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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Case No. 14-ALJ-17-0158-CC

Appellate Case No. 2015-001509

DIRECTV, Inc. and its Subsidiaries, ... Appellant,

v.

South Carolina Department of Revenue, ... Respondent.

RECORD ON APPEAL

VOLUME I

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RECORD ON APPEAL
INDEX

VOLUME I

ORDERS AND JUDGMENTS

Final Order and Decision dated May 12, 2015 1

Reconsideration Order dated June 12, 2015 23

Amended Final Order and Decision dated June 12, 2015 31

Order Granting Extension for DIRECTV to Serve and File Its Initial Brief and Designation of Record dated August 11, 2015 54

Order Granting Extension for DIRECTV to Serve and File Its Initial Brief and Designation of Record dated September 11, 2015 55

DETERMINATIONS

Respondent's Exhibit 13: Department Determination dated February 18, 2014 57

MOTIONS

DIRECTV's Motion for Reconsideration Under ALC Rule 29(D) and/or to Alter or Amend Under SCRCP Rule 59(e) filed May 22, 2015 65

Department's Response to DIRECTV's Motion for Reconsideration Under ALC Rule 29(D) and/or to Alter or Amend Under SCRCP Rule 59(e) filed May 22, 2015 102

TRANSCRIPT

Hearing Transcript dated January 13-14, 2015 124

EXHIBITS AND OTHER MATERIALS OR DOCUMENTS

Petitioner's Exhibit 1: Customer Contracts with DIRECTV 267

Petitioner's Exhibit 2: CV of Professor Richard D. Pomp 291

Petitioner's Exhibit 3: Expert Report of Professor Pomp 306

Petitioner's Exhibit 5: Excerpts of Deposition Transcript of John A. Swain 315

Petitioner's Exhibit 7: CV of Dr. Brian J. Cody 318

Petitioner's Exhibit 8: Expert Report of Dr. Cody 323

Petitioner's Exhibit 16: Uniform Division of Income for Tax Purposes Act 350

Joint Exhibit 1: Joint Deposition Designation from Deposition of William J. Spina 362

Respondent's Exhibit 1-10: DIRECTV's Original and Amended South Carolina Corporate Returns for the Tax Periods ended December 31, 2006 through December 31, 2011 366

Respondent's Exhibit 11: 2006 through 2008 Field Audit Report of DIRECTV 470

Respondent's Exhibit 12: 2009 through 2011 Field Audit Report of DIRECTV 482

Respondent's Exhibit 14: CV of Professor John A. Swain 490

VOLUME II

Respondent's Exhibit 15: CV of Dr. Glenn W. Harrison 499

Respondent's Exhibit 21: Portions of Transcript from Lockwood Greene 520

Joint Stipulation of Petitioner and Respondent dated January 12, 2015 530

Appellant's Notice of Appeal dated July 9, 2015 535

Appellant's Notice of Filing Appeal Bond dated July 9, 2015 561

Certificate of Counsel 568

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DIRECTV, Inc. & Subsidiaries, Petitioner, vs. South Carolina Department of Revenue, Respondent.	)	Docket No. 14-ALJ-17-0158-CC **FINAL ORDER AND DECISION**

Appearances:

For the Petitioner: R. Gregory Roberts, Esq.; Andres Vallejo, Esq.; Bryson M. Geer, Esq.; and John von Lehe, Esq.

For the Respondent: Nicole M. Wooten, Esq.; William J. Condon, Jr., Esq.; Timothy C. Thompson, Esq.; and Mary Elizabeth Campbell, Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) following DIRECTV, Inc. & Subsidiaries' (DIRECTV or Petitioner) request for a contested case hearing under S.C. Code Ann. § 12-60-460 (2014). DIRECTV is contesting the South Carolina Department of Revenue's (Department or Respondent) Determination denying DIRECTV's claim for a refund of South Carolina corporate income and license fee taxes for the tax years 2006 through 2008 and the assessment of South Carolina corporate income and license fee taxes, interest, and penalties for the tax years 2009 through 2011 (Tax Periods at Issue).[1]

The Department's Determination (Determination) concluded that applicable South Carolina law and long-standing Department policy require DIRECTV to source all of the gross receipts of its South Carolina subscription revenue to South Carolina because all of the income-producing activity related to DIRECTV's South Carolina customers occurs in South Carolina. DIRECTV asserts that little or no subscription revenue from South Carolina customers should be

[1] The tax years noted relate to income tax years. Income taxes are generally due in arrears, while license fees are due in advance. For clarity, when the Court refers to tax years, reference is being made to income taxes for that year and license fees due for the following year.

FILED
May 12, 2015
SC ADMIN. LAW COURT

included in the numerator of the gross receipts ratio because the majority of the income-producing activity occurs outside of South Carolina.

A hearing was held before this Court on January 13 and 14, 2015.

ISSUES

The following issues are raised in this proceeding:

1. To what extent under S.C. Code Sections 12-6-2290 and 12-6-2295(A)(5) did Petitioner's applicable income-producing activity occur within South Carolina?[2]
2. Whether the Department properly assessed substantial understatement penalties against DIRECTV for taxes owed for 2009 through 2011.

STIPULATIONS OF FACT

At the hearing into this matter and pursuant to Rule 25(C) of the Rules of Procedure for the Administrative Law Court (ALC Rules), the parties entered the following written stipulations of fact into the Record:

1. One of the issues presented by Petitioner for determination in this appeal is whether Respondent is seeking an alternative method of apportionment to source Petitioner's subscription revenue from the provision of its direct broadcast satellite services (Subscription Revenue).

2. In Petitioner's Request for Contested Case Hearing and Prehearing Statement filed with this Court, one of the issues presented for determination was whether Respondent satisfied its burden of proof for the use of an alternative apportionment methodology under S.C. Code Ann. § 12-6-2320.

3. The parties wish to clarify that Respondent does not assert that an alternative apportionment methodology under Section 12-6-2320 was used or should be used to source Petitioner's Subscription Revenue for tax years 2006 through 2011 (Period at Issue).

4. The sole remaining issue presented for determination with respect to the sourcing of Petitioner's Subscription Revenue is how that revenue should be sourced under Sections 12-6-2290 and 12-6-2295(A)(5).

5. As a result, Petitioner's Prehearing Statement is deemed to be amended to remove the assertions set forth in Paragraph No. 3(b) and Paragraph No. 4(b).

6. The parties submitted Exhibit A, a schedule setting forth the amount of (i) Petitioner's total Subscription Revenue for each year during the Period at Issue, (ii) Petitioner's

[2] The parties agree that at least some income-producing activity occurred within South Carolina.

total Subscription Revenue from South Carolina Customers for each year during the Period at Issue, (iii) the total revenue from leases of set-top boxes and sales of tangible personal property to South Carolina customers for each year during the Period at Issue, (iv) Petitioner's total revenue from leases of set-top boxes and sales of tangible personal property for each year during the Period at Issue, and (v) Petitioner's total gross receipts for each year during the Period at Issue.

7. The parties agreed to work together in good faith to verify and to confirm the amounts set forth in Exhibit A to provide this Court with a final version of Exhibit A within two weeks of the conclusion of the trial.

8. For each year during the Period at Issue, Petitioner included revenue from the leases of set-top boxes and sales of tangible personal property (e.g., remote controls) to South Carolina customers in the numerator of the gross receipts factor and the parties do not dispute the treatment of this revenue.

After the hearing, the parties determined Exhibit A that was attached to the Stipulations did not need to be amended. Based upon the Stipulations of the parties, the Court adopts the schedule setting forth the amounts listed in Exhibit A, and these figures shall be used in calculating the gross receipts ratio:

	S.C. Subscription Revenue	**Total Subscription Revenue**	**S.C. Lease/Sale Revenue from Set-top Boxes**	**Total Lease/Sale Revenue from Set-top Boxes**	**Total Revenues**
2006	265,155,289	13,583,081,711	3,376,851	160,263,938	13,743,345,649
2007	297,356,680	14,900,247,218	12,547,540	582,796,802	15,483,044,020
2008	334,652,301	16,321,615,758	19,605,211	923,326,252	17,244,942,010
2009	361,394,437	17,348,388,812	26,702,174	1,238,157,983	18,586,546,795
2010	392,627,654	18,654,864,389	31,565,700	1,444,720,825	20,099,585,214
2011	409,564,133	19,689,434,914	42,129,631	1,925,855,682	21,615,290,596

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

DIRECTV's Business Operations

DIRECTV is a multistate taxpayer headquartered in Los Angeles, California that offers direct broadcast satellite video services to customers throughout the United States. DIRECTV

accomplishes this through four general types of activities: marketing and sales; content development (both original and acquired programming); broadcast operations; and customer service.[3] Through DIRECTV's marketing and sales activities, it advertises its programming services to subscribers. DIRECTV engages in distinctive marketing activities on a national scale which includes South Carolina. The goal of DIRECTV's print and television advertising is to encourage customers to call a toll-free number to place an order for television services.

Customers pay DIRECTV a subscription fee for access to hundreds of television programming channels and other audio/visual options that are transmitted nationwide to customer's homes or businesses via satellites. DIRECTV receives its programming from third parties through satellite, fiber-optic cables, and over-the-air broadcast. DIRECTV also collects programming from local broadcast television stations through the use of local collection facilities throughout seven designated market areas (DMA). During the Tax Periods at Issue, DIRECTV had four to six local collection facilities in South Carolina.

The signals for the programming content are collected at broadcast and uplink centers. These broadcast centers and uplink facilities transmit the programming content signals to the satellites. The satellites then transmit the signals received from the broadcast centers and uplink facilities directly to DIRECTV satellite dishes mounted on or near customer homes. DIRECTV transmits its broadcast utilizing two types of beams from its satellites. One beam, the "CONUS" beam, covers the entire United States. It transmits the national programming sold to DIRECTV. The other beam is a narrow beam that transmits the local programming to the DMAs. Those signals are then relayed from the dish to a set-top box located in the customer's home or business, which delivers the signals to the customer's television set.

Customers pay a monthly subscription fee for access to basic channels and can also purchase premium channels and pay-per-view programs for an additional fee. In order to receive the receive programming, customers must contract with DIRECTV for the service, and then use a satellite dish, remote controls, and set-top box provided by DIRECTV in order to access DIRECTV's programming. During the Period at Issue, DIRECTV provided customer service support to customers in South Carolina through both owned-and-operated internal call centers and third-party call centers, none of which were located in South Carolina. DIRECTV also employed

[3] Although several affiliated entities are involved in the provision of DIRECTV's programming services, this case involves only DIRECTV Inc., and thus, the Court's focus is upon the activities of that entity.

two employees in South Carolina and contracted with third-party home service providers who installed and serviced equipment in homes of new customers in South Carolina. Also during the Tax Periods at Issue, DIRECTV began leasing the set-top boxes to customers in exchange for a lease fee. However, the importance of these services as to income production has not been sufficiently explained.

DIRECTV's primary source of revenue is the subscription revenue it receives from its approximately twenty million subscribers. DIRECTV's revenue includes monthly fees for subscribing to one or more packages of video programming; revenue from pay-per-view programming; revenue from the sale or lease of the set-top boxes; revenue from optional warranty on the leased boxes (protection plans); and revenues from fees associated with high-definition set-top boxes, set-top boxes with DVR, and multi-room viewing. I find that the rental and sales receipts received from South Carolina customers are properly included in the numerator of the gross receipts ratio.[4]

DIRECTV's Income Tax Returns

For the 2006 through 2008 tax years, DIRECTV filed corporate income tax returns in South Carolina in which it sourced 100% of subscription receipts from South Carolina customers to the numerator of the gross receipts ratio. By doing so, DIRECTV used gross receipts ratios of 1.9539%, 2.0016%, and 2.0543% for years 2006 through 2008, respectively. In 2008, the Department began an audit of DIRECTV. As a result of the audit, the Department accepted DIRECTV's original 2006 through 2008 corporate income tax returns as filed (i.e., the Department did not make any adjustments to the tax returns). DIRECTV subsequently filed amended corporate income tax returns for the 2006 through 2008 tax years, and the single change was the removal from the gross receipts ratio of 100% of the subscription receipts from South Carolina customers that DIRECTV originally included in the numerator. The amended gross receipts ratios for years 2006 through 2008 were 0.0246%, 0.081%, and 0.1137%, respectively. DIRECTV explained the change in a statement attached to each of the three amended returns:

> This return is being amended to apportion sales receipts to the state under S.C. Code Ann. § 12-6-2295 which sources sales of services under a pro-rata cost of

[4] The parties do not dispute the treatment of the rental income of the set-top boxes and agree that all such rental income from the set-top boxes received by DIRECTV from South Carolina customers should be included in the numerator of the gross receipts ratio for apportionment purposes. *See* Stipulation of Facts, filed January 13, 2015.

performance method.[5] The originally filed return incorrectly apportioned satellite television subscription receipts to South Carolina using market-based sourcing, rather than the cost of performance sourcing that is prescribed by statute.

Because of the amended returns for 2006 through 2008, DIRECTV decreased its tax and license fee liability by $5,976,816.00 and sought a refund in this amount. In a field audit report dated November 29, 2011, the Department denied the amended returns and related refunds and accepted the original returns as filed.

DIRECTV then filed its original 2009 through 2011 corporate income tax returns using the same costs-of-performance method that it used on its 2006 through 2008 amended returns; the Department audited these returns as well.[6] In a field audit report dated January 28, 2014, the Department assessed DIRECTV for income taxes and license fees for 2009 through 2011 using a gross receipts ratio that included all of the subscription receipts from South Carolina customers in the numerator.

The Department subsequently issued its Determination and found that the income-producing activity of DIRECTV was the delivery of the signal into the South Carolina customer's home or business and onto the customers' television sets and that, accordingly, DIRECTV should include 100% of the subscription receipts received from South Carolina customers in the numerator of the gross receipts ratio. DIRECTV subsequently requested a contested case hearing regarding this Determination.

CONCLUSIONS OF LAW

General Conclusions

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. §§ 1-

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[5] Both Petitioner and the Department originally erred in how they referenced South Carolina's apportionment method for receipts from services; Petitioner in its amended returns for 2006-2008 referred to it as a "cost of performance method," and the Department referred to it as "market base sourcing" in its Report of Field Audit of Petitioner's 2009-2011 receipts. However, both parties agree, and have subsequently clarified their positions to reflect, that South Carolina uses a method of apportionment based on the proportion of income-producing activity conducted within the State.

[6] DIRECTV did not include any of the subscription receipts from South Carolina customers in the numerator of the gross receipts ratio on its amended 2006 through 2008 returns and on its original 2009 and 2010 returns. On its 2011 South Carolina return, DIRECTV changed its method again by including approximately $22 million of its $410 million subscription receipts from South Carolina customers in the numerator. DIRECTV did this by sourcing 0.11% of its total subscription receipts to South Carolina based on a ratio of its alleged payroll in South Carolina to its total payroll. From 2006 through 2010, DIRECTV did not source any subscription receipts to South Carolina because it claims that the vast majority of its payroll and property were located outside of South Carolina.

23-600(A) (Supp. 2014) and 12-60-460 (2014). The hearing before the ALC is a contested case hearing and is heard de novo. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). This Court must make its factual findings based on the preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2009); *see also Anonymous (M-156-90) v. State Bd. of Med. Examiners*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998); *Nat'l Health Corp. v. Dep't of Health and Envtl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989). Because DIRECTV is challenging a determination by the Department that it must source its South Carolina subscription receipts from South Carolina customers to the numerator of the gross receipts ratio, DIRECTV has the burden of proof. *See* ALC Rule 29(B); *Ford v. Atl. Coast Line R. Co.*, 169 S.C. 41, 168 S.E. 143, 167 (1932) ("The general rule is, in the absence of valid statutory enactment to the contrary, that the burden of proof rests upon him who has the affirmative of the issue and does not shift to the defendant even when aided, in the first instance, by a rebuttable presumption."); *see also Leventis v. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132033, 530 S.E.2d 643, 651 (Ct. App. 2000). This burden requires DIRECTV to prove that the Department's determination is errant by a preponderance of the evidence. *See, e.g., Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 346, 415 S.E.2d 384, 388 (1992) ("Findings of fact based upon a 'preponderance' of the evidence are those supported by the greatest 'weight, amount, credibility or truth' as reflected by the whole of the evidence before the court, or 'evidence which convinces as to its truth.'").

Applicable Law

It is well-settled law that the purpose of the South Carolina allocation and apportionment provisions is to provide for imposition of income tax "upon a base which reasonably represents the proportion of the trade or business carried on within this State." *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 142 S.E.2d 445 (1965).[7] Furthermore, a statutory provision must be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Hay v. S.C. Tax Comm'n*, 273 S.C. 269, 255 S.E.2d 837 (1979). The method of

[7] Generally, allocation refers to the assignment of nonbusiness income to a specific state. *See* S.C. Code Ann. § 12-6-2220; *Emerson Elec. Co. v. S.C. Dep't of Rev.*, 395 S.C. 481, 486, 719 S.E.2d 650, 652-653 (2011) (noting that a multistate corporation's "non-business income is not apportioned among various states. Rather, non-business income is allocated to or deemed to be earned in a particular state . . . ."). Apportionment generally refers to the assignment of business income of a corporation that is taxable in more than one state. *See* S.C. Code Ann. § 12-6-2210(B); *Emerson*, 395 S.C. at 485, 719 S.E.2d at 652 (stating that "[a] corporation's business income is apportioned among the states in which it conducts business.").

apportionment that a taxpayer must use depends upon the nature of the taxpayer's business in this State. During the Tax Periods at Issue, net income of a manufacturer or a dealer in tangible personal property was apportioned based on a three-factor formula and later on a single sales factor (*see* S.C. Code Ann. §§ 12-6-2250, -2252 (Supp. 2007)),[8] while net income of substantially all other taxpayers was apportioned based on a single gross receipts formula (*see* S.C. Code Ann. § 12-6-2290 (Supp. 2007)). Accordingly, for service providers, South Carolina law mandates the following method of apportionment:

> If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2252 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

S.C. Code Ann. § 12-6-2290.[9] Thus, service providers are required to use the single gross receipts apportionment formula. For tax years after 2006, the final sentence of Section 12-6-2290 directs taxpayers to S.C. Code Ann. § 12-6-2295 for a non-exclusive list of the items to be sourced, or included, in the gross receipts apportionment ratio.[10] The relevant subsection in this matter is Section 12-6-2295(A)(5), which states:

> (A) The terms "sales" as used in Section 12-6-2280 and "gross receipts" as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:
>
> * * *

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[8] In 2006, the South Carolina Legislature enacted a change in the apportionment method provided in Section 12-6-2250 for taxpayers whose principal business in South Carolina is manufacturing or any form of collecting, buying, assembling, or processing goods and materials within South Carolina, or selling, distributing, or dealing in tangible personal property within South Carolina. The three-factor apportionment method for a multistate taxpayer (based on property, payroll, and double weighted sales) changed to a single-sales-factor apportionment method. This change was phased-in for income tax years beginning in 2007 through 2010. For income tax years beginning in 2011, the single-sales-factor apportionment method in Section 12-6-2252 replaced the three-factor apportionment method in Section 12-6-2250. *See* S.C. Rev. Ruling #09-15.

[9] In 1995, the General Assembly repealed Chapter 7 and added Chapter 6 of Title 12. Accordingly, Section 12-6-2290 replaced Section 12-7-1190 as the statute that directed taxpayers how to apportion net income related to services. In 2007, the General Assembly amended Section 12-6-2290 by adding an additional sentence to the end of the existing statute. That sentence reads as follows: "For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295." 2007 South Carolina Laws Act 110 (S.B 91).

[10] 2007 South Carolina Laws Act 110 (S.B. 91) also added Section 12-6-2295, the companion statute to Section 12-6-2290. *See* 2007 South Carolina Laws Act 110, § 51.A; eff. June 21, 2007. These additions were effective for DIRECTV's 2007 tax year.

(5) receipts from services if the entire income producing activity is within this State. If the income producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income producing activity is performed within this State[.]

Taxpayer Is a Service Provider

DIRECTV provides direct broadcast satellite services to customers throughout the United States. Its primary income is subscription revenue from providing these services and is not from engaging in manufacturing or dealing in tangible personal property. In a similar case, a Texas administrative law court found that a direct broadcast satellite company was a service provider for purposes of its apportionment laws. *Anonymous Taxpayer v. Texas Comptroller of Pub. Accounts*, 2013 WL 3490605 (Tex. Cptr. Pub. Acct.) (May 17, 2013). As a service provider, Section 12-6-2290 is the applicable statute to apportion DIRECTV's adjusted net income to South Carolina. Further, after 2006, Section 12-6-2295(A)(5) is the supplemental sourcing statute when determining the numerator of the gross receipts ratio, and requires DIRECTV to source receipts from South Carolina customers to South Carolina if the income-producing activity occurs in this State. Therefore, for all Tax Periods at Issue, DIRECTV must apportion its net income to South Carolina using a gross receipts factor in Section 12-6-2290.

As noted above, since 1958, the applicable South Carolina apportionment statutes have always mandated that gross receipts be used when apportioning net income to South Carolina for a corporation whose income is generated from the provision of services.[11]

Income-Producing Activity of DIRECTV

The Court must first determine whether any income-producing activity occurred in this State and then decide whether that activity occurred within or without South Carolina. Only after identifying the income-producing activity is there a need to quantify how much of the income-producing activity occurred in South Carolina.

Identification of the Income-Producing Activity

Effective for the 2007 tax year, Section 12-6-2295(A)(5) was applicable and supplemented Section 12-6-2290.[12] Section 12-6-2295(A)(5) added the "income producing activity" language

[11] Section 12-6-2295(A)(5) is the applicable sourcing statute for the 2007-2011 tax years at issue. Only Section 12-6-2290 is applicable for tax year 2006.

[12] Notably, when adding Section 12-6-2295(A) for the 2007 tax year, the General Assembly stated the following in 2007 South Carolina Laws Act 110, § 51.A; eff. June 21, 2007: "To Amend . . . by adding Sections 12-6-2252 and

to the apportionment statutes for service providers. The Department argues that the identity of DIRECTV's income producing activity is the delivery of the signal into the homes and onto the television screens of its customers. Therefore, the Department contends that 100% of the subscription receipts from South Carolina should be sourced to the numerator of the gross-receipts ratio because there is no other income-producing activity related to DIRECTV's business in South Carolina. To the contrary, DIRECTV presented evidence that its income-producing activities in South Carolina could be identified using four "value drivers." Those "value drivers" are: 1) DIRECTV's content and programming; 2) DIRECTV's acquisition and distribution of the content to customers; 3) DIRECTV's marketing and sale of its service; and 4) DIRECTV's customer services.

The Court concludes that pursuant to Section 12-6-2295(A)(5), DIRECTV's income-producing activity includes the customers' subscriptions and delivery of the signal into the location and onto the television screens of its customers. In identifying this income-producing activity, the Court considered the activities of businesses in the direct broadcast services industry and the sources of income within the industry. DIRECTV derives income from monthly subscription receipts that customers pay to DIRECTV in order to view its video programs in their homes and businesses. These subscription receipts are received as a result of the delivery of the signal into the customer's home and onto the customer's television, and are therefore directly related to the primary income-producing activity of DIRECTV.

The Court, however, does not adopt the view of the Department that income-producing activity of businesses within the direct broadcast services industry is completely limited to the delivery of a signal into the customer's home and onto the customer's television. Rather, the Court agrees with Professor Richard D. Pomp that "opinions can differ on how to measure the extent to which income-producing activities take place in South Carolina, but answering that question by simply ignoring the outside activities is unacceptable."

In *Walter E. Heller W., Inc. v. Dep't of Revenue*, 161 Ariz. 49, 775 P.2d 1113 (1989), the Arizona Supreme Court analyzed how interest income earned on loans made to Arizona customers should be sourced under provisions that mirrored the Uniform Division of Income for Tax

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12-6-2295 so as to further provide for allocation and apportionment of business income for state income tax purposes by basing the determination only on a sales factor and to define the terms 'sales' and 'gross receipts' consistently and specifically for that purpose[.]"

Purposes Act (UDITPA).[13] In reaching its decision, the Arizona Supreme Court did not simply look to the location of the customer as the Department does here. Rather, the court determined that the income-producing activities consisted of the solicitation of new customers, the investigation of credit records of potential customers, and the servicing of such contracts, all of which occurred in Arizona. *Id.* at 53-54, 775 P.2d at 1116-17. Therefore, the court's reasoning implies that the location of customers does not necessarily identify the income-producing activities of the taxpayer and therefore is not a reasonable method of identification.

In this case, the evidence also suggested that there may be other activities, such as advertising, that influence the customer's decision to make the purchase. In explaining those activities from DIRECTV's perspective, Dr. Brian J. Cody testified that he employed DIRECTV's payroll and net value of assets as proxies in identifying DIRECTV's income-producing activities. Dr. Cody explained the "[t]wo measures which are proxies . . . [a]re not perfect, but they're proxies . . . ." However, that evidence is simply insufficient to satisfy DIRECTV's burden of proof.

Our Supreme Court "has long realized the practical impossibility of a state's achieving a perfect apportionment of expansive, complex business activities such as those of Appellant, and has declared that 'rough approximation rather than precision' is sufficient." *Covington Fabrics Corp. v. S.C. Tax Comm'n*, 264 S.C. 59, 66-67, 212 S.E.2d 574, 577-78 (1975). The Court also noted that "[a]lthough exactness in apportionment is desirable, all that is required is a reasonable approximation." Though this Court thus recognizes that an exact determination of the identity of the income-producing activities is not possible, I find that Dr. Cody's proxies in identifying DIRECTV's income-producing activities are so far from perfect as to be of no practical value. DIRECTV did not sufficiently explain the effect of its value drivers on income production in this State. In other words, DIRECTV's evidence is just too nebulous to properly identify whether DIRECTV's value drivers are income producing and the extent to which such production occurs. Therefore, though Section 12-6-2295(A)(5) provides "flexibility" in determining the relative amount of income-producing activities in the State, Dr. Cody's payroll-and-assets method does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina or the value attributable to such activities. Though its evidence did

[13] UDITPA was created in 1957 by the Uniform Law Commission as a model statute for the division of income for income tax purposes. The goal of the Uniform Law Commission in drafting UDITPA was to develop a model act that would be widely adopted..

reflect that its advertising probably produced some income, the evidence did not reflect what portion of DIRECTV's cost was either attributable to South Carolina customers or may have influenced South Carolina customers to subscribe to DIRECTV. Instead, the Court was left to speculate as to the extent to which DIRECTV's content and programming, acquisition and distribution thereof, advertising, and customer service in installing and maintaining its equipment within this State influenced customers' decision to subscribe to DIRECTV.

Moreover, it does not appear that some of the activities that DIRECTV attributes to income production are actually income-producing activities. DIRECTV argues that its cost to produce the content and broadcast of signals into South Carolina should be considered as an income-producing cost. The Department, on the other hand, argues that only the delivery of the signal into the customer's home and onto the customer's television is income-producing activity. Thus, the pertinent issue here is at what point DIRECTV's activities become income-producing. Both parties assert that the holding in *Mercury Motor Express, Inc. v. S.C. Tax Comm'n*, 244 S.C. 134, 135 S.E.2d 756 (1964) is applicable to this case. In *Mercury*, the South Carolina Supreme Court addressed the income-producing activity of an interstate freight hauler. The taxpayer argued that the apportionment formula produced an unconstitutional result because it apportioned 17% of its income to the State (reflecting that 17% of its mileage was in the State), while revenue from freight either originating or delivered to South Carolina accounted for only 1% of its gross revenue. The taxpayer asserted that when its trucks were merely traveling through South Carolina, they were not engaged in any activity that contributed to the taxpayer's net income. Rather, the taxpayer argued that the taxable event should only occur if it was delivering freight in the State of South Carolina; otherwise the State's mileage formula produced "an arbitrary, discriminatory and unconstitutional results, in violation of the commerce clause. . . ." In other words, the taxpayer in *Mercury* contended that the incidental act of transporting freight through the State should not be considered as a taxable event.

The Supreme Court listed a series of transactions that occurred in the freight hauling business: solicitation of the freight, picking up the freight, hauling the freight, dropping off the freight, and collecting the hauling charges. The Supreme Court held that while each of these transactions was "necessarily incidental to the production of [the business's] income," the activity that "primarily earn[ed] the income" was the hauling of freight "through and over the highways of the State of South Carolina." *Id.* Thus, the Court focused upon the company's primary activity in

determining whether South Carolina's tax was arbitrary. However, that focus did not specifically equate to the issue to be determined in this case.

In *Mercury*, the Supreme Court's inclusion of "incidental" in its definition of income-producing activities distinguishes that activity from the primary income-producing activity. However, the Court did not determine that those "incidental" activities were not income-producing. Nevertheless, the consideration of primary versus incidental activities does offer a point for analysis. Here, Petitioner engages in other out-of-state activities that cause satellite signals to be beamed into this State. But, it is not until a customer subscribes to Petitioner's services by purchasing a satellite dish to receive those signals and a set-top box to decode those signals that Petitioner's actions have any income producing value. Indeed, the national programming through the CONUS beams would exist regardless of whether there were **any** subscribers in South Carolina. Therefore, such broadcasting is an incidental activity to producing income until a customer subscribes to DIRECTV.

The beaming of the satellite signals through the air of South Carolina to the customer's dish, set-top box, and television screen and the collection of charges for such service, are also analogous to the loading, hauling, and delivery of freight following the customer's solicitation of that freight, and the collection of charges therefor in *Mercury*. The other prior activities that prepare the way for DIRECTV's provision of services, i.e., the infrastructure for producing and collecting the programming content and transmitting the signals, though necessary, are merely incidental to the income-generating activities themselves, i.e., the services that directly produce income for DIRECTV. In this case, the production and collection of programming content signals and transmission to broadcast centers and uplink facilities and then to the satellites would, in comparison to the facts in the *Mercury* case, be akin to the manufacturing and transfer of the freight through its infrastructure to a storage location, from which it is later – **only after an order is placed** (or "solicited," as the Supreme Court put it) – loaded, hauled, and delivered, and for which charges are collected.

In sum, DIRECTV failed to sufficiently identify its outside income-producing activities. Even as to local programming, though it is almost completely geared towards South Carolina residents, DIRECTV failed to prove what impact the availability of local programming has on South Carolina customers' decision to subscribe to DIRECTV. Consequently, the remaining evidence is that the transmission of the beams to the customers, as well as the subsequent activities

performed that allow South Carolina customers to experience DIRECTV's services – such as the sale/lease, installation, or repair of set-top boxes that are sold or leased to customers –are income-producing activities under Section 12-6-2295(A)(5); and all occur entirely within the State.

Sourcing of the Income-Producing Activity

DIRECTV argues that nearly all of the income-producing activities it identified in this matter occurring outside of South Carolina should be sourced to the location of the activities performed by DIRECTV. At the outset, the Court disagrees that DIRECTV has sufficiently identified its activities to be sourced.[14] Furthermore, even if it had identified those activities, DIRECTV failed to sufficiently establish that those activities should be sourced elsewhere.

Pursuant to Section 12-6-2295(A)(5), a service provider's gross receipts are sourced to South Carolina based on the location of the income-producing activity according to one of two prongs. In the first prong, all of the gross receipts are sourced to South Carolina "if the entire income-producing activity is within this State." S.C. Code Ann. § 12-6-2295(A)(5) (Supp. 2007). In the second prong, "[i]f the income-producing activity is performed partly within and partly without this State, [gross receipts are sourced to South Carolina] to the extent the income-producing activity is performed in this State." *Id.*

DIRECTV argues that its income should be sourced based upon payroll and assets/property factors, similar to the taxpayer in *Lockwood Greene Eng'rs, Inc. v. S. C. Tax Comm'n*, 293 S.C. 447, 361 S.E.2d 346, (Ct. App. 1987). The applicable statute for apportioning net income from a taxpayer whose principal profits were derived from services at the time of *Lockwood Greene* was Section 12-7-1190 (1976) which stated:

> If the principal profits or income of a taxpayer . . . are derived from sources other than manufacturing, producing, collecting, buying, assembling, processing, or selling, distributing or dealing in tangible personal property such taxpayer shall make returns and pay annually an income tax upon a proportion of its remaining net income computed on the basis of the ratio of gross receipts from within this State during the income year to the total gross receipts of such year within and without the State.

S.C. Code Ann. § 12-7-1190 (1976).

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[14] As noted above, DIRECTV argues its "value drivers," reflect its income-producing activity.[14] While DIRECTV may rely heavily upon "value drivers" in determining the value of certain components within its company, DIRECTV has, as aforementioned, failed to sufficiently demonstrate whether and to what extent those value drivers are income-producing activities as required by the applicable and mandatory language of Section 12-6-2295(A)(5) when calculating the numerator of the gross receipts factor.

The taxpayer in *Lockwood Greene* unsuccessfully argued that the then-applicable apportionment statute for net income related to services – Section 12-7-1190 – prescribed one rule (i.e., the origin-of-payment rule) for all businesses that do not deal in tangible personal property. The South Carolina Court of Appeals did not accept the taxpayer's argument that Section 12-7-1190 was a one-rule statute and that all net income to be apportioned under Section 12-7-1190 must be apportioned under the same method. Several facts support the Court of Appeals' determination: (1) the Court of Appeals did not believe that the use of different methods for different industries when applying Section 12-7-1190 created a constitutional problem;[15] (2) the Court of Appeals clearly suggested a distinction between finance companies and media broadcasters on one hand and personal *professional* service firms, such as Lockwood, on the other when determining where to source service receipts;[16] and (3) the Court of Appeals noted that the Lockwood firm "provides services to its clients through highly trained engineers and personnel in various offices" and that a "client pays an engineering firm for the **expertise and time** of its employees." *Lockwood Greene*, 293 S.C. at 449, 361 S.E.2d at 347 (emphasis added). Based on the specifics of Lockwood's business, the Court of Appeals then concluded, "Therefore, an engineering firm's business carried on in a state is reasonably measured by the services rendered by its personnel in the state," which "is epitomized by the 'place of activity' test advanced by" the Department. *Id.* Again, it would not have been necessary for the Court of Appeals to address the specifics of Lockwood Greene's business if Section 12-7-1190 was a "one-rule statute."

On one hand, the Court's decision in *Lockwood Greene* did **not** mandate that the net income of **all** service providers be apportioned based on a "place of activity" test that is quantified by a payroll factor or some other cost-based factor. The Court of Appeals specifically recognized that the Department's audit guidelines at the time sourced revenues of personal *professional* service

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[15] After hearing the taxpayer's argument (that the Department had not consistently applied Section 12-7-1190) and considering the guidelines (which illustrated the Department's policy of allowing the use of different methods for different industries), the Court of Appeals stated, "[w]e discern no constitutional basis for Lockwood's argument." *Lockwood Greene*, 293 S.C. at 450 n.1, 361 S.E.2d at 348 n.1.

[16] *Id.* at 450, 361 S.E.2d at 348 ("We are not persuaded [finance companies and media broadcasters] are comparable to Lockwood. By contrast, the Tax Commission guidelines concerning law firms, accounting firms, entertainment and sports companies, and hospital management companies all focus on whether the services are performed in South Carolina."). *Implicit in this finding* is the fact that the only reason for the Court of Appeals to distinguish a taxpayer like Lockwood from companies in other industries was the Court of Appeals' belief that Section 12-7-1190 was not a "one-rule statute," and that different methods could be used for different industries when applying Section 12-7-1190.

providers (e.g., engineering, law, and accounting firms) to the "place of activity."[17] *Lockwood Greene*, 293 S.C. at 450, 293 S.E.2d at 348. At the same time, the court was **not persuaded** that service industries, such as finance companies and media broadcasters, were comparable, thus implying that revenues of service industries were sourced to the "origin of payment" (i.e., location of the borrower or customer) *Id.* The Court of Appeals also held that no constitutional problem existed with the Department's policy of sourcing revenues of services providers in a different manner for different industries.[18] *Id.* at 450 n.1, 361 S.E.2d at 348 n.1.

Accordingly, the result of *Lockwood Greene* was the Court of Appeals' holding that (1) a personal professional service firm should source its gross receipts to South Carolina based on the "place of activity" test; and (2) affirmation that the Department's then-existing policy of using different methods for different industries to source service-related net income to South Carolina, was in compliance with Section 12-7-1190. Further, despite DIRECTV's contention, the Court of Appeals in *Lockwood Greene* did not impose a one-rule "place of activity" test for apportioning service-related income in South Carolina on *all* multistate corporate taxpayers. The Court of Appeals clearly supported the Department's use of different methods for different industries and did not reject Lockwood's "one-rule" argument only to replace it with a different one-rule requirement.[19]

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[17] The Department argues that it has had a longstanding policy in place regarding the sourcing of service-related net income and that it is therefore entitled to deference. However, this policy, though once apparently written down and acknowledged by the Court of Appeals in *Lockwood Greene*, is no longer written anywhere and apparently has not been for some time. As the finding of fact in *Lockwood Greene* is the only evidence of this policy, I find that this finding of fact is insufficient as a basis for deference, though the fact that DIRECTV previously filed its returns sourcing 100% of the South Carolina subscription revenue to South Carolina before filing the amended returns suggests that the Department had such a policy in place. Moreover, "[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law." *See* S.C. Code Ann. § 1-23-10(4) (2005). *See also Kirven v. Cent. States Health & Life Co., of Omaha*, 409 S.C. 30, 45, 727 S.E.2d 794 802 (2014) ("[A]n agency guideline does not have the force of law, and in any event, can never trump a regulation.... *Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.*") (quoting *Doe v. S.C. Dep't of Health & Human Servs.*, 398 S.C. 62, 68 n.7, 727 S.E.2d 605, 608 n.7 (2011)).

[18] It is noteworthy that the payroll factor that was used by the Department to source Lockwood's gross receipts to South Carolina was used merely as a proxy for calculating Lockwood's actual gross receipts from within South Carolina. If the Department had had all of Lockwood's records, the Department would not have had to use the payroll proxy but could have examined all of Lockwood's invoices and added the fees billed for the work of South Carolina engineers. Here, DIRECTV has added up all of its actual subscription receipts from South Carolina customers for the applicable tax years; therefore, no cost-based proxy is needed.

[19] When Section 12-6-2295(A)(5) was enacted, the distinction between "place of activity" and "origin of payment" became irrelevant and the question then became whether the income-producing activity occurred completely within the State of South Carolina, and if only partly within the State, in what proportion it was conducted within the State. Lockwood Greene, in light of Section 12-6-2295(A)(5), still suggests that income-producing activity is the acts of a

Unlike the taxpayer in *Lockwood Greene*, a DIRECTV customer did not hire specific professionals and is not paying for those professionals' expertise and time, or that of any other DIRECTV employee or contractor. Instead, the customer is paying for video programming to be viewed on the customer's television at the time and place the customer demands. DIRECTV does not sell contract negotiations. It does not sell network management services. It does not sell broadcast infrastructure or satellite triangulation. Rather, DIRECTV is in the business of selling television broadcast subscriptions to customers; and without the actual delivery of that broadcast signal into South Carolina homes, it would not have generated the income at issue here. Indeed, as noted above, the national programming through the CONUS beams would exist regardless of whether there were any subscribers in South Carolina; therefore, such broadcasting is incidental activity. As to local broadcasting in South Carolina, though it is almost completely geared towards South Carolina residents, DIRECTV provided no evidence of what impact the availability of local programming has on South Carolina customers' decision to subscribe to DIRECTV.

Furthermore, as noted above, Dr. Cody testified that he employed DIRECTV's payroll and net value of assets as proxies in determining and sourcing DIRECTV's income-producing activities. However, as with the determination/identification of income-producing activities, the Court also rejects as too nebulous this approach to sourcing gross receipts to South Carolina. In sum, the payroll-and-assets method of Dr. Cody does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina, and the value attributable to such activities.

Moreover, the approach proposed by Dr. Cody unduly emphasizes what amounts to "costs of performance." It is clear that South Carolina is not a UDITPA State, and it does not apportion the net income of service providers based upon costs-of-performance elements. Although South Carolina's Section 12-6-2295(A)(5) is similar to UDITPA's Section 17, the General Assembly specifically chose not to include the phrase "based on costs of performance." South Carolina's applicable statutes merely require the apportionment of a service provider's net income using a gross-receipts ratio, and the gross receipts are attributable to South Carolina if the income-producing activity occurs within South Carolina or, if the income-producing activity

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business that directly result in the purchase of a product or service. Finally, as discussed supra, the location of income-producing activity will vary depending on the industry.

occurs both within and outside of South Carolina, to the extent that the income-producing activity is performed within South Carolina.

Likewise, the South Carolina courts also have never imposed a costs-of-performance approach to sourcing receipts of service providers to South Carolina. In addition to not being a costs-of-performance state, South Carolina also has never been a state that always sourced receipts to the state in which the market exists (i.e., to the location of the customer or where the benefit is received). While some states, such as California, have statutorily adopted a market-based approach to source gross receipts of a service provider,[20] South Carolina has not adopted any such "blanket" approach, be it market-based, costs of performance, or otherwise. Rather, its policy has been one of apportioning net income "upon a base which reasonably represents the proportion of the trade or business carried on within this State." *Lockwood Greene*, 292 S.C. at 449, 361 S.E.2d at 347 (citing *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 142 S.E.2d 445 (1979)); *see also* S.C. Code Ann. § 12-6-2320(A) (Supp. 2000). Thus, the Court agrees with Professor Pomp that instead of mandating one method (*e.g.*, "costs of performance" or "market-based") for determining the amount and location of income-producing activities, S.C. Code Section 12-6-2295(A)(5) provides "flexibility" in determining the relative amount of income-producing activities in the State. This approach necessitates flexibility in application of law and policy to different and often diverse service industries. *See Dish DBS Corp.*, at *9-10 ("Lockwood Greene could be interpreted to apply a flexible standard based on where the income producing activity takes place, which varies upon industry type.").

Even in many states that **have** adopted the costs-of-performance language within their applicable statutes or regulations, such states have found that the income-producing activity was **not** located in the state(s) in which significant costs were incurred. For instance, in *Heller W., Inc.*, the Arizona Supreme Court determined that the taxpayer's income-producing activity occurred solely in Arizona despite the fact that the California-based commercial financing company that received income from loans it made to Arizona borrowers incurred most of its costs in California. 116 Ariz. at 51, 53, 775 P.2d at 1115, 1117. Importantly, the applicable Arizona statute was the same as S.C. Code Ann. § 12-6-2295(A)(5) except that the Arizona sourcing statute **actually used** the phrase "costs-of-performance." Even though this language in the Arizona

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[20] *See* Cal. Rev. & Taxation Code (R&TC) § 25136; Cal. Code Regs. § 25136-2.

statute gave that taxpayer's costs-of-performance argument more merit, it was not enough to convince the court to find that the income-producing activity occurred outside of Arizona. The taxpayer argued that its income-producing activity was the borrowing of money by Heller Western through its Los Angeles headquarters to make loans to customers in Arizona. *Id.* at 50, 775 P2d at 1114. The Arizona Supreme Court held that "[t]hough borrowing of funds [in California] may be an important step in Heller Western's financing process, the direct generation of the loans occurred in Arizona. We conclude that Heller Western's sales activity in Arizona constituted the income producing activity contemplated by our tax regulations." *Id.* at 53, 775 P2d at 1117. That court went on to provide the following reasoning:

> Heller Western's costs in procuring the [product that it has sold to Arizona customers] are analogous to the costs of a merchandise retailer in procuring his inventory. Heller Western can no more argue that its receipts from Arizona loan consumers should not be taxed due to its out-of-state involvement in procuring its 'inventory' than a retailer who is engaged in extensive dealings out of state to buy his merchandise could argue that he should not be taxed on the goods he sells to consumers here."

Id. This reasoning is applicable in the instant case.

This is not to suggest that the Court should not consider out-of-state activity when determining whether activity is income-producing, nor does this suggest that no such out-of-state income-producing activity occurred in this case. For instance, it is possible that advertising performed within or without the South Carolina could be considered income-producing activity.[21] However, DIRECTV did not provide any evidence that reflected how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated in South Carolina. Therefore, the Court cannot consider advertising in this case.

Finally, even if this Court ruled that South Carolina was a costs-of-performance state, and that costs of performance therefore applied in this case, DIRECTV did not present sufficient

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[21] For example, in *Ameritech Publ'g, Inc. v. Wis. Department of Revenue*, 327 Wis.2d 798, 788 N.W.2d 383 (Ct. App. 2010) (unpublished), 2010 WL 2519583, the Wisconsin Court of Appeals affirmed the taxing authority's determination that the income-producing activity of a company that received advertising revenue by placing the advertisements in telephone directories distributed in Wisconsin "was performed in Wisconsin when the advertisement reached its intended, Wisconsin audience." *Id.* at 2010 WL 2519583, *5. Indeed, the court found that the income-producing activity occurred *solely* in Wisconsin, even though the vast majority of the taxpayer's costs to gather the advertising and to publish the telephone directory were incurred outside of Wisconsin and despite the fact that the applicable Wisconsin statute *included* the phrase "costs of performance" (unlike the South Carolina statute). The Court of Appeals concluded that the advertising company's customers were paying for the broad access that the company could provide to a Wisconsin audience, and that the taxpayer's income-producing activity was thus "the provision of access to a Wisconsin audience." *Id.* at *9-10

evidence to determine its income-producing activities or to quantify how much income-producing activity occurred in any applicable state. Furthermore, DIRECTV put no value on its subscriptions or the value perceived by its customers. DIRECTV simply did not provide sufficient information on how to apportion its subscription receipts between states in which it believes income-producing activities occur.

Substantial Understatement Penalties

Civil penalties are applied to every South Carolina tax law that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43. Such penalties are considered a tax owed to this State. *Id.* Further, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A). Section 12-54-155(A)(1) states that "[i]f there is an underpayment attributable to . . . a substantial understatement of tax for a taxable period . . . there **must** be added to the tax an amount equal to twenty-five percent of the amount of the underpayment." (emphasis added). For purposes of this subsection, "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return. "[T]here is a substantial understatement of tax for a taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars." *Id.* § 12-54-155(B)(1)(a).

In the instant matter, the Department was correct to apply a substantial understatement penalty for underpayment of taxes owed for 2009 through 2011, and this Court concludes DIRECTV must be assessed the substantial understatement penalty.

Conclusion

After considering the evidence in the record and the pertinent legal authorities, I conclude that based upon the reliable evidence, DIRECTV's income-producing activity is the delivery of the signal into the homes and onto the television sets of DIRECTV's customers. All of those income-producing activities related to South Carolina customers occurred entirely within South Carolina; therefore, 100% of DIRECTV's subscription receipts from South Carolina customers must be sourced to the numerator of the gross receipts ratio. This Court rejects DIRECTV's attempt to source the subscription receipts from South Carolina customers outside of South Carolina based upon costs of performance. Finally, DIRECTV is liable for substantial underpayment penalties.

ORDER

IT IS THEREFORE ORDERED that DIRECTV's refund requests for its amended 2006, 2007, and 2008 income tax returns are denied.

IT IS FURTHER ORDERED that DIRECTV be assessed $6,646,168.00 in tax and license fees, $653,425.00 in interest, and $1,661,541.00 in penalties with regard to its 2009, 2010, and 2011 income tax returns.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

May 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

May 12, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DIRECTV, Inc. & Subsidiaries,	)	Docket No. 14-ALJ-17-0158-CC
	)	
Petitioner,	)	
	)	
vs.	)	**RECONSIDERATION ORDER**
	)	
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	
	)	

FILED
June 12, 2015
SC ADMIN. LAW COURT

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to Petitioner DIRECTV, Inc. & Subsidiaries' (DIRECTV) Motion for Reconsideration of the Court's Final Order and Decision issued May 12, 2015 (Final Order). In that order, the Court found that all of DIRECTV's income-producing activities occurred within South Carolina, requiring all of DIRECTV's subscription receipts to be sourced to the numerator of the gross receipts formula and that DIRECTV should be fined a substantial understatement penalty. On June 1, 2015, the South Carolina Department of Revenue (Department) filed a Response to Petitioner's Motion for Reconsideration. On June 5, 2015, DIRECTV filed a Reply to the SCDOR's Response to Motion for Reconsideration (Reply). After careful consideration of the arguments submitted, I find that a few of DIRECTV's arguments warrant reconsideration and clarification of the original Order. Accordingly, I am issuing an Amended Final Order and Decision (Amended Final Order) that will reflect the changes made upon reconsideration. The remaining arguments will be addressed below.

DISCUSSION

Interpretation and Application of Burden of Proof

DIRECTV first argues that the Court misinterpreted and failed to apply the proper burden of proof.[1] DIRECTV argues that it provided "substantial evidence" regarding its income-

[1] In the heading of its argument in its Motion for Reconsideration, DIRECTV stated, "The Court Applied an Improper Standard of Review . . . ." However, the substance of DIRECTV's argument refers to the Court's application of the burden of proof, which is the correct position because the Court is not sitting in an appellate capacity and is therefore not applying a standard of review in this case. Also, though DIRECTV devotes the first two sections of its

producing activities and their locations such that it established by a preponderance of the evidence that the Department's assessment was incorrect, thus meeting its "only burden." DIRECTV also argues that the Court misinterpreted DIRECTV's burden of proof and improperly placed an additional burden on it by "requiring DIRECTV to establish the actual revenue attributable to South Carolina" in addition to requiring DIRECTV to establish that the Department's apportionment was incorrect. DIRECTV relies on *Cloyd v. Mabry*, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988) for the proposition that if a taxpayer demonstrates "that the assessing authority's valuation is incorrect[,] . . . the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." DIRECTV appears to interpret these phrases to mean that once it established the incorrectness of the Department's apportionment approach, it had no further burden of proof beyond that point. I disagree.

As set forth in the Court's Order, the burden of proof in this case is a preponderance of the evidence. *See* S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2014); *see also Anonymous (M-156-90) v. State Bd. of Med. Examiners*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998); *Nat'l Health Corp. v. Dep't of Health and Envtl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989). Also, "[t]he general rule . . . is that the burden of proof rests upon him who has the affirmative of the issue and does not shift to the defendant even when aided, in the first instance, by a rebuttable presumption." *Ford v. Atl. Coast Line R. Co.*, 169 S.C. 41, 168 S.E. 143, 167 (1932); *see also Leventis v. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (noting that the complaining party in an adjudicatory administrative proceeding bears the burden of proof). Accordingly, DIRECTV had the burden of proof because it was challenging a determination by the Department that it must source its South Carolina subscription receipts from South Carolina customers to the numerator of the gross receipts ratio.

Moreover, the standard of review in this case is de novo, i.e., the ALC stands in the shoes of the Department and makes its own findings of fact. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). As the finder of fact, the ALC is entitled to weigh the evidence and make credibility determinations. *See MRI at Belfair, LLC v. S.C. Dep't of Health and Envtl. Control*, 392 S.C. 314, 324, 709 S.E.2d 626, 631 ("[A]s

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argument to the application and imposition of the burden of proof, the Court, for the sake of expediency and convenience, has combined these two sections into one section of discussion.

the fact-finder, the ALC was free to make factual findings based on its view of the credibility and weight of the evidence.") (2011). The ALC is free to accept or reject the testimony of any witness, including an expert witness. *Maull v. S. Carolina Dep't of Health & Envtl. Control*, 411 S.C. 349, 359, 768 S.E.2d 402, 408 (Ct. App. 2015); *Estate of Hicks*, 284 S.C. 462, 466, 327 S.E.2d 345, 348 (1985) ("It is the duty of the trier of facts to evaluate witness testimony and assign to it such weight as he determines proper."); *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997) ("The fact finder is imbued with broad discretion in determining credibility or believability of witnesses.").

It is questionable whether *Cloyd* applies in this case as that case involved a property tax assessment instead of a corporate income tax apportionment. But assuming that *Cloyd* does apply, the Court's disagreement with the Department's apportionment approach did not remove the Court's ability to make its own findings as to the proper apportionment approach to be taken; it simply removed the presumption that the Department's apportionment approach was correct.[2] Therefore, the fact that the Court did not accept the Department's apportionment approach did not absolve DIRECTV of its responsibility to prove its case by a preponderance of the evidence. The burden remained upon DIRECTV to show that its version of the case was correct.[3] And the Court did not require DIRECTV to prove the "actual revenue attributable to South Carolina," but rather a **reasonable approximation** thereof. DIRECTV may have provided evidence to support its claim, but the Court, as the finder of fact, found that evidence to be unpersuasive and that it failed to satisfy DIRECTV's burden of proof. As DIRECTV points out in its Motion for Reconsideration, the Court made the following findings:

- The "payroll-and-assets method does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina or the value attributable to such activities."

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[2] For example, citing another property tax assessment case, *Smith v. Newberry Cnty. Assessor*, 350 S.C. 572, 578-79, 567 S.E.2d 501, 504-05 (Ct. App. 2002), the Court of Appeals found that the administrative law judge properly determined a fair market value of a property even though it was not the value presented by any of the experts in the case because the ALC has the ability to determine the proper assessed value based on the evidence presented even when the county assessor's value is deemed incorrect.

[3] If DIRECTV's assertion was a correct interpretation of the law, a taxpayer would only be required to challenge the validity of the Department's determination and once exposing an error in that determination it would prevail no matter how erroneous its claim.

- "Though [DIRECTV's] evidence did reflect that its advertising probably produced some income, the evidence did not reflect what portion of DIRECTV's cost was either attributable to South Carolina customers or may have influenced South Carolina customers to subscribe to DIRECTV."
- "[I]t is possible that advertising performed within or without [] South Carolina could be considered income-producing activity. However, DIRECTV did not provide any evidence that reflected how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated in South Carolina. Therefore, the Court cannot consider advertising in this case."[4]
- "DIRECTV simply did not provide sufficient information on how to apportion its subscription receipts between states in which it believes income-producing activities occur."

Thus, the reason the Court agreed with the apportionment outcome originally reached by the Department, though disagreeing with the approach it took, is because DIRECTV's evidence was either insufficient or not credible.

Consideration of Evidence Pertaining to DIRECTV's Income-Producing Activities and the Portion of DIRECTV's Receipts Attributable to South Carolina[5]

DIRECTV next argues that "the Court failed to consider and/or overlooked the substantial evidence presented by DIRECTV regarding its income-producing activities and the location from which those activities were conducted." To support this argument, DIRECTV cites Mr. Goswitz's testimony regarding the activities necessary to produce DIRECTV's programming services; Dr. Cody's testimony that he viewed the income-producing activities of DIRECTV as "the activities that DIRECTV engages in in order to convert potential customers into subscribers and to retain and drive additional income from existing subscribers;" and testimony from DIRECTV that it considers its income-producing activities to be the "assets and the employees that perform the service which puts the video into the television of its customers." DIRECTV also cites to excerpts of Dr. Cody's testimony to support its assertion that "the Court failed to consider and/or overlooked

[4] The Court did acknowledge the potential that advertising cost directed to customers in this State could be an income-producing activity. However, whether that would be sourced outside of this State greatly depended upon the evidence presented, but it was simply lacking in this case.

[5] Though DIRECTV devotes two sections of its argument to the Court's alleged failure to consider and/or overlooking of evidence, the Court, for the sake of expediency and convenience, has combined these two sections into one section of discussion.

the evidence presented by DIRECTV establishing the portion of its subscription revenue that should be attributed to South Carolina."

However, the Court considered all the testimony cited by DIRECTV (and indeed all of the evidence presented by the parties) and gave it the weight the Court deemed warranted.[6] As mentioned above, the Court is entitled to make credibility determinations and to weigh the evidence as it deems proper. *See MRI at Belfair, supra*; *Estate of Hicks, supra*; and *Small, supra*. Moreover, the question of whether there is "substantial evidence" arises in an appeal, not a contested case; and that determination is whether the evidence in the record that this Court relied on – not what it rejected – in arriving at its decision is substantial, i.e., is such that "would allow reasonable minds to reach the same conclusion as the agency." *See Friends of Earth v. Pub. Serv. Comm'n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). Simply because the Court rejected or refused to accord much weight to evidence presented by DIRECTV does not mean that the Court did not consider that evidence.

Primary Income-Producing Activity

DIRECTV next argues that the Court erred in considering only "primary" income-producing activity, when the statute only requires an analysis of a taxpayer's income-producing activity. The Court has clarified its language regarding this issue in the Amended Order to more precisely reflect the distinction between activity that produces income and activity that is merely preparatory to the production of income. Nevertheless, the Court maintains its original position that DIRECTV failed to sufficiently prove its contentions regarding income-producing activity occurring outside of South Carolina. The only activities that the evidence established as attributable to income production in South Carolina were when a customer subscribes to DIRECTV's services by purchasing a satellite dish to receive those signals and a set-top box to decode those signals. And even if the other activities were income-producing, DIRECTV's evidence failed to establish that those activities should be apportioned to South Carolina.

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[6] In its Reply, DIRECTV stated, "[I]t is beyond dispute that the Department provided no credible evidence on the identity or location of DIRECTV's income-producing activities, beyond the simplistic assertion that only the final step in the delivery process produces income because only then does the customer pay for the service." However whether the evidence was presented by the Department or DIRECTV, the evidence, as set forth in the findings, established the income-producing activities that occurred in this State.

Construction of DIRECTV's Methodology as Being Cost-of-Performance

DIRECTV next argues that the Court misconstrued the payroll-and-assets method applied by Dr. Cody as a costs-of-performance methodology. DIRECTV contends that relying on the payroll-and-assets method "as a proxy for measuring gross receipts attributable to South Carolina does not imply that DIRECTV is asserting that South Carolina is a cost of performance state." DIRECTV also relies on *Lockwood Greene Eng'rs, Inc. v. S. C. Tax Comm'n*, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987) to assert that the payroll-and-assets method is consistent with current South Carolina law.

First, the Court, in its Order, has already distinguished the present case from *Lockwood Greene* and declines to do so again. Second, as explained in its decision, the Court agrees with Professor Pomp that S.C. Code Section 12-6-2295(A)(5) provides "flexibility" in determining the relative amount of income-producing activities in the State. Following that reasoning, the Court was charged with discerning the appropriate methodology of assessing the income-producing activity in this State. In making that assessment, the Court found that Dr. Cody's method "unduly emphasized" what amounted to the costs-of-performance method. In other words, the Court attributed Dr. Cody's proxies of payroll expense and net book value of assets to the cost-of-performance method and found that the way in which he did so unduly emphasized DIRECTV's costs outside of the State while giving little consideration to the significant factors that occur within the State.[7] Again, the Court, as the factfinder, did not find Dr. Cody's method persuasive.[8]

Substantial Understatement Penalty

DIRECTV argues that the Court erred in failing to consider DIRECTV's argument that substantial understatement penalties should be abated where there is substantial authority for a taxpayer's position and/or where a taxpayer acts in good faith. I agree, in part. Accordingly, this correction will be reflected in the Court's forthcoming Amended Final Order.

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[7] This is not to suggest that elements of the costs-of-performance method cannot be utilized, though they are certainly not required. However, regardless of whether the proxies used by Dr. Cody are subsumed under the costs-of-performance method, DIRECTV's evidence gave too little consideration to important factors occurring within the State.

[8] Dr. Cody testified that payroll and assets are proxies that "provide a practical and actually a very well-trod path for allocating and determining the location of income-producing activities." However, this Court found that he should have trodden down another path.

ORDER

IT IS THEREFORE ORDERED that DIRECTV's Motion for Reconsideration is **GRANTED IN PART AND DENIED IN PART**, in keeping with this Order.

IT IS FURTHER ORDERED that all additional factual findings in this Order are incorporated into the Amended Final Order as findings of fact.

IT IS FURTHER ORDERED that all additional legal conclusions in this Order are incorporated into the Amended Final Order as conclusions of law.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

June 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

June 12, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DIRECTV, Inc. & Subsidiaries, Petitioner, vs. South Carolina Department of Revenue, Respondent.	)	Docket No. 14-ALJ-17-0158-CC **AMENDED FINAL ORDER AND DECISION**

Appearances:

For the Petitioner: R. Gregory Roberts, Esq.; Andres Vallejo, Esq.; Bryson M. Geer, Esq.; and John von Lehe, Esq.

For the Respondent: Nicole M. Wooten, Esq.; William J. Condon, Jr., Esq.; Timothy C. Thompson, Esq.; and Mary Elizabeth Campbell, Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) following DIRECTV, Inc. & Subsidiaries' (DIRECTV or Petitioner) request for a contested case hearing under S.C. Code Ann. § 12-60-460 (2014). DIRECTV is contesting the South Carolina Department of Revenue's (Department or Respondent) Determination denying DIRECTV's claim for a refund of South Carolina corporate income and license fee taxes for the tax years 2006 through 2008 and the assessment of South Carolina corporate income and license fee taxes, interest, and penalties for the tax years 2009 through 2011 (Tax Periods at Issue).[1]

The Department's Determination (Determination) concluded that applicable South Carolina law and long-standing Department policy require DIRECTV to source all of the gross receipts of its South Carolina subscription revenue to South Carolina because all of the income-producing activity related to DIRECTV's South Carolina customers occurs in South Carolina. DIRECTV asserts that little or no subscription revenue from South Carolina customers should be

[1] The tax years noted relate to income tax years. Income taxes are generally due in arrears, while license fees are due in advance. For clarity, when the Court refers to tax years, reference is being made to income taxes for that year and license fees due for the following year.

FILED
June 12, 2015
SC ADMIN. LAW COURT

included in the numerator of the gross receipts ratio because the majority of the income-producing activity occurs outside of South Carolina.

A hearing was held before this Court on January 13 and 14, 2015.

ISSUES

The following issues are raised in this proceeding:

1. To what extent under S.C. Code Sections 12-6-2290 and 12-6-2295(A)(5) did Petitioner's applicable income-producing activity occur within South Carolina?[2]
2. Whether the Department properly assessed substantial understatement penalties against DIRECTV for taxes owed for 2009 through 2011.

STIPULATIONS OF FACT

At the hearing into this matter and pursuant to Rule 25(C) of the Rules of Procedure for the Administrative Law Court (ALC Rules), the parties entered the following written stipulations of fact into the Record:

1. One of the issues presented by Petitioner for determination in this appeal is whether Respondent is seeking an alternative method of apportionment to source Petitioner's subscription revenue from the provision of its direct broadcast satellite services (Subscription Revenue).

2. In Petitioner's Request for Contested Case Hearing and Prehearing Statement filed with this Court, one of the issues presented for determination was whether Respondent satisfied its burden of proof for the use of an alternative apportionment methodology under S.C. Code Ann. § 12-6-2320.

3. The parties wish to clarify that Respondent does not assert that an alternative apportionment methodology under Section 12-6-2320 was used or should be used to source Petitioner's Subscription Revenue for tax years 2006 through 2011 (Period at Issue).

4. The sole remaining issue presented for determination with respect to the sourcing of Petitioner's Subscription Revenue is how that revenue should be sourced under Sections 12-6-2290 and 12-6-2295(A)(5).

5. As a result, Petitioner's Prehearing Statement is deemed to be amended to remove the assertions set forth in Paragraph No. 3(b) and Paragraph No. 4(b).

6. The parties submitted Exhibit A, a schedule setting forth the amount of (i) Petitioner's total Subscription Revenue for each year during the Period at Issue, (ii) Petitioner's

[2] The parties agree that at least some income-producing activity occurred within South Carolina.

total Subscription Revenue from South Carolina Customers for each year during the Period at Issue, (iii) the total revenue from leases of set-top boxes and sales of tangible personal property to South Carolina customers for each year during the Period at Issue, (iv) Petitioner's total revenue from leases of set-top boxes and sales of tangible personal property for each year during the Period at Issue, and (v) Petitioner's total gross receipts for each year during the Period at Issue.

7. The parties agreed to work together in good faith to verify and to confirm the amounts set forth in Exhibit A to provide this Court with a final version of Exhibit A within two weeks of the conclusion of the trial.

8. For each year during the Period at Issue, Petitioner included revenue from the leases of set-top boxes and sales of tangible personal property (e.g., remote controls) to South Carolina customers in the numerator of the gross receipts factor and the parties do not dispute the treatment of this revenue.

After the hearing, the parties determined Exhibit A that was attached to the Stipulations did not need to be amended. Based upon the Stipulations of the parties, the Court adopts the schedule setting forth the amounts listed in Exhibit A, and these figures shall be used in calculating the gross receipts ratio:

	S.C. Subscription Revenue	**Total Subscription Revenue**	**S.C. Lease/Sale Revenue from Set-top Boxes**	**Total Lease/Sale Revenue from Set-top Boxes**	**Total Revenues**
2006	265,155,289	13,583,081,711	3,376,851	160,263,938	13,743,345,649
2007	297,356,680	14,900,247,218	12,547,540	582,796,802	15,483,044,020
2008	334,652,301	16,321,615,758	19,605,211	923,326,252	17,244,942,010
2009	361,394,437	17,348,388,812	26,702,174	1,238,157,983	18,586,546,795
2010	392,627,654	18,654,864,389	31,565,700	1,444,720,825	20,099,585,214
2011	409,564,133	19,689,434,914	42,129,631	1,925,855,682	21,615,290,596

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

DIRECTV's Business Operations

DIRECTV is a multistate taxpayer headquartered in Los Angeles, California that offers direct broadcast satellite video services to customers throughout the United States. DIRECTV

accomplishes this through four general types of activities: marketing and sales; content development (both original and acquired programming); broadcast operations; and customer service.[3] Through DIRECTV's marketing and sales activities, it advertises its programming services to subscribers. DIRECTV engages in distinctive marketing activities on a national scale which includes South Carolina. The goal of DIRECTV's print and television advertising is to encourage customers to call a toll-free number to place an order for television services.

Customers pay DIRECTV a subscription fee for access to hundreds of television programming channels and other audio/visual options that are transmitted nationwide to customer's homes or businesses via satellites. DIRECTV receives its programming from third parties through satellite, fiber-optic cables, and over-the-air broadcast. DIRECTV also collects programming from local broadcast television stations through the use of local collection facilities throughout seven designated market areas (DMA). During the Tax Periods at Issue, DIRECTV had four to six local collection facilities in South Carolina.

The signals for the programming content are collected at broadcast and uplink centers. These broadcast centers and uplink facilities transmit the programming content signals to the satellites. The satellites then transmit the signals received from the broadcast centers and uplink facilities directly to DIRECTV satellite dishes mounted on or near customer homes. DIRECTV transmits its broadcast utilizing two types of beams from its satellites. One beam, the "CONUS" beam, covers the entire United States. It transmits the national programming sold to DIRECTV. The other beam is a narrow beam that transmits the local programming to the DMAs. Those signals are then relayed from the dish to a set-top box located in the customer's home or business, which delivers the signals to the customer's television set.

Customers pay a monthly subscription fee for access to basic channels and can also purchase premium channels and pay-per-view programs for an additional fee. In order to receive the receive programming, customers must contract with DIRECTV for the service, and then use a satellite dish, remote controls, and set-top box provided by DIRECTV in order to access DIRECTV's programming. During the Period at Issue, DIRECTV provided customer service support to customers in South Carolina through both owned-and-operated internal call centers and third-party call centers, none of which were located in South Carolina. DIRECTV also employed

[3] Although several affiliated entities are involved in the provision of DIRECTV's programming services, this case involves only DIRECTV Inc., and thus, the Court's focus is upon the activities of that entity.

two employees in South Carolina and contracted with third-party home service providers who installed and serviced equipment in homes of new customers in South Carolina. Also during the Tax Periods at Issue, DIRECTV began leasing the set-top boxes to customers in exchange for a lease fee. However, the importance of these services as to income production has not been sufficiently explained.

DIRECTV's source of revenue is the subscription revenue it receives from its approximately twenty million subscribers. DIRECTV's revenue includes monthly fees for subscribing to one or more packages of video programming; revenue from pay-per-view programming; revenue from the sale or lease of the set-top boxes; revenue from optional warranty on the leased boxes (protection plans); and revenues from fees associated with high-definition set-top boxes, set-top boxes with DVR, and multi-room viewing. I find that the rental and sales receipts received from South Carolina customers are properly included in the numerator of the gross receipts ratio.[4]

DIRECTV's Income Tax Returns

For the 2006 through 2008 tax years, DIRECTV filed corporate income tax returns in South Carolina in which it sourced 100% of subscription receipts from South Carolina customers to the numerator of the gross receipts ratio. By doing so, DIRECTV used gross receipts ratios of 1.9539%, 2.0016%, and 2.0543% for years 2006 through 2008, respectively. In 2008, the Department began an audit of DIRECTV. As a result of the audit, the Department accepted DIRECTV's original 2006 through 2008 corporate income tax returns as filed (i.e., the Department did not make any adjustments to the tax returns). DIRECTV subsequently filed amended corporate income tax returns for the 2006 through 2008 tax years, and the single change was the removal from the gross receipts ratio of 100% of the subscription receipts from South Carolina customers that DIRECTV originally included in the numerator. The amended gross receipts ratios for years 2006 through 2008 were 0.0246%, 0.081%, and 0.1137%, respectively. DIRECTV explained the change in a statement attached to each of the three amended returns:

> This return is being amended to apportion sales receipts to the state under S.C. Code Ann. § 12-6-2295 which sources sales of services under a pro-rata cost of

[4] The parties do not dispute the treatment of the rental income of the set-top boxes and agree that all such rental income from the set-top boxes received by DIRECTV from South Carolina customers should be included in the numerator of the gross receipts ratio for apportionment purposes. *See* Stipulation of Facts, filed January 13, 2015.

performance method.[5] The originally filed return incorrectly apportioned satellite television subscription receipts to South Carolina using market-based sourcing, rather than the cost of performance sourcing that is prescribed by statute.

Because of the amended returns for 2006 through 2008, DIRECTV decreased its tax and license fee liability by $5,976,816.00 and sought a refund in this amount. In a field audit report dated November 29, 2011, the Department denied the amended returns and related refunds and accepted the original returns as filed.

DIRECTV then filed its original 2009 through 2011 corporate income tax returns using the same costs-of-performance method that it used on its 2006 through 2008 amended returns; the Department audited these returns as well.[6] In a field audit report dated January 28, 2014, the Department assessed DIRECTV for income taxes and license fees for 2009 through 2011 using a gross receipts ratio that included all of the subscription receipts from South Carolina customers in the numerator.

The Department subsequently issued its Determination and found that the income-producing activity of DIRECTV was the delivery of the signal into the South Carolina customer's home or business and onto the customers' television sets and that, accordingly, DIRECTV should include 100% of the subscription receipts received from South Carolina customers in the numerator of the gross receipts ratio. DIRECTV subsequently requested a contested case hearing regarding this Determination.

CONCLUSIONS OF LAW

General Conclusions

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. §§ 1-

[5] Both Petitioner and the Department originally erred in how they referenced South Carolina's apportionment method for receipts from services; Petitioner in its amended returns for 2006-2008 referred to it as a "cost of performance method," and the Department referred to it as "market base sourcing" in its Report of Field Audit of Petitioner's 2009-2011 receipts. However, both parties agree, and have subsequently clarified their positions to reflect, that South Carolina uses a method of apportionment based on the proportion of income-producing activity conducted within the State.

[6] DIRECTV did not include any of the subscription receipts from South Carolina customers in the numerator of the gross receipts ratio on its amended 2006 through 2008 returns and on its original 2009 and 2010 returns. On its 2011 South Carolina return, DIRECTV changed its method again by including approximately $22 million of its $410 million subscription receipts from South Carolina customers in the numerator. DIRECTV did this by sourcing 0.11% of its total subscription receipts to South Carolina based on a ratio of its alleged payroll in South Carolina to its total payroll. From 2006 through 2010, DIRECTV did not source any subscription receipts to South Carolina because it claims that the vast majority of its payroll and property were located outside of South Carolina.

23-600(A) (Supp. 2014) and 12-60-460 (2014). The hearing before the ALC is a contested case hearing and is heard de novo. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). This Court must make its factual findings based on the preponderance of the evidence. *See* S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2014); *see also Anonymous (M-156-90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998); *Nat'l Health Corp. v. Dep't of Health and Envtl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989). Because DIRECTV is challenging a determination by the Department that it must source its South Carolina subscription receipts from South Carolina customers to the numerator of the gross receipts ratio, DIRECTV has the burden of proof. *See Ford v. Atl. Coast Line R. Co.*, 169 S.C. 41, 168 S.E. 143, 167 (1932) ("The general rule is, in the absence of valid statutory enactment to the contrary, that the burden of proof rests upon him who has the affirmative of the issue. . . ."); *see also Leventis v. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000). This burden requires DIRECTV to prove that the Department's determination is errant by a preponderance of the evidence. *See, e.g., Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 346, 415 S.E.2d 384, 388 (1992) ("Findings of fact based upon a 'preponderance' of the evidence are those supported by the greatest 'weight, amount, credibility or truth' as reflected by the whole of the evidence before the court, or 'evidence which convinces as to its truth.'").

Applicable Law

It is well-settled law that the purpose of the South Carolina allocation and apportionment provisions is to provide for imposition of income tax "upon a base which reasonably represents the proportion of the trade or business carried on within this State." *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 142 S.E.2d 445 (1965).[7] Furthermore, a statutory provision must be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Hay v. S.C. Tax Comm'n*, 273 S.C. 269, 255 S.E.2d 837 (1979). The method of apportionment that a taxpayer must use depends upon the nature of the taxpayer's business in this

[7] Generally, allocation refers to the assignment of nonbusiness income to a specific state. *See* S.C. Code Ann. § 12-6-2220; *Emerson Elec. Co. v. S.C. Dep't of Rev.*, 395 S.C. 481, 486, 719 S.E.2d 650, 652-653 (2011) (noting that a multistate corporation's "non-business income is not apportioned among various states. Rather, non-business income is allocated to or deemed to be earned in a particular state . . . ."). Apportionment generally refers to the assignment of business income of a corporation that is taxable in more than one state. *See* S.C. Code Ann. § 12-6-2210(B); *Emerson*, 395 S.C. at 485, 719 S.E.2d at 652 (stating that "[a] corporation's business income is apportioned among the states in which it conducts business.").

State. During the Tax Periods at Issue, net income of a manufacturer or a dealer in tangible personal property was apportioned based on a three-factor formula and later on a single sales factor (*see* S.C. Code Ann. §§ 12-6-2250, -2252 (Supp. 2007)),[8] while net income of substantially all other taxpayers was apportioned based on a single gross receipts formula (*see* S.C. Code Ann. § 12-6-2290 (Supp. 2007)). Accordingly, for service providers, South Carolina law mandates the following method of apportionment:

> If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2252 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

S.C. Code Ann. § 12-6-2290.[9] Thus, service providers are required to use the single gross receipts apportionment formula. For tax years after 2006, the final sentence of Section 12-6-2290 directs taxpayers to S.C. Code Ann. § 12-6-2295 for a non-exclusive list of the items to be sourced, or included, in the gross receipts apportionment ratio.[10] The relevant subsection in this matter is Section 12-6-2295(A)(5), which states:

> (A) The terms "sales" as used in Section 12-6-2280 and "gross receipts" as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:
>
> * * *
>
> (5) receipts from services if the entire income producing activity is within this State. If the income producing activity is performed partly within and

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[8] In 2006, the South Carolina Legislature enacted a change in the apportionment method provided in Section 12-6-2250 for taxpayers whose principal business in South Carolina is manufacturing or any form of collecting, buying, assembling, or processing goods and materials within South Carolina, or selling, distributing, or dealing in tangible personal property within South Carolina. The three-factor apportionment method for a multistate taxpayer (based on property, payroll, and double weighted sales) changed to a single-sales-factor apportionment method. This change was phased-in for income tax years beginning in 2007 through 2010. For income tax years beginning in 2011, the single-sales-factor apportionment method in Section 12-6-2252 replaced the three-factor apportionment method in Section 12-6-2250. *See* S.C. Rev. Ruling #09-15.

[9] In 1995, the General Assembly repealed Chapter 7 and added Chapter 6 of Title 12. Accordingly, Section 12-6-2290 replaced Section 12-7-1190 as the statute that directed taxpayers how to apportion net income related to services. In 2007, the General Assembly amended Section 12-6-2290 by adding an additional sentence to the end of the existing statute. That sentence reads as follows: "For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295." 2007 South Carolina Laws Act 110 (S.B 91).

[10] 2007 South Carolina Laws Act 110 (S.B. 91) also added Section 12-6-2295, the companion statute to Section 12-6-2290. *See* 2007 South Carolina Laws Act 110, § 51.A; eff. June 21, 2007. These additions were effective for DIRECTV's 2007 tax year.

partly without this State, sales are attributable to this State to the extent the income producing activity is performed within this State[.]

Taxpayer Is a Service Provider

DIRECTV provides direct broadcast satellite services to customers throughout the United States. Its income is subscription revenue from providing these services and is not from engaging in manufacturing or dealing in tangible personal property. In a similar case, a Texas administrative law court found that a direct broadcast satellite company was a service provider for purposes of its apportionment laws. *Anonymous Taxpayer v. Texas Comptroller of Pub. Accounts*, 2013 WL 3490605 (Tex. Cptr. Pub. Acct.) (May 17, 2013). As a service provider, Section 12-6-2290 is the applicable statute to apportion DIRECTV's adjusted net income to South Carolina. Further, after 2006, Section 12-6-2295(A)(5) is the supplemental sourcing statute when determining the numerator of the gross receipts ratio, and requires DIRECTV to source receipts from South Carolina customers to South Carolina if the income-producing activity occurs in this State. Therefore, for all Tax Periods at Issue, DIRECTV must apportion its net income to South Carolina using a gross receipts factor in Section 12-6-2290.

As noted above, since 1958, the applicable South Carolina apportionment statutes have always mandated that gross receipts be used when apportioning net income to South Carolina for a corporation whose income is generated from the provision of services.[11]

Income-Producing Activity of DIRECTV

The Court must first determine whether any income-producing activity occurred in this State and then decide whether that activity occurred within or without South Carolina. Only after identifying the income-producing activity is there a need to quantify how much of the income-producing activity occurred in South Carolina.

Identification of the Income-Producing Activity

Effective for the 2007 tax year, Section 12-6-2295(A)(5) was applicable and supplemented Section 12-6-2290.[12] Section 12-6-2295(A)(5) added the "income producing activity" language

[11] Section 12-6-2295(A)(5) is the applicable sourcing statute for the 2007-2011 tax years at issue. Only Section 12-6-2290 is applicable for tax year 2006.

[12] Notably, when adding Section 12-6-2295(A) for the 2007 tax year, the General Assembly stated the following in 2007 South Carolina Laws Act 110, § 51.A, eff. June 21, 2007: "To Amend . . . by adding Sections 12-6-2252 and 12-6-2295 so as to further provide for allocation and apportionment of business income for state income tax purposes

to the apportionment statutes for service providers. The Department argues that the identity of DIRECTV's income-producing activity is the delivery of the signal into the homes and onto the television screens of its customers. Therefore, the Department contends that 100% of the subscription receipts from South Carolina should be sourced to the numerator of the gross-receipts ratio because there is no other income-producing activity related to DIRECTV's business in South Carolina. To the contrary, DIRECTV presented evidence that its income-producing activities in South Carolina could be identified using four "value drivers." Those "value drivers" are: 1) DIRECTV's content and programming; 2) DIRECTV's acquisition and distribution of the content to customers; 3) DIRECTV's marketing and sale of its service; and 4) DIRECTV's customer services.

The Court concludes that pursuant to Section 12-6-2295(A)(5), DIRECTV's income-producing activity includes the customers' subscriptions and delivery of the signal into the location and onto the television screens of its customers. In identifying this income-producing activity, the Court considered the activities of businesses in the direct broadcast services industry and the sources of income within the industry. DIRECTV derives income from monthly subscription receipts that customers pay to DIRECTV in order to view its video programs in their homes and businesses. These subscription receipts are received as a result of the delivery of the signal into the customer's home and onto the customer's television, and are therefore directly related to the income-producing activity of DIRECTV.

The Court, however, does not adopt the view of the Department that income-producing activity of businesses within the direct broadcast services industry is completely limited to the delivery of a signal into the customer's home and onto the customer's television. Rather, the Court agrees with Professor Richard D. Pomp that "opinions can differ on how to measure the extent to which income-producing activities take place in South Carolina, but answering that question by simply ignoring the outside activities is unacceptable."

In *Walter E. Heller W., Inc. v. Dep't of Revenue*, 161 Ariz. 49, 775 P.2d 1113 (1989), the Arizona Supreme Court analyzed how interest income earned on loans made to Arizona customers should be sourced under provisions that mirrored the Uniform Division of Income for Tax

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by basing the determination only on a sales factor and to define the terms 'sales' and 'gross receipts' consistently and specifically for that purpose[.]"

Purposes Act (UDITPA).[13] In reaching its decision, the Arizona Supreme Court did not simply look to the location of the customer as the Department does here. Rather, the court determined that the income-producing activities consisted of the solicitation of new customers, the investigation of credit records of potential customers, and the servicing of such contracts, all of which occurred in Arizona. *Id.* at 53-54, 775 P.2d at 1116-17. Therefore, the court's reasoning implies that the location of customers does not necessarily identify the income-producing activities of the taxpayer and therefore is not a reasonable method of identification.

In this case, the evidence also suggested that there may be other activities, such as advertising, that influence the customer's decision to make the purchase. In explaining those activities from DIRECTV's perspective, Dr. Brian J. Cody testified that he employed DIRECTV's payroll and net value of assets as proxies in identifying DIRECTV's income-producing activities. Dr. Cody explained the "[t]wo measures which are proxies . . . [a]re not perfect, but they're proxies . . . ." However, that evidence is simply insufficient to satisfy DIRECTV's burden of proof.

Our Supreme Court "has long realized the practical impossibility of a state's achieving a perfect apportionment of expansive, complex business activities such as those of Appellant, and has declared that 'rough approximation rather than precision' is sufficient." *Covington Fabrics Corp. v. S.C. Tax Comm'n*, 264 S.C. 59, 66-67, 212 S.E.2d 574, 577-78 (1975). The Court also noted that "[a]lthough exactness in apportionment is desirable, all that is required is a reasonable approximation." Though this Court recognizes that an exact determination of the identity of the income-producing activities is not possible, I find that Dr. Cody's proxies in identifying DIRECTV's income-producing activities are so far from perfect as to be of no practical value. DIRECTV did not sufficiently explain the effect of its value drivers on income production in this State. In other words, DIRECTV's evidence is just too nebulous to properly identify whether DIRECTV's value drivers are income producing and the extent to which such production occurs. Therefore, though Section 12-6-2295(A)(5) provides "flexibility" in determining the relative amount of income-producing activities in the State, Dr. Cody's payroll-and-assets method does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina or the value attributable to such activities. Though its evidence did

[13] UDITPA was created in 1957 by the Uniform Law Commission as a model statute for the division of income for income tax purposes. The goal of the Uniform Law Commission in drafting UDITPA was to develop a model act that would be widely adopted..

reflect that its advertising probably produced some income, the evidence did not reflect what portion of DIRECTV's cost was either attributable to South Carolina customers or may have influenced South Carolina customers to subscribe to DIRECTV. Instead, the Court was left to speculate as to the extent to which DIRECTV's content and programming, acquisition and distribution thereof, advertising, and customer service in installing and maintaining its equipment within this State influenced customers' decision to subscribe to DIRECTV.

Moreover, it does not appear that some of the activities that DIRECTV attributes to income production are actually income-producing activities. DIRECTV argues that its cost to produce the content and broadcast of signals into South Carolina should be considered as an income-producing cost. The Department, on the other hand, argues that only the delivery of the signal into the customer's home and onto the customer's television is income-producing activity. Thus, the pertinent issue here is at what point DIRECTV's activities become income-producing. Both parties assert that the holding in *Mercury Motor Express, Inc. v. S.C. Tax Comm'n*, 244 S.C. 134, 135 S.E.2d 756 (1964) is applicable to this case. In *Mercury*, the South Carolina Supreme Court addressed the income-producing activity of an interstate freight hauler. The taxpayer argued that the apportionment formula produced an unconstitutional result because it apportioned 17% of its income to the State (reflecting that 17% of its mileage was in the State), while revenue from freight either originating or delivered to South Carolina accounted for only 1% of its gross revenue. The taxpayer asserted that when its trucks were merely traveling through South Carolina, they were not engaged in any activity that contributed to the taxpayer's net income. Rather, the taxpayer argued that the taxable event should only occur if it was delivering freight in the State of South Carolina; otherwise the State's mileage formula produced "an arbitrary, discriminatory and unconstitutional results, in violation of the commerce clause. . . ." In other words, the taxpayer in *Mercury* contended that the incidental act of transporting freight through the State should not be considered as a taxable event.

The Supreme Court listed a series of transactions that occurred in the freight hauling business: solicitation of the freight, picking up the freight, hauling the freight, dropping off the freight, and collecting the hauling charges. The Supreme Court held that while each of these transactions was "necessarily incidental to the production of [the business's] income," the activity that "primarily earn[ed] the income" was the hauling of freight "through and over the highways of the State of South Carolina." *Id.* Thus, the Court focused upon the company's primary activity in

determining whether South Carolina's tax was arbitrary. However, that focus did not specifically equate to the issue to be determined in this case.

In *Mercury*, the Supreme Court found that both the "incidental" and "primary" activities of the appellant's business "contribute[d] to the earnings and net income of the appellant" and were "necessarily incidental to the production of its income." Presumably, the Court distinguished those activities for a reason.[14] However, the Court gave no explanation of the distinction between the "incidental" versus "primary" activities or why such a distinction was made. Nevertheless, *Mercury* did not address activities occurring prior to the "solicitation of freight." Therefore, *Mercury* provides no guidance for activities occurring before the solicitation of DIRECTV's services.

Here, Petitioner engages in other "preparatory" activities that eventually lead to satellite signals being beamed into this State. But those activities have no bearing on a customer's decision to subscribe to, i.e. solicit, Petitioner's services, nor do they occur as a result of that decision to subscribe. For instance, the national programming through the CONUS beams would exist regardless of whether there were any subscribers in South Carolina. Thus, such "preparatory" activities are too attenuated to the production of income to be considered "income-producing activity" for purposes of Section 12-6-2295(A)(5).

Analogizing the facts in this case to the holding in *Mercury*, the beaming of the satellite signals through the air of South Carolina to the customer's dish, set-top box, and television screen, and the collection of charges for such service, are also analogous to the loading, hauling, and delivery of freight following the customer's solicitation of that freight, and the collection of charges therefor. However, the other prior activities that prepare the way for DIRECTV's provision of services, i.e., the infrastructure for producing and collecting the programming content and transmitting the signals would, in comparison to the facts in the *Mercury* case, be akin to the manufacturing and transfer of the freight through its infrastructure to a storage location, from which it is later – **only after an order is placed** (or "solicited," as the Supreme Court put it) – loaded, hauled, and delivered, and for which charges are collected. Though *Mercury* did not

[14] It is notable that the Supreme Court was not considering the same issue that is before the ALC. The Supreme Court was seeking to determine whether the taxing method utilized by this State was constitutional. The Court's purpose in considering whether South Carolina was taxing the primary activity could simply have been a method to determine whether the statute had a rational basis. Therefore, the emphasis placed upon the Court's analysis of "incidental" versus "primary" activities appears to be undue.

address such pre-order activities, I find that the ones at issue in this case are too attenuated to be considered income-producing.

More importantly, the evidence failed to establish that these services directly related to the production of income. In sum, DIRECTV failed to sufficiently identify its outside income-producing activities.[15] Even as to local programming, though it is almost completely geared towards South Carolina residents, DIRECTV failed to prove what impact the availability of local programming has on South Carolina customers' decision to subscribe to DIRECTV. Consequently, the remaining evidence is that the transmission of the beams to the customers, as well as the subsequent activities performed that allow South Carolina customers to experience DIRECTV's services – such as the sale/lease, installation, or repair of set-top boxes that are sold or leased to customers –are income-producing activities under Section 12-6-2295(A)(5); and all occur entirely within the State.

Sourcing of the Income-Producing Activity

DIRECTV argues that nearly all of the income-producing activities it identified in this matter occurring outside of South Carolina should be sourced to the location of the activities performed by DIRECTV. At the outset, the Court disagrees that DIRECTV has sufficiently identified its activities to be sourced.[16] Furthermore, even if it had identified those activities, DIRECTV failed to sufficiently establish that those activities should be sourced elsewhere.

Pursuant to Section 12-6-2295(A)(5), a service provider's gross receipts are sourced to South Carolina based on the location of the income-producing activity according to one of two prongs. In the first prong, all of the gross receipts are sourced to South Carolina "if the entire income-producing activity is within this State." S.C. Code Ann. § 12-6-2295(A)(5) (Supp. 2007). In the second prong, "[i]f the income-producing activity is performed partly within and partly

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[15] For example, as will be discussed *infra*, advertising performed within or without the South Carolina could be considered income-producing activity. However, DIRECTV did not provide any evidence that reflected approximately how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated in South Carolina.

[16] As noted above, DIRECTV argues its "value drivers," reflect its income-producing activity. While DIRECTV may rely heavily upon "value drivers" in determining the value of certain components within its company, DIRECTV has, as aforementioned, failed to sufficiently demonstrate whether and to what extent those value drivers are income-producing activities as required by the applicable and mandatory language of Section 12-6-2295(A)(5) when calculating the numerator of the gross receipts factor.

without this State, [gross receipts are sourced to South Carolina] to the extent the income-producing activity is performed in this State." *Id.*

DIRECTV argues that its income should be sourced based upon payroll and assets/property factors, similar to the taxpayer in *Lockwood Greene Eng'rs, Inc. v. S. C. Tax Comm'n*, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987). The applicable statute for apportioning net income from a taxpayer whose principal profits were derived from services at the time of *Lockwood Greene* was Section 12-7-1190 (1976) which stated:

> If the principal profits or income of a taxpayer . . . are derived from sources other than manufacturing, producing, collecting, buying, assembling, processing, or selling, distributing or dealing in tangible personal property such taxpayer shall make returns and pay annually an income tax upon a proportion of its remaining net income computed on the basis of the ratio of gross receipts from within this State during the income year to the total gross receipts of such year within and without the State.

S.C. Code Ann. § 12-7-1190 (1976).

The taxpayer in *Lockwood Greene* unsuccessfully argued that the then-applicable apportionment statute for net income related to services – Section 12-7-1190 – prescribed one rule (i.e., the origin-of-payment rule) for all businesses that do not deal in tangible personal property. The South Carolina Court of Appeals did not accept the taxpayer's argument that Section 12-7-1190 was a one-rule statute and that all net income to be apportioned under Section 12-7-1190 must be apportioned under the same method. Several facts support the Court of Appeals' determination: (1) the Court of Appeals did not believe that the use of different methods for different industries when applying Section 12-7-1190 created a constitutional problem;[17] (2) the Court of Appeals clearly suggested a distinction between finance companies and media broadcasters on one hand and personal *professional* service firms, such as Lockwood, on the other when determining where to source service receipts;[18] and (3) the Court of Appeals noted that the

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[17] After hearing the taxpayer's argument (that the Department had not consistently applied Section 12-7-1190) and considering the guidelines (which illustrated the Department's policy of allowing the use of different methods for different industries), the Court of Appeals stated, "[w]e discern no constitutional basis for Lockwood's argument." *Lockwood Greene*, 293 S.C. at 450 n.1, 361 S.E.2d at 348 n.1.

[18] *Id.* at 450, 361 S.E.2d at 348 ("We are not persuaded [finance companies and media broadcasters] are comparable to Lockwood. By contrast, the Tax Commission guidelines concerning law firms, accounting firms, entertainment and sports companies, and hospital management companies all focus on whether the services are performed in South Carolina."). *Implicit in this finding* is the fact that the only reason for the Court of Appeals to distinguish a taxpayer like Lockwood from companies in other industries was the Court of Appeals' belief that Section 12-7-1190 was not a "one-rule statute," and that different methods could be used for different industries when applying Section 12-7-1190.

Lockwood firm "provides services to its clients through highly trained engineers and personnel in various offices" and that a "client pays an engineering firm for the **expertise and time** of its employees." *Lockwood Greene*, 293 S.C. at 449, 361 S.E.2d at 347 (emphasis added). Based on the specifics of Lockwood's business, the Court of Appeals then concluded, "Therefore, an engineering firm's business carried on in a state is reasonably measured by the services rendered by its personnel in the state," which "is epitomized by the 'place of activity' test advanced by" the Department. *Id.* Again, it would not have been necessary for the Court of Appeals to address the specifics of Lockwood Greene's business if Section 12-7-1190 was a "one-rule statute."

On one hand, the Court's decision in *Lockwood Greene* did **not** mandate that the net income of **all** service providers be apportioned based on a "place of activity" test that is quantified by a payroll factor or some other cost-based factor. The Court of Appeals specifically recognized that the Department's audit guidelines at the time sourced revenues of personal *professional* service providers (e.g., engineering, law, and accounting firms) to the "place of activity."[19] *Lockwood Greene*, 293 S.C. at 450, 293 S.E.2d at 348. At the same time, the court was **not persuaded** that service industries, such as finance companies and media broadcasters, were comparable, thus implying that revenues of service industries were sourced to the "origin of payment" (i.e., location of the borrower or customer) *Id.* The Court of Appeals also held that no constitutional problem existed with the Department's policy of sourcing revenues of services providers in a different manner for different industries. *Id.* at 450 n.1, 361 S.E.2d at 348 n.1.

Accordingly, the result of *Lockwood Greene* was the Court of Appeals' holding that (1) a personal professional service firm should source its gross receipts to South Carolina based on the "place of activity" test; and (2) affirmation that the Department's then-existing policy of using different methods for different industries to source service-related net income to South Carolina, was in compliance with Section 12-7-1190. Further, despite DIRECTV's contention, the Court of

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[19] The Department argues that it has had a longstanding policy in place regarding the sourcing of service-related net income and that it is therefore entitled to deference. However, this policy, though once apparently written down and acknowledged by the Court of Appeals in *Lockwood Greene*, is no longer written anywhere and apparently has not been for some time. As the finding of fact in *Lockwood Greene* is the only evidence of this policy, I find that this finding of fact is insufficient as a basis for deference. Moreover, "[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law." *See* S.C. Code Ann. § 1-23-10(4) (2005). *See also Kirven v. Cent. States Health & Life Co., of Omaha*, 409 S.C. 30, 45, 727 S.E.2d 794 802 (2014) ("[A]n agency guideline does not have the force of law, and in any event, can never trump a regulation.... *Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.*") (quoting *Doe v. S.C. Dep't of Health & Human Servs.*, 398 S.C. 62, 68 n.7, 727 S.E.2d 605, 608 n.7 (2011)).

Appeals in *Lockwood Greene* did not impose a one-rule "place of activity" test for apportioning service-related income in South Carolina on *all* multistate corporate taxpayers. The Court of Appeals clearly supported the Department's use of different methods for different industries and did not reject Lockwood's "one-rule" argument only to replace it with a different one-rule requirement.[20]

Unlike the taxpayer in *Lockwood Greene*, a DIRECTV customer did not hire specific professionals and is not paying for those professionals' expertise and time, or that of any other DIRECTV employee or contractor. Instead, the customer is paying for video programming to be viewed on the customer's television at the time and place the customer demands. DIRECTV does not sell contract negotiations. It does not sell network management services. It does not sell broadcast infrastructure or satellite triangulation. Rather, DIRECTV is in the business of selling television broadcast subscriptions to customers; and without the actual delivery of that broadcast signal into South Carolina homes, it would not have generated the income at issue here. Indeed, as noted above, the national programming through the CONUS beams would exist regardless of whether there were any subscribers in South Carolina; therefore, such broadcasting is preparatory activity. As to local broadcasting in South Carolina, though it is almost completely geared towards South Carolina residents, DIRECTV provided no evidence of what impact the availability of local programming has on South Carolina customers' decision to subscribe to DIRECTV.

Furthermore, as noted above, Dr. Cody testified that he employed DIRECTV's payroll and net value of assets as proxies in determining and sourcing DIRECTV's income-producing activities. However, as with the determination/identification of income-producing activities, the Court also rejects as too nebulous this approach to sourcing gross receipts to South Carolina. In sum, the payroll-and-assets method of Dr. Cody does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina, and the value attributable to such activities.

Moreover, the approach proposed by Dr. Cody unduly emphasizes what amounts to "costs of performance." It is clear that South Carolina is not a UDITPA State, and it does not require

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[20] When Section 12-6-2295(A)(5) was enacted, the distinction between "place of activity" and "origin of payment" became irrelevant and the question then became whether the income-producing activity occurred completely within the State of South Carolina, and if only partly within the State, in what proportion it was conducted within the State. Lockwood Greene, in light of Section 12-6-2295(A)(5), still suggests that income-producing activity is the acts of a business that directly result in the purchase of a product or service. Finally, as discussed supra, the location of income-producing activity will vary depending on the industry.

apportionment of the net income of service providers based upon costs-of-performance elements. Although South Carolina's Section 12-6-2295(A)(5) is similar to UDITPA's Section 17, the General Assembly specifically chose not to include the phrase "based on costs of performance." South Carolina's applicable statutes merely require the apportionment of a service provider's net income using a gross-receipts ratio, and the gross receipts are attributable to South Carolina if the income-producing activity occurs within South Carolina or, if the income-producing activity occurs both within and outside of South Carolina, to the extent that the income-producing activity is performed within South Carolina.

Likewise, the South Carolina courts have never imposed a costs-of-performance approach to sourcing receipts of service providers to South Carolina. In addition to not being a costs-of-performance state, South Carolina has never been a state that always sourced receipts to the state in which the market exists (i.e., to the location of the customer or where the benefit is received). While some states, such as California, have statutorily adopted a market-based approach to source gross receipts of a service provider,[21] South Carolina has not adopted any such "blanket" approach, be it market-based, costs of performance, or otherwise. Rather, its policy has been one of apportioning net income "upon a base which reasonably represents the proportion of the trade or business carried on within this State." *Lockwood Greene*, 292 S.C. at 449, 361 S.E.2d at 347 (citing *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 142 S.E.2d 445 (1979)); *see also* S.C. Code Ann. § 12-6-2320(A) (Supp. 2000). Thus, the Court agrees with Professor Pomp that instead of mandating one method (*e.g.*, "costs of performance" or "market-based") for determining the amount and location of income-producing activities, S.C. Code Section 12-6-2295(A)(5) provides "flexibility" in determining the relative amount of income-producing activities in the State. This approach necessitates flexibility in application of law and policy to different and often diverse service industries. *See Dish DBS Corp.*, at *9-10 ("Lockwood Greene could be interpreted to apply a flexible standard based on where the income producing activity takes place, which varies upon industry type.").

Even in many states that **have** adopted the costs-of-performance language within their applicable statutes or regulations, such states have found that the income-producing activity was **not** located in the state(s) in which significant costs were incurred. For instance, in *Heller W.*,

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[21] *See* Cal. Rev. & Taxation Code (R&TC) § 25136; Cal. Code Regs. § 25136-2.

Inc., the Arizona Supreme Court determined that the taxpayer's income-producing activity occurred solely in Arizona despite the fact that the California-based commercial financing company that received income from loans it made to Arizona borrowers incurred most of its costs in California. 116 Ariz. at 51, 53, 775 P.2d at 1115, 1117. Importantly, the applicable Arizona statute was the same as S.C. Code Ann. § 12-6-2295(A)(5) except that the Arizona sourcing statute **actually used** the phrase "costs-of-performance." Even though this language in the Arizona statute gave that taxpayer's costs-of-performance argument more merit, it was not enough to convince the court to find that the income-producing activity occurred outside of Arizona. The taxpayer argued that its income-producing activity was the borrowing of money by Heller Western through its Los Angeles headquarters to make loans to customers in Arizona. *Id.* at 50, 775 P2d at 1114. The Arizona Supreme Court held that "[t]hough borrowing of funds [in California] may be an important step in Heller Western's financing process, the direct generation of the loans occurred in Arizona. We conclude that Heller Western's sales activity in Arizona constituted the income producing activity contemplated by our tax regulations." *Id.* at 53, 775 P2d at 1117. That court went on to provide the following reasoning:

> Heller Western's costs in procuring the [product that it has sold to Arizona customers] are analogous to the costs of a merchandise retailer in procuring his inventory. Heller Western can no more argue that its receipts from Arizona loan consumers should not be taxed due to its out-of-state involvement in procuring its 'inventory' than a retailer who is engaged in extensive dealings out of state to buy his merchandise could argue that he should not be taxed on the goods he sells to consumers here."

Id. This reasoning is applicable in the instant case.

This is not to suggest that the Court should not consider out-of-state activity when determining whether activity is income-producing, nor does this suggest that no such out-of-state income-producing activity occurred in this case. For instance, it is possible that advertising performed within or without the South Carolina could be considered income-producing activity.[22]

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[22] For example, in *Ameritech Publ'g, Inc. v. Wis. Department of Revenue*, 327 Wis.2d 798, 788 N.W.2d 383 (Ct. App. 2010) (unpublished), 2010 WL 2519583, the Wisconsin Court of Appeals affirmed the taxing authority's determination that the income-producing activity of a company that received advertising revenue by placing the advertisements in telephone directories distributed in Wisconsin "was performed in Wisconsin when the advertisement reached its intended, Wisconsin audience." *Id.* at 2010 WL 2519583, *5. Indeed, the court found that the income-producing activity occurred *solely* in Wisconsin, even though the vast majority of the taxpayer's costs to gather the advertising and to publish the telephone directory were incurred outside of Wisconsin and despite the fact that the applicable Wisconsin statute *included* the phrase "costs of performance" (unlike the South Carolina statute). The Court of Appeals concluded that the advertising company's customers were paying for the broad access that the

However, DIRECTV did not provide any evidence that reflected approximately how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated in South Carolina. Therefore, the Court cannot consider advertising in this case.

Finally, even if this Court ruled that South Carolina was a costs-of-performance state, and that costs of performance therefore applied in this case, DIRECTV did not present sufficient evidence to determine its income-producing activities or to quantify how much income-producing activity occurred in any applicable state. Furthermore, DIRECTV put no value on its subscriptions or the value perceived by its customers. DIRECTV simply did not provide sufficient information on how to apportion its subscription receipts between states in which it believes income-producing activities occur.

Substantial Understatement Penalties

Civil penalties are applied to every South Carolina tax law that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43. Such penalties are considered a tax owed to this State. *Id.* Further, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A). Section 12-54-155(A)(1) states that "[i]f there is an underpayment attributable to . . . a substantial understatement of tax for a taxable period . . . there **must** be added to the tax an amount equal to twenty-five percent of the amount of the underpayment." (emphasis added). For purposes of this subsection, "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return. "[T]here is a substantial understatement of tax for a taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars." *Id.* § 12-54-155(B)(1)(a). However, Section 12-54-155(B)(2)(b) adds the following:

> The amount of the understatement . . . must be reduced by that portion of the understatement which is attributable to the tax treatment of an item: (i) by the taxpayer if there is or was substantial authority for that treatment, or (ii) with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item by the taxpayer. . . .

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company could provide to a Wisconsin audience, and that the taxpayer's income-producing activity was thus "the provision of access to a Wisconsin audience." *Id.* at *9-10

Moreover, subsection (D)(1) further adds that "[a] penalty must not be imposed pursuant to this section with respect to a portion of an underpayment if it is shown that there was a reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion." Finally, "[u]nless specifically prohibited, the department may waive, dismiss, or reduce penalties provided for in this chapter." S.C. Code Ann. § 12-54-160.

In the instant matter, the Department was correct in its calculation of the understatement of taxes owed for 2009-2011 (and interest thereon), and that amount was properly not reduced. I find that there was no substantial authority for DIRECTV's treatment of subscription receipts. Also, though DIRECTV appropriately disclosed relevant facts affecting subscription receipts, I find that DIRECTV's basis for its tax treatment of the subscription receipts to be unreasonable.

I also find that the Department was correct to apply a substantial understatement penalty for underpayment of taxes owed for 2009 through 2011. Though DIRECTV acted in good faith with respect to bringing its claim regarding the portions of the understated tax amounts, I find that DIRECTV did not have "**reasonable** cause" (emphasis added) for the underpaid taxes, i.e., DIRECTV's method of calculating subscription receipts was unreasonable. Nevertheless, because the Court finds that DIRECTV acted with sufficient belief in bringing its claim regarding the portion of the understated tax amounts, the Court, pursuant to Section 12-54-160, concludes that a reduction in the penalty imposed upon DIRECTV should be reduced. Therefore, the Court shall reduce the penalty originally sought by the Department to 25% of that amount.

Conclusion

After considering the evidence in the record and the pertinent legal authorities, I conclude that based upon the reliable evidence, DIRECTV's income-producing activity is the delivery of the signal into the homes and onto the television sets of DIRECTV's customers. All of those income-producing activities related to South Carolina customers occurred entirely within South Carolina; therefore, 100% of DIRECTV's subscription receipts from South Carolina customers must be sourced to the numerator of the gross receipts ratio. This Court rejects DIRECTV's attempt to source the subscription receipts from South Carolina customers outside of South Carolina based upon costs of performance. Finally, DIRECTV is liable for substantial underpayment penalties.

ORDER

IT IS THEREFORE ORDERED that DIRECTV's refund requests for its amended 2006, 2007, and 2008 income tax returns are denied.

IT IS FURTHER ORDERED that DIRECTV be assessed $6,646,168.00 in tax and license fees, $653,425.00 in interest, and $1,246,155.75 in penalties with regard to its 2009, 2010, and 2011 income tax returns.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

June 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

June 12, 2015
Columbia, South Carolina

The South Carolina Court of Appeals

DIRECTV, Inc. & Subsidiaries, Appellant,

v.

South Carolina Department of Revenue, Respondent.

Appellate Case No. 2015-001509

The Honorable Ralph King Anderson, III
Trial Court Case No. 2014ALJ170158CC

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until September 09, 2015.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Bryson Moore Geer, Esquire
John C. Von Lehe, Jr., Esquire
R. Gregory Roberts, Esq, Esquire
Andres Vallejo, Esq, Esquire

FILED
08-11-2015

The South Carolina Court of Appeals

DIRECTV, Inc. & Subsidiaries, Appellant,

v.

South Carolina Department of Revenue, Respondent.

Appellate Case No. 2015-001509

The Honorable Ralph King Anderson, III
Trial Court Case No. 2014ALJ170158CC

ORDER

The time for serving and filing the appellant's initial brief and designation of matter is hereby extended until October 09, 2015. No further extensions will be granted absent extraordinary circumstances.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

cc:
Bryson Moore Geer, Esquire
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FILED
09-11-2015

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February 18, 2014

John Galloway
Deloitte Tax LLP
Suite 550 South Tryon St.
Charlotte, NC 28202

Re: Department Determination
DIRECTV, Inc. & Subsidiaries
Income Tax Periods, 2006-2011; License Fee Periods, 2010-2012

Dear Mr. Galloway:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a $500.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211.

If you would like to pay your liability, please mail your payment to my attention at the Office of General Counsel, PO Box 12265, Columbia, SC 29211

OFFICE OF GENERAL COUNSEL, TAX, AND REGULATORY SERVICES

Adam N. Marinelli
Counsel for Litigation

ANM:acc

Enclosures

DEPARTMENT DETERMINATION

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El Segundo, CA 90245

By and Through: John Galloway
Deloitte Tax LLP
Suite 550 South Tryon St.
Charlotte, NC 28202

Periods Involved:

Income Tax Periods Ending 2006 through 2011,
License Fee Periods Ending 2010 through 2012.

Matter in Dispute:

Is the Taxpayer entitled to source its income related to the sale of television broadcast subscriptions in South Carolina to another state?

2006 through 2008 Requested Refund Amount: **$5,976,816.00**

2009 through 2011 Tax Years:

	TAX	INTEREST	PENALTY	TOTALS
Income Tax	$6,613,067.00	$651,397.00	$1,653,233.00	$8,917,730.00
License Fee	33.101.00	2,028.00	8,725.00	43,404.00
TOTALS	$6,646,168.00	$653,425.00	$1,661.541.00	$8,961,134.00

Determination:

The Taxpayer is not entitled to source its income related to the sale of television broadcast subscriptions in South Carolina to another state.

Facts:

1. DIRECTV, Inc. & subsidiaries (DIRECTV) is headquartered in El Segundo, California, and provides access to digital television entertainment to South Carolina customers. It operates throughout the United States and Latin America.

2. DIRECTV grants its subscribers access to hundreds of television programming channels and other audio/visual options that are transmitted nationwide to subscriber's homes or businesses via high-powered satellites. Subscribers pay a monthly fee for access to basic channels and can also purchase premium channels and pay-per-view programs for an additional fee.

3. Each South Carolina subscriber rents a satellite, remote controls, and receiver box in order to access DIRECTV's programming from their home.

4. Originally, DIRECTV filed its 2006, 2007, and 2008 returns to reflect a market based sourcing method for its subscription revenue, which sourced its subscription receipts to the origin of its customers.

5. DIRECTV subsequently amended those returns to reflect a cost of performance approach, sourcing its income generated from customer subscriptions to its headquarters in California. Based upon the amended approach, the taxpayer's South Carolina tax liability was substantially decreased and it claimed a sizable refund for those years. The taxpayer also filed its original 2009 through 2011 returns to reflect the same cost of performance sourcing scheme.

6. The Department of Revenue (Department) audited the taxpayer's amended returns and in a letter dated November 29, 2011, denied the refunds claimed, asserting the taxpayer's receipts from South Carolina subscribers should be sourced to this State. Subsequent to that audit, and prior to the issuance of this Determination, the Department audited the taxpayer's returns for 2009 through 2011 and issued an assessment on the same legal basis as the refund denial.

7. The taxpayer timely protested the Department's denial of the refund claim and adjustments on the returns in a letter dated February 27, 2012. The taxpayer has also protested the additional assessment for its subsequent returns.

Discussion:

DIRECTV does not contest its duty to file for engaging in business in South Carolina. Rather, it raises a new objection to the inclusion of its South Carolina subscription receipts as part of its apportioned net income for its state tax liability and contends that only the receipts from equipment rentals should be sourced here. As discussed below, the taxpayer's assertions are without merit and inconsistent with South Carolina law and jurisprudence.

Because DIRECTV is a media broadcasting company and is not regularly engaged in the sale of tangible personal property, its apportioned net income is determined pursuant to S.C. Code Ann. § 12-6-2290 (Supp. 2006). For tax years prior to 2010:[1]

> [i]f the principal profits or income of a taxpayer are derived from sources other than [manufacturing or dealing in tangible personal property] or [certain industries], the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year.

Section 12-6-2290 (citations omitted) (emphasis added). It is well settled law that the purpose of the South Carolina allocation and apportionment provisions is to provide for imposition of income tax "upon a base which reasonably represents the proportion of the trade or business carried on within this State." Hertz Corp. v. S.C. Tax Comm'n, 246 S.C. 92, 142 S.E.2d 445 (1965). Furthermore, a statutory provision must be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm'n, 273 S.C. 269, 255 S.E.2d 837 (1979).

The operative question that remains upon application of Section 12-6-2290's plain language to the facts of this case is quite simple: are DIRECTV's subscription receipts from South Carolina customers generated "from within this State?" The Department's auditor contends the question should be answered in the affirmative. DIRECTV believes that these subscription receipts should be deemed produced in California, based upon its interpretation of Lockwood Greene Engineers, Inc. v. South Carolina Tax Comm'n, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987). The analysis required to reach the appropriate answer to this argument rests squarely upon a determination of what is the "income producing activity" in relation to the generation of the subscription receipts at issue.

I. The Income Producing Activity for DIRECTV Occurs Within This State.

In Lockwood, the Court of Appeals determined that the gross receipts of an engineering firm must be apportioned according to the location where the services were performed rather than to where its customers were located. The court referred to this as the "place of activity" test. Lockwood's income producing activity was the provision of personal engineering services. The court held that because the engineer rendered his services where he physically worked, then the income derived from those services was part of the

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[1] In 2007, Section 12-6-2290 was amended by replacing "12-6-2252" for "12-6-" and adding the language "For purpose of this section, items included in gross are as provided in Section 12-6-2295". These amendments, however, are r tax years after 2010.

receipts of the state in which the engineer was located – meaning, work performed in South Carolina was held to be South Carolina receipts.

DIRECTV erroneously contends that Lockwood "solidified the 'place of activity' test as the operative test to determine the portion of a taxpayer's income producing activities occurring within South Carolina for the purpose of assigning receipts to the South Carolina apportionment factor."[2] Such belief, however, completely disregards the clear limitations of the Lockwood Court's holding:

> Lockwood also argues the statute has not been consistently interpreted by the Tax Commission. Lockwood refers to Tax Commission guidelines concerning computation of the gross receipts of finance companies and media broadcasters. We are not persuaded these businesses are comparable to Lockwood. By contrast, the Tax Commission guidelines concerning law firms, accounting firms, entertainment and sports companies, and hospital management companies all focus on whether the services are performed in South Carolina. These situations are analogous and consistent with the situation of Lockwood

Lockwood, 293 S.C. at 450, 361 S.E.2d at 348 (emphasis added). The Lockwood Court's decision was based on the Department's long standing administrative practice of apportioning income for certain taxpayers. For example, finance companies are taxed in South Carolina based on whether the borrower resides in this State. Engineers and architects are taxed here if they perform any services in the state. Law firms and accounting firms are subject to tax based on where they perform the personal services for which they are paid. Restaurant franchise companies that have no activity in this State except the presence of their franchise name from which they derive their income are subject to tax in South Carolina. Based on this language, it is abundantly clear that the Court of Appeals intended to limit its holding to certain types of service providers. Lockwood logically stands for the proposition that personal service providers should apportion their South Carolina income based on a cost of performance approach, as that type of service has a direct causal link to the production of income. Here, however, DIRECTV is not a personal service provider and, therefore, Lockwood is wholly inapplicable.

DIRECTV further argues that it should apportion its income pursuant to S.C. Code Ann. § 12-6-2280 (Supp. 2006), which is the sales factor for businesses whose principal business is manufacturing or dealing in tangible personal property who are apportioning their income pursuant to the three-factor formula under S.C. Code Ann. § 12-6-2250 (Supp. 2006). However, as demonstrated above, DIRECTV's principal business is the provision of television programming via satellite and, therefore, must apportion its

[2]Taxpayer's Letter dated October 5, 2012 at 2.

income pursuant to Section 12-6-2290. Nonetheless, DIRECTV further relies on S.C. Code Ann. § 12-6-2295(A)(5) (Supp. 2006) which reads "sales are attributable to this State to the extent the income-producing activity is performed within this State." It is this very language that provides the basis for DIRECTV's suggestion that its income should be sourced based on a cost of performance approach. While some jurisdictions, including the Multistate Tax Commission (MTC), have enacted statutes or regulations with identical language, those jurisdictions have also included the language "based on cost of performance" in the sourcing provisions. The South Carolina General Assembly, however, chose not to include such language, meaning Section 12-6-2295(A)(5) does not require that income be sourced for South Carolina apportionment purposes based on a cost of performance.

Furthermore, DIRECTV argues that its activities, a majority of which occur outside the State, including (1) selecting, negotiating, acquiring, and managing broadcast programming; (2) managing and servicing the subscriber network; (3) managing the broadcast infrastructure; and (4) receiving programming content (which is then uplinked to the satellites) are its income producing undertakings. However, as noted above, DIRECTV's business is one centered upon broadcasting television programming via satellites into the homes of its customers. Meaning, all of the specific activities identified by DIRECTV lack any and all intrinsic value without the actual provision of television programming to South Carolina customers. It is vital to note here that each and every one of the activities the taxpayer attempts to characterize as "income producing" has no direct causal effect upon the generation of income. All of them are inherently indirect activities, or rather, precursors to the only directly engaged activity that creates DIRECTV profit. It is ***this final act***, the culmination of those enumerated activities – the delivery of the signal into the homes and onto the television screens of its customers – that produces income for DIRECTV. It does not sell contract negotiations. It does not sell network management services. It does not sell broadcast infrastructure or satellite triangulation. DIRECTV is in the business of selling television broadcast subscriptions to customers, and without the actual delivery of that broadcast signal into South Carolina homes it would not have generated the income at issue here. It is that act alone for which South Carolina customers sign contracts and pay their monthly fees.

South Carolina is most certainly not alone in this method of sourcing receipts for taxpayers like DIRECTV. Twenty-three states have adopted the "audience approach" for assigning receipts from programming and broadcasting companies.[3] Florida, for example, adopted the following language:

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[3] See e.g., Alabama - Ala. Admin. Code R. 810-27-1-4.18(h) (2013); Arkansas - Ark. Admin. Code § 006.05.308-26-51-718(d)(2.26-51-718(d)) (2013); Colorado - 1 Colo. Code Regs. § 201-3, Spec. Reg. 5A (2013); Connecticut - Conn. Gen. Stat. § 12-218(l) (2013); Florida - Fla. Admin. Code Ann. R. 12C-1.0155(2)(i) (2013); Georgia - Ga. Comp. R. & Regs. 560-7-7.03(5)(c) 6(vii) (2013); Hawaii - Haw. Code R. § 18-235-38-06.04 (2013); Idaho Admin. Code R. 35.01.01.580(01)(e) (2013); Iowa Admin. Code. R. 701-54.7(5)(422) (2013); Maryland - Md. Code Regs. 03.04.03.09 (2013); Michigan -

> Television and Radio Broadcasting. Gross receipts, including advertising revenues, from broadcasting within and without the state will be attributed to the numerator of the sales factor on the basis of the ratio of the audience within the state to the audience everywhere.

Fla. Admin. Code Ann. R. 12C-1.0155(2)(i) (2013). This approach has been tested in adjudicative proceedings as well, and courts in other jurisdictions have held that audience based sourcing for taxpayers like DIRECTV is the proper method. In Texas, an Administrative Law Judge illuminated the income producing activity when he held:

> The act Petitioner's customer contracts and pays to receive, and the act that produces the receipts at issue, is the act performed by the receiver (i.e., the set top box) that Petitioner sells or leases to its subscribers. Petitioner's customers contract for the receipt of television programming. Petitioner contracts to provide the programming, and **it is the microchips within the receiver that unscramble and decode the satellite's encrypted signal that completes the transaction and produces the programming receipt**. It is undisputed that each of the programming receipts scheduled within the audit are receipts Petitioner received from Texas subscribers. The ALJ finds the auditor correctly apportioned the receipts at issue.

Anonymous Taxpayer v. Texas Comptroller of Public Accounts, 2013 WL 3490605 (Tex. Cptr. Pub. Acct.) (May 17, 2013) (emphasis added.). The approach the auditor has taken denying the refund claimed by DIRECTV's amended returns and in auditing its originally filed returns is identical to the Texas ALJ's rationale. DIRECTV produces income in South Carolina by providing receiver boxes that interpret a signal and provide television services to South Carolina customers. To that extent, and in complete

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Mich. Comp. Laws Ann. § 208.1305(20) (2013); Montana - Mont. Admin. R. 42.26.1103 (2013); New Hampshire - NH Code R. Rev. 304.09 (2013); New Mexico - NM Code R. § 3.5.19(18) (2013); North Dakota - ND Admin. Code R. 81-03-09-38 (2013); Oregon - Or. Rev. Stat. § 314.684 (2013); Or. Admin. R. 150-314.684(4) (2013); California – 18 CA ADC § 25137-8.1 (2013); Illinois – 35 ILCS 5/305(B7) (2013); Louisiana – La. Rev. Stat. Ann. § 47:287.95(K)(2)(c)(i) (2013); New Jersey - Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 478 A.2d 742 (1984) (citing N.J. Stat. Ann. § 54:10A-8.(2013)); Ohio – Ohio Admin. Code 5703-29-17(9)(a) (2013); Rhode Island – R.I. Admin. Code § 60-1-194:1 (2013); Washington – Wash. Admin. Code 458-20-241(2013).

consistency with Section 12-6-2290, those gross receipts should be sourced to South Carolina.

Conclusion

The gross receipts that DIRECTV generates from the sale of subscriptions are directly produced from activity that occurs within this state. The taxpayer's attempts to argue its out-of-state activities create the income at issue, pursuant to its strained interpretation of Lockwood, lack all merit. The refund claimed by the taxpayer in this matter was properly denied, and its revenue from subscription receipts should be sourced to South Carolina.

February 18, 2014

FILED
MAY 22 2015
SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

DIRECTV, Inc. & Subsidiaries, Petitioner, vs. South Carolina Department of Revenue, Respondent.	Docket No. 14-ALJ-17-0158-CC **MOTION FOR RECONSIDERATION UNDER ALC RULE 29(D) AND/OR TO ALTER OR AMEND UNDER SCRCP RULE 59(E)**

Pursuant to South Carolina Rule of Civil Procedure 59(e) and Rule 29(D) of the Rules of Procedure for the Administrative Law Court, Petitioner DIRECTV, Inc. & Subsidiaries ("DIRECTV") respectfully requests that this Court reconsider and alter or amend its Final Order and Decision dated May 12, 2015 (the "Order"), a copy of which is attached hereto as Ex. A, which found in favor of Respondent South Carolina Department of Revenue (the "Department") in this matter. This motion is based upon the grounds that the Court may have overlooked, misinterpreted or failed to apply South Carolina law and/or overlooked or failed to consider certain evidence and arguments presented, which, when considered, necessitate a finding in favor of DIRECTV.

A. The Court Applied an Improper Standard of Review and Failed to Find that Once DIRECTV Met Its Burden to Establish that the Assessment was Incorrect, the Assessment Should be Dismissed.

As discussed in its Proposed Final Order, because DIRECTV challenged the assessment issued by the Department, DIRECTV has the burden to establish by a preponderance of the evidence that the assessment is incorrect. Proposed Final Order, p. 20 (citing *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 496 S.E.2d 17 (1998) (finding that "the standard of

proof in administrative hearings is generally a preponderance of the evidence") and *Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 132, 530 S.E.2d 643, 651 (Ct. App. 2000) (explaining that "the complaining party bears the burden of proof")); *see also DISH DBS Corp. v. S.C. Dep't of Revenue*, No. 14-ALJ-17-0285-CC (ALC Feb. 10, 2015) ("Petitioner requested a contested case hearing and, therefore, has the burden of proof to show by a preponderance of the evidence that the Department's tax assessment was incorrect.").

Although a tax assessment is initially presumed correct, once a taxpayer establishes that an assessment is incorrect, either by proving the actual valuation or through other evidence establishing that the assessment is incorrect, the presumption of correctness is removed and the taxpayer is entitled to appropriate relief. *See Cloyd v. Mabry*, 295 S.C. 86, 88-89, 367 S.E.2d 171, 173 (Ct. App. 1988) (explaining that "[a] taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect" and that, although "[o]rdinarily, this will be done by proving the actual value . . . [t]he taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect" and "[i]f he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief"); *see also Anonymous Taxpayer v. S.C. Dep't of Revenue*, No. 07-ALJ-17-0189-CC (ALC Aug. 23, 2007), *Lawton v. S.C. Dep't of Revenue*, No. 08-ALJ-17-0118-CC (ALC Sept. 5, 2008), and *Travelscape, LLC v. S.C. Dep't of Revenue*, No. 08-ALJ-17-0076-CC (ALC Feb. 12, 2009) (each citing to the burden of proof and standard of review set forth in *Cloyd*).

Similarly, this Court explained that "DIRECTV has the burden of proof" and that "[t]his burden requires DIRECTV to prove that the Department's determination is errant by a preponderance of the evidence." Order, p. 7.

As explained by the Court, the assessment was based on the Department's contention that "100% of [DIRECTV's] subscription receipts from South Carolina should be sourced to the numerator of the gross-receipts ratio because there is no other income-producing activity related to DIRECTV's business in South Carolina." Order, p. 10. Similarly, uncontroverted evidence presented during the hearing through the testimony of Robert N. King, Timothy Donovan and John Swearingen established that the Department's assessment was based solely on customer location.[1] Tr. 302:4-6; Tr. 314:20-23; Tr. 349:13-17.

DIRECTV, however, presented substantial evidence regarding its income-producing activities and where those activities were conducted, including, but not limited to the following:

- Testimony by Philip J. Goswitz, Senior Vice President of Space, Communications and Video at DIRECTV regarding the activities necessary to produce DIRECTV's programming services and where those activities were conducted. Tr. 47:14-85:5.
- Dr. Cody's testimony that he viewed the income-producing activities of DIRECTV as "the activities that DIRECTV engages in in order to convert potential customers into subscribers and to retain and drive additional income from existing subscribers." Tr. 221:6-11.
- Testimony from DIRECTV that the company considered its income-producing activities to be the "assets and the employees that perform the service which puts the video into the television of its customers." Tr. 379:15-18.

Based on the evidence presented and arguments made, the Court acknowledged that the assessment was incorrect. For example, the Court expressly states that it "does not adopt the view of the Department that income-producing activity of businesses within the direct broadcast services industry is completely limited to the delivery of a signal into the customer's home and onto the customer's television." Order, p. 10. Similarly, the Court agreed with Professor Pomp that "opinions can differ on how to measure the extent to which income-producing activities take

[1] Robert N. King is an auditor for the Department and conducted the audit of DIRECTV. Timothy Donovan is an employee of the Department and was involved in the audit of DIRECTV. John Swearingen is an employee of the Department.

place in South Carolina, *but answering that question by simply ignoring the outside activities is unacceptable*." Order, p. 10 (emphasis added). Moreover, the Court found that, "[i]n this case, the evidence also suggested that there may be other activities, such as advertising, that influence the customer's decision to make the purchase." Order, p. 11. Finally, the Court explained that "the location of customers does not necessarily identify the income-producing activities of the taxpayer and therefore is not a reasonable method of identification." Order, p. 11.

Thus, not only does the evidence presented during the hearing establish that the Department's assessment is incorrect, but the Court's own analysis confirms this. Accordingly, as DIRECTV's only burden is to establish by a preponderance of the evidence that the Department's assessment is incorrect, the Department's assessment should be dismissed.

Based on the above, DIRECTV respectfully requests that the Court (i) reconsider the above facts and arguments, (ii) alter or amend its Order to find that DIRECTV satisfied its burden of proof by establishing by a preponderance of the evidence that the assessment is incorrect, and (iii) alter or amend its Order to dismiss the assessment.

B. The Court Misinterpreted the Burden of Proof Imposed on DIRECTV and Improperly Imposed an Additional Burden on DIRECTV.

As discussed above, DIRECTV's burden of proof in this matter is to establish by a preponderance of the evidence that the assessment is incorrect. Despite the evidence presented during the hearing and the Court's own analysis establishing that the assessment is incorrect (discussed above in Section A), the Court nevertheless upheld the assessment based on its findings that:

- The "payroll-and-assets method does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina or the value attributable to such activities." Order, p. 11.

- "Though [DIRECTV's] evidence did reflect that its advertising probably produced some income, the evidence did not reflect what portion of DIRECTV's cost was either attributable to South Carolina customers or may have influenced South Carolina customers to subscribe to DIRECTV." Order, pp. 11-12.

- "[I]t is possible that advertising performed within or without [] South Carolina could be considered income-producing activity. However, DIRECTV did not provide any evidence that reflected how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated in South Carolina. Therefore, the Court cannot consider advertising in this case." Order, p. 19.

- "DIRECTV simply did not provide sufficient information on how to apportion its subscription receipts between states in which it believes income-producing activities occur." Order, p. 20.

However, by not only requiring DIRECTV to establish that the assessment is incorrect, but also requiring DIRECTV to establish the actual revenue attributable to South Carolina, the Court misinterpreted the burden of proof on DIRECTV and improperly placed an additional burden on DIRECTV. *See Cloyd v. Mabry*, 295 S.C. at 88-89, 367 S.E.2d at 173 (explaining that a taxpayer can contest an assessment by proving the actual value *or* "by other evidence that the assessing authority's valuation is incorrect" and "[i]f he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief").

Based on the above, DIRECTV respectfully requests that the Court (i) reconsider the above facts and arguments, (ii) alter or amend its Order to find that DIRECTV satisfied its burden of proof by establishing by a preponderance of the evidence that the assessment is incorrect, and (iii) alter or amend its Order to dismiss the assessment.

C. The Court Failed to Consider and/or Overlooked Substantial Evidence in the Record Establishing DIRECTV's Income Producing Activities.

In reaching its decision, the Court found that "DIRECTV failed to sufficiently identify its outside income-producing activities" (Order, p. 13) and that "DIRECTV did not present sufficient evidence to determine its income-producing activities" (Order, pp. 19-20).

In so finding, the Court failed to consider and/or overlooked the substantial evidence presented by DIRECTV regarding its income-producing activities and the location from which those activities were conducted, which included the following:

- Mr. Goswitz's detailed testimony regarding the activities necessary to produce DIRECTV's programming services, which includes (i) procuring and developing premium quality video entertainment, including the development of original programming and acquisition of programming from third-parties, (ii) operation of local collection facilities, uplink centers, broadcast centers, and satellites that are used to collect and deliver the programming services to customers, and (iii) customer service and marketing activities that allow DIRECTV to maintain and enhance its brand and brand awareness. Tr. 47:14-85:5.

- Dr. Cody's testimony that he viewed the income-producing activities of DIRECTV as "the activities that DIRECTV engages in in order to convert potential customers into subscribers and to retain and drive additional income from existing subscribers." Tr. 221:6-11.

- Testimony from DIRECTV that the company considered its income-producing activities to be the "assets and the employees that perform the service which puts the video into the television of its customers." Tr. 379:15-18.

Thus, DIRECTV provided sufficient evidence to identify its income-producing activities. Accordingly, DIRECTV respectfully requests that the Court (i) reconsider the above facts, and (ii) alter or amend its Order to find that DIRECTV sufficiently identified its income-producing activities.

D. The Court Failed to Consider and/or Overlooked Substantial Evidence in the Record Establishing the Portion of DIRECTV's Receipts that Should be Attributed to South Carolina.

In reaching its decision, the Court found that "the payroll-and-assets method of Dr. Cody does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina, and the value attributable to such activities" (Order, p. 17) and that "DIRECTV simply did not provide sufficient information on how to apportion its subscription receipts between states in which it believes income-producing activities occur" (Order, p. 20).

In so finding, the Court failed to consider and/or overlooked the evidence presented by DIRECTV establishing the portion of its subscription revenue that should be attributed to South Carolina, which included the following:

- Dr. Cody's testimony that the income-producing activities of DIRECTV are best reflected by a formula that considers both payroll and assets because services rendered by DIRECTV personnel and tangible assets, such as (i) the local collection facilities, (ii) set-top boxes, and (iii) regional uplink facilities, play important roles in the generation of DIRECTV's subscription revenue. Tr. 229:7-231:18.

- Dr. Cody's testimony that payroll and assets are two measures that "provide a practical and actually a very well-trod path for allocating and determining the location of income-producing activities." Tr. 496:16-21.

- Dr. Cody's further testimony that "[a] couple of very common factors or proxies [for income-producing activities] are payroll and assets. Professor Pomp referred to labor and capital. It's the same thing, fundamental economics. There are some other measures that could potentially be used, but payroll and assets are two very common measures that are used. So I developed methodologies using those measures." Tr. 229:11-21.

In its Order, the Court acknowledged that the South Carolina Supreme Court "has long realized the practical impossibility of a state's achieving a perfect apportionment of expansive, complex business activities such as those of Appellant, and has declared that 'rough approximation rather than precision' is sufficient" and that "[a]lthough exactness in apportionment is desirable, all that is required is a reasonable approximation." Order, p. 11

(citing and quoting *Covington Fabrics Corp. v. S.C. Tax Comm'n*, 264 S.C. 59, 66-67, 212 S.E.2d 574, 577-78 (1975)). As discussed in DIRECTV's Proposed Final Order, the Court of Appeals endorsed this approach in *Lockwood Greene Engineers, Inc. v. South Carolina Tax Commission*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987).[2] In finding that the "place of activity" was properly determined using only a payroll factor, the Court of Appeals explained that "an engineering firm's business carried on in a state is *reasonably measured* by the services rendered by its personnel in the state." *Id.*[3] (emphasis added).

Thus, contrary to the Court's conclusions, DIRECTV presented substantial evidence supporting Dr. Cody's use of the Payroll and Assets Method as a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina, and the value attributable to those activities, which, as the case law authorities cited here and in DIRECTV's Proposed Final Order indicate, is all that is required in the context of a unitary business such as DIRECTV.

Based on the above, DIRECTV respectfully requests that the Court (i) reconsider the above facts and arguments, (ii) alter or amend its Order to find that Dr. Cody's Payroll and

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[2] Although the Court rejects the Department's reliance on its so-called longstanding guidelines relating to the sourcing of service-related income, the Court nevertheless states that the "fact that DIRECTV previously filed its returns sourcing 100% of the South Carolina subscription revenue to South Carolina before filing the amended returns suggests that the Department had such a policy in place." Order, p. 16, n.17. There is no support in the record for the inference drawn by the Court. In fact, the uncontroverted testimony presented at the hearing establishes that (i) the Department's so-called longstanding guidelines did not apply to taxpayers like DIRECTV and (ii) the guidelines did not apply to subscription revenue. Tr. 348-349; 348:24-349:4.

[3] In footnote 18 of the Order, the Court observes that "[i]t is noteworthy that the payroll factor that was used by the Department to source Lockwood's gross receipts to South Carolina was used merely as a proxy for calculating Lockwood's actual gross receipts from within South Carolina" and that "[i]f the Department had had all of Lockwood's records, the Department would not have had to use the payroll proxy but could have examined all of Lockwood's invoices and added the fees billed for the work of South Carolina engineers." As noted in footnote 18 of DIRECTV's Proposed Final Order, there is no basis for these claims. These statements were not supported by anything in the Court of Appeals' decision, there was nothing in the court's decision indicating that a different result would be warranted if additional information were available, and there is no evidence in the record to support these claims.

Assets Method provides a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina, and (iii) alter or amend its Order to find that DIRECTV sufficiently established the portion of its receipts that should be attributed to South Carolina.

E. The Court Misinterpreted the Language of South Carolina Code Section 12-6-2295(A)(5) As Requiring an Examination of "Primary" Income-Producing Activities.

In reaching its decision, the Court misinterpreted South Carolina law by looking only to what it considered to be DIRECTV's "primary" income-producing activities.

The Court explained that "DIRECTV derives income from monthly subscription receipts that customers pay to DIRECTV in order to view its video programs in their homes and businesses" and that "[t]hese subscription receipts are received as a result of the delivery of the signal into the customer's home and onto the customer's television, and are therefore directly related to the *primary* income-producing activity of DIRECTV." Order, p. 10 (emphasis added). Despite acknowledging that DIRECTV "engages in other out-of-state activities that cause satellite signals to be beamed into this State," the Court found that "it is not until a customer subscribes to [DIRECTV's] services by purchasing a satellite dish to receive those signals and a set-top box to decode those signals that [DIRECTV's] actions have any income producing value." Order, p. 13. The Court explained that, "the national programming through the CONUS beams would exist regardless of whether there were **any** subscribers in South Carolina" and "[t]herefore, such broadcasting is an incidental activity to producing income until a customer subscribes to DIRECTV." Order, p. 13 (emphasis in original). The Court further explained that "[t]he other prior activities that prepare the way for DIRECTV's provision of services, i.e., the infrastructure for producing and collecting the programming content and transmitting the signals,

though necessary, are merely incidental to the income-generating activities themselves, i.e., the services that directly produce income for DIRECTV." Order, p. 13.

The Court's conclusion is inconsistent with the plain language of the statute, which simply requires an analysis of a taxpayer's income-producing activities, not just so-called "primary" income-producing activities. *See* S.C. Code Ann. § 12-6-2295(A)(5).

The Court's conclusion is also inconsistent with the South Carolina Supreme Court's decision in *Mercury Motor Express, Inc. v. South Carolina Tax Commission*, 244 S.C. 134, 135 S.E.2d 756 (1964), in which the Supreme Court rejected a narrow construction of income-producing activities that would have considered only the activities for which the company was actually paid. Although the Court acknowledges that the Supreme Court considered "incidental" activities to be income-producing activities, the Court nevertheless concludes that only DIRECTV's "primary" activities should be considered for purposes of applying Section 12-6-2295(A)(5).[4]

Although DIRECTV does not agree with the Court's characterization of its "primary" income-producing activities, the Court's consideration of only so-called "primary" activities to determine DIRECTV's income-producing activities (i) ignores the substantial evidence in the record regarding DIRECTV's income-producing activities, (ii) misinterprets the plain language of the statute, and (iii) is inconsistent with established case law. Moreover, by focusing on the activities of South Carolina subscribers, the Court misconstrues Section 12-6-2295(A)(5) by looking to activities conducted by third parties instead of the activities conducted by DIRECTV (*i.e.*, the taxpayer).

[4] Further, by only focusing on the delivery of the signal in South Carolina, the Court completely ignores the other activities involved in delivering the signal, almost all of which take place outside of South Carolina.

Based on the above, DIRECTV respectfully requests that the Court (i) reconsider the above facts and arguments and (ii) alter or amend its Order to consider all of the income-producing activities performed by DIRECTV.

F. The Court Misconstrued the Methodology Applied by DIRECTV As Being A Cost of Performance Methodology.

In reaching its decision, the Court misconstrues the Payroll and Assets Method applied by Dr. Cody as a cost of performance methodology, stating that, "the approach proposed by Dr. Cody unduly emphasizes what amounts to 'costs of performance'" and explaining that "[i]t is clear that South Carolina is not a UDITPA State, and it does not apportion the net income of service providers based upon costs-of-performance elements." Order, p. 17.

DIRECTV has not asserted that South Carolina is a cost of performance state, and the Payroll and Assets Method is not a cost of performance methodology. Instead, evidence presented by DIRECTV included the following:

- Testimony by Professor Pomp that was adopted by the Court, which stated that it "agrees with Professor Pomp that instead of mandating one method (*e.g.*, 'costs of performance' or 'market-based') for determining the amount and location of income-producing activities, S.C. Code Section 12-6-2295(A)(5) provides 'flexibility' in determining the relative amount of income-producing activities in the State." Order, p. 18.
- Testimony by Dr. Cody that he employed two common proxies using data from DIRECTV's financial records to identify and locate its income-producing activities: (i) payroll expense inside and outside of South Carolina; and (ii) the net book value of assets inside and outside of South Carolina. Tr. 229:7-21.
- Testimony by Dr. Cody that payroll and assets are proxies that "provide a practical and actually a very well-trod path for allocating and determining the location of income-producing activities," and that payroll and asset proxies also reflect the fundamental economics of DIRECTV's operations. Tr. 496:16-21.

Thus, as the record establishes, simply relying on the Payroll and Assets Method as a proxy for measuring the gross receipts attributable to South Carolina does not imply that DIRECTV is asserting that South Carolina is a cost of performance state. Moreover, the Payroll

and Assets Method is consistent with existing South Carolina case law. *See Lockwood*, 293 S.C. 447.

Based on the above, DIRECTV respectfully requests that the Court (i) reconsider the above facts and arguments, and (ii) alter or amend its Order to adopt the Payroll and Assets Method applied by Dr. Cody.

G. The Court Failed to Consider DIRECTV's Argument that Penalties Must be Abated When There is Substantial Authority and/or the Taxpayer Acted in Good Faith.

In its Proposed Final Order, DIRECTV argued that the asserted substantial understatement penalties should be abated because there was substantial authority for its position and it acted in good faith. Proposed Final Order, pp. 36-37.

In upholding the substantial understatement penalty, the Court considered only the portion of the statutory provision providing that "[i]f there is an underpayment attributable to . . . a substantial understatement of tax for a taxable period . . . there **must** be added to the tax an amount equal to twenty-five percent of the amount of the underpayment." Order, p. 20 (quoting S.C. Code Ann. § 12-54-155(A)(1)) (emphasis in Order). The Court, however, failed to consider and/or overlooked the portion of the statute providing that:

> The amount of the understatement . . . must be reduced by that portion of the understatement which is attributable to the tax treatment of an item:
>
> (i) by the taxpayer if there is or was substantial authority for that treatment, or
>
> (ii) with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return and there is a reasonable basis for the tax treatment of the item by the taxpayer.

S.C. Code Ann. § 12-54-155(B)(2)(b).

The Court also failed to consider and/or overlooked the portion of the statute providing that "[a] penalty must not be imposed pursuant to this section with respect to a portion of an

underpayment if it is shown that there was a reasonable cause for the portion and that the taxpayer acted in good faith with respect to the portion." S.C. Code Ann. § 12-54-155(D)(1).

DIRECTV presented testimony and substantial evidence that its treatment of subscription revenue was correct. Moreover, as the only adjustment made by the Department relates to the apportionment of DIRECTV's subscription revenue, even if the assessment is upheld, pursuant to South Carolina's apportionment provisions and case law, DIRECTV had substantial authority for its treatment of subscription revenue. DIRECTV's treatment of its subscription revenue was consistent with the theory applied by the Court of Appeals in *Lockwood*, the only published decision on point, and also with *Mercury Motor Express*, which rejected a narrow view of income-producing activities—similar to the view advanced by the Department in this case—that would have considered only activities for which the company was actually paid. Further, the position taken by DIRECTV on its return for the 2011 tax year, in which it sourced a portion of its subscription revenue to South Carolina, demonstrates that DIRECTV was acting in good faith and trying to comply with Sections 12-6-2290 and 12-6-2295(A)(5).

Based on the above, DIRECTV respectfully requests that this Court (i) reconsider these facts and arguments, and (ii) alter or amend its Order to find that the substantial understatement penalties should be abated.

CONCLUSION

Based on the foregoing, DIRECTV respectfully requests that this Court reconsider its rulings and alter or amend its Order to find in favor of DIRECTV on all issues, dismiss the Department's proposed assessment in its entirety, and grant the refund claims requested by DIRECTV.

Dated: May 22, 2015

By: _____

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for DIRECTV Inc. & Subsidiaries, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified **via E-Mail and U.S. Mail** to the following address(es):

Pleadings: **MOTION FOR RECONSIDERATION UNDER ALC RULE 29(D) AND/OR TO ALTER OR AMEND UNDER SCRCP RULE 59(E)**

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FILED

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DIRECTV, Inc. & Subsidiaries, Petitioner, vs. South Carolina Department of Revenue, Respondent.	)	Docket No. 14-ALJ-17-0158-CC **FINAL ORDER AND DECISION**

Appearances:

For the Petitioner: R. Gregory Roberts, Esq.; Andres Vallejo, Esq.; Bryson M. Geer, Esq.; and John von Lehe, Esq.

For the Respondent: Nicole M. Wooten, Esq.; William J. Condon, Jr., Esq.; Timothy C. Thompson, Esq.; and Mary Elizabeth Campbell, Esq.

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) following DIRECTV, Inc. & Subsidiaries' (DIRECTV or Petitioner) request for a contested case hearing under S.C. Code Ann. § 12-60-460 (2014). DIRECTV is contesting the South Carolina Department of Revenue's (Department or Respondent) Determination denying DIRECTV's claim for a refund of South Carolina corporate income and license fee taxes for the tax years 2006 through 2008 and the assessment of South Carolina corporate income and license fee taxes, interest, and penalties for the tax years 2009 through 2011 (Tax Periods at Issue).[1]

The Department's Determination (Determination) concluded that applicable South Carolina law and long-standing Department policy require DIRECTV to source all of the gross receipts of its South Carolina subscription revenue to South Carolina because all of the income-producing activity related to DIRECTV's South Carolina customers occurs in South Carolina. DIRECTV asserts that little or no subscription revenue from South Carolina customers should be

[1] The tax years noted relate to income tax years. Income taxes are generally due in arrears, while license fees are due in advance. For clarity, when the Court refers to tax years, reference is being made to income taxes for that year and license fees due for the following year.

included in the numerator of the gross receipts ratio because the majority of the income-producing activity occurs outside of South Carolina.

A hearing was held before this Court on January 13 and 14, 2015.

ISSUES

The following issues are raised in this proceeding:

1. To what extent under S.C. Code Sections 12-6-2290 and 12-6-2295(A)(5) did Petitioner's applicable income-producing activity occur within South Carolina?[2]
2. Whether the Department properly assessed substantial understatement penalties against DIRECTV for taxes owed for 2009 through 2011.

STIPULATIONS OF FACT

At the hearing into this matter and pursuant to Rule 25(C) of the Rules of Procedure for the Administrative Law Court (ALC Rules), the parties entered the following written stipulations of fact into the Record:

1. One of the issues presented by Petitioner for determination in this appeal is whether Respondent is seeking an alternative method of apportionment to source Petitioner's subscription revenue from the provision of its direct broadcast satellite services (Subscription Revenue).

2. In Petitioner's Request for Contested Case Hearing and Prehearing Statement filed with this Court, one of the issues presented for determination was whether Respondent satisfied its burden of proof for the use of an alternative apportionment methodology under S.C. Code Ann. § 12-6-2320.

3. The parties wish to clarify that Respondent does not assert that an alternative apportionment methodology under Section 12-6-2320 was used or should be used to source Petitioner's Subscription Revenue for tax years 2006 through 2011 (Period at Issue).

4. The sole remaining issue presented for determination with respect to the sourcing of Petitioner's Subscription Revenue is how that revenue should be sourced under Sections 12-6-2290 and 12-6-2295(A)(5).

5. As a result, Petitioner's Prehearing Statement is deemed to be amended to remove the assertions set forth in Paragraph No. 3(b) and Paragraph No. 4(b).

6. The parties submitted Exhibit A, a schedule setting forth the amount of (i) Petitioner's total Subscription Revenue for each year during the Period at Issue, (ii) Petitioner's

[2] The parties agree that at least some income-producing activity occurred within South Carolina.

total Subscription Revenue from South Carolina Customers for each year during the Period at Issue, (iii) the total revenue from leases of set-top boxes and sales of tangible personal property to South Carolina customers for each year during the Period at Issue, (iv) Petitioner's total revenue from leases of set-top boxes and sales of tangible personal property for each year during the Period at Issue, and (v) Petitioner's total gross receipts for each year during the Period at Issue.

7. The parties agreed to work together in good faith to verify and to confirm the amounts set forth in Exhibit A to provide this Court with a final version of Exhibit A within two weeks of the conclusion of the trial.

8. For each year during the Period at Issue, Petitioner included revenue from the leases of set-top boxes and sales of tangible personal property (e.g., remote controls) to South Carolina customers in the numerator of the gross receipts factor and the parties do not dispute the treatment of this revenue.

After the hearing, the parties determined Exhibit A that was attached to the Stipulations did not need to be amended. Based upon the Stipulations of the parties, the Court adopts the schedule setting forth the amounts listed in Exhibit A, and these figures shall be used in calculating the gross receipts ratio:

	S.C. Subscription Revenue	Total Subscription Revenue	S.C. Lease/Sale Revenue from Set-top Boxes	Total Lease/Sale Revenue from Set-top Boxes	Total Revenues
2006	265,155,289	13,583,081,711	3,376,851	160,263,938	13,743,345,649
2007	297,356,680	14,900,247,218	12,547,540	582,796,802	15,483,044,020
2008	334,652,301	16,321,615,758	19,605,211	923,326,252	17,244,942,010
2009	361,394,437	17,348,388,812	26,702,174	1,238,157,983	18,586,546,795
2010	392,627,654	18,654,864,389	31,565,700	1,444,720,825	20,099,585,214
2011	409,564,133	19,689,434,914	42,129,631	1,925,855,682	21,615,290,596

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

DIRECTV's Business Operations

DIRECTV is a multistate taxpayer headquartered in Los Angeles, California that offers direct broadcast satellite video services to customers throughout the United States. DIRECTV

accomplishes this through four general types of activities: marketing and sales; content development (both original and acquired programming); broadcast operations; and customer service.[3] Through DIRECTV's marketing and sales activities, it advertises its programming services to subscribers. DIRECTV engages in distinctive marketing activities on a national scale which includes South Carolina. The goal of DIRECTV's print and television advertising is to encourage customers to call a toll-free number to place an order for television services.

Customers pay DIRECTV a subscription fee for access to hundreds of television programming channels and other audio/visual options that are transmitted nationwide to customer's homes or businesses via satellites. DIRECTV receives its programming from third parties through satellite, fiber-optic cables, and over-the-air broadcast. DIRECTV also collects programming from local broadcast television stations through the use of local collection facilities throughout seven designated market areas (DMA). During the Tax Periods at Issue, DIRECTV had four to six local collection facilities in South Carolina.

The signals for the programming content are collected at broadcast and uplink centers. These broadcast centers and uplink facilities transmit the programming content signals to the satellites. The satellites then transmit the signals received from the broadcast centers and uplink facilities directly to DIRECTV satellite dishes mounted on or near customer homes. DIRECTV transmits its broadcast utilizing two types of beams from its satellites. One beam, the "CONUS" beam, covers the entire United States. It transmits the national programming sold to DIRECTV. The other beam is a narrow beam that transmits the local programming to the DMAs. Those signals are then relayed from the dish to a set-top box located in the customer's home or business, which delivers the signals to the customer's television set.

Customers pay a monthly subscription fee for access to basic channels and can also purchase premium channels and pay-per-view programs for an additional fee. In order to receive the receive programming, customers must contract with DIRECTV for the service, and then use a satellite dish, remote controls, and set-top box provided by DIRECTV in order to access DIRECTV's programming. During the Period at Issue, DIRECTV provided customer service support to customers in South Carolina through both owned-and-operated internal call centers and third-party call centers, none of which were located in South Carolina. DIRECTV also employed

[3] Although several affiliated entities are involved in the provision of DIRECTV's programming services, this case involves only DIRECTV Inc., and thus, the Court's focus is upon the activities of that entity.

two employees in South Carolina and contracted with third-party home service providers who installed and serviced equipment in homes of new customers in South Carolina. Also during the Tax Periods at Issue, DIRECTV began leasing the set-top boxes to customers in exchange for a lease fee. However, the importance of these services as to income production has not been sufficiently explained.

DIRECTV's primary source of revenue is the subscription revenue it receives from its approximately twenty million subscribers. DIRECTV's revenue includes monthly fees for subscribing to one or more packages of video programming; revenue from pay-per-view programming; revenue from the sale or lease of the set-top boxes; revenue from optional warranty on the leased boxes (protection plans); and revenues from fees associated with high-definition set-top boxes, set-top boxes with DVR, and multi-room viewing. I find that the rental and sales receipts received from South Carolina customers are properly included in the numerator of the gross receipts ratio.[4]

DIRECTV's Income Tax Returns

For the 2006 through 2008 tax years, DIRECTV filed corporate income tax returns in South Carolina in which it sourced 100% of subscription receipts from South Carolina customers to the numerator of the gross receipts ratio. By doing so, DIRECTV used gross receipts ratios of 1.9539%, 2.0016%, and 2.0543% for years 2006 through 2008, respectively. In 2008, the Department began an audit of DIRECTV. As a result of the audit, the Department accepted DIRECTV's original 2006 through 2008 corporate income tax returns as filed (i.e., the Department did not make any adjustments to the tax returns). DIRECTV subsequently filed amended corporate income tax returns for the 2006 through 2008 tax years, and the single change was the removal from the gross receipts ratio of 100% of the subscription receipts from South Carolina customers that DIRECTV originally included in the numerator. The amended gross receipts ratios for years 2006 through 2008 were 0.0246%, 0.081%, and 0.1137%, respectively. DIRECTV explained the change in a statement attached to each of the three amended returns:

> This return is being amended to apportion sales receipts to the state under S.C. Code Ann. § 12-6-2295 which sources sales of services under a pro-rata cost of

[4] The parties do not dispute the treatment of the rental income of the set-top boxes and agree that all such rental income from the set-top boxes received by DIRECTV from South Carolina customers should be included in the numerator of the gross receipts ratio for apportionment purposes. *See* Stipulation of Facts, filed January 13, 2015.

performance method.[5] The originally filed return incorrectly apportioned satellite television subscription receipts to South Carolina using market-based sourcing, rather than the cost of performance sourcing that is prescribed by statute.

Because of the amended returns for 2006 through 2008, DIRECTV decreased its tax and license fee liability by $5,976,816.00 and sought a refund in this amount. In a field audit report dated November 29, 2011, the Department denied the amended returns and related refunds and accepted the original returns as filed.

DIRECTV then filed its original 2009 through 2011 corporate income tax returns using the same costs-of-performance method that it used on its 2006 through 2008 amended returns; the Department audited these returns as well.[6] In a field audit report dated January 28, 2014, the Department assessed DIRECTV for income taxes and license fees for 2009 through 2011 using a gross receipts ratio that included all of the subscription receipts from South Carolina customers in the numerator.

The Department subsequently issued its Determination and found that the income-producing activity of DIRECTV was the delivery of the signal into the South Carolina customer's home or business and onto the customers' television sets and that, accordingly, DIRECTV should include 100% of the subscription receipts received from South Carolina customers in the numerator of the gross receipts ratio. DIRECTV subsequently requested a contested case hearing regarding this Determination.

CONCLUSIONS OF LAW

General Conclusions

This Court has subject matter jurisdiction in this case pursuant to S.C. Code Ann. §§ 1-

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[5] Both Petitioner and the Department originally erred in how they referenced South Carolina's apportionment method for receipts from services; Petitioner in its amended returns for 2006-2008 referred to it as a "cost of performance method," and the Department referred to it as "market base sourcing" in its Report of Field Audit of Petitioner's 2009-2011 receipts. However, both parties agree, and have subsequently clarified their positions to reflect, that South Carolina uses a method of apportionment based on the proportion of income-producing activity conducted within the State.

[6] DIRECTV did not include any of the subscription receipts from South Carolina customers in the numerator of the gross receipts ratio on its amended 2006 through 2008 returns and on its original 2009 and 2010 returns. On its 2011 South Carolina return, DIRECTV changed its method again by including approximately $22 million of its $410 million subscription receipts from South Carolina customers in the numerator. DIRECTV did this by sourcing 0.11% of its total subscription receipts to South Carolina based on a ratio of its alleged payroll in South Carolina to its total payroll. From 2006 through 2010, DIRECTV did not source any subscription receipts to South Carolina because it claims that the vast majority of its payroll and property were located outside of South Carolina.

23-600(A) (Supp. 2014) and 12-60-460 (2014). The hearing before the ALC is a contested case hearing and is heard de novo. *Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control*, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004). This Court must make its factual findings based on the preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2009); *see also Anonymous (M-156-90) v. State Bd. of Med. Examiners*, 329 S.C. 371, 375-78, 496 S.E.2d 17, 19-20 (1998); *Nat'l Health Corp. v. Dep't of Health and Envtl. Control*, 298 S.C. 373, 379, 380 S.E.2d 841, 844 (Ct. App. 1989). Because DIRECTV is challenging a determination by the Department that it must source its South Carolina subscription receipts from South Carolina customers to the numerator of the gross receipts ratio, DIRECTV has the burden of proof. *See* ALC Rule 29(B); *Ford v. Atl. Coast Line R. Co.*, 169 S.C. 41, 168 S.E. 143, 167 (1932) ("The general rule is, in the absence of valid statutory enactment to the contrary, that the burden of proof rests upon him who has the affirmative of the issue and does not shift to the defendant even when aided, in the first instance, by a rebuttable presumption."); *see also Leventis v. Dep't of Health and Envtl. Control*, 340 S.C. 118, 132033, 530 S.E.2d 643, 651 (Ct. App. 2000). This burden requires DIRECTV to prove that the Department's determination is errant by a preponderance of the evidence. *See, e.g., Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 346, 415 S.E.2d 384, 388 (1992) ("Findings of fact based upon a 'preponderance' of the evidence are those supported by the greatest 'weight, amount, credibility or truth' as reflected by the whole of the evidence before the court, or 'evidence which convinces as to its truth.'").

Applicable Law

It is well-settled law that the purpose of the South Carolina allocation and apportionment provisions is to provide for imposition of income tax "upon a base which reasonably represents the proportion of the trade or business carried on within this State." *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 142 S.E.2d 445 (1965).[7] Furthermore, a statutory provision must be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. *Hay v. S.C. Tax Comm'n*, 273 S.C. 269, 255 S.E.2d 837 (1979). The method of

[7] Generally, allocation refers to the assignment of nonbusiness income to a specific state. *See* S.C. Code Ann. § 12-6-2220; *Emerson Elec. Co. v. S.C. Dep't of Rev.*, 395 S.C. 481, 486, 719 S.E.2d 650, 652-653 (2011) (noting that a multistate corporation's "non-business income is not apportioned among various states. Rather, non-business income is allocated to or deemed to be earned in a particular state . . . ."). Apportionment generally refers to the assignment of business income of a corporation that is taxable in more than one state. *See* S.C. Code Ann. § 12-6-2210(B); *Emerson*, 395 S.C. at 485, 719 S.E.2d at 652 (stating that "[a] corporation's business income is apportioned among the states in which it conducts business.").

apportionment that a taxpayer must use depends upon the nature of the taxpayer's business in this State. During the Tax Periods at Issue, net income of a manufacturer or a dealer in tangible personal property was apportioned based on a three-factor formula and later on a single sales factor (*see* S.C. Code Ann. §§ 12-6-2250, -2252 (Supp. 2007)),[8] while net income of substantially all other taxpayers was apportioned based on a single gross receipts formula (*see* S.C. Code Ann. § 12-6-2290 (Supp. 2007)). Accordingly, for service providers, South Carolina law mandates the following method of apportionment:

> If the principal profits or income of a taxpayer are derived from sources other than those described in Section 12-6-2252 or Section 12-6-2310, the taxpayer shall apportion its remaining net income using a fraction in which the numerator is gross receipts from within this State during the taxable year and the denominator is total gross receipts from everywhere during the taxable year. For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295.

S.C. Code Ann. § 12-6-2290.[9] Thus, service providers are required to use the single gross receipts apportionment formula. For tax years after 2006, the final sentence of Section 12-6-2290 directs taxpayers to S.C. Code Ann. § 12-6-2295 for a non-exclusive list of the items to be sourced, or included, in the gross receipts apportionment ratio.[10] The relevant subsection in this matter is Section 12-6-2295(A)(5), which states:

> (A) The terms "sales" as used in Section 12-6-2280 and "gross receipts" as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:
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> * * *

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[8] In 2006, the South Carolina Legislature enacted a change in the apportionment method provided in Section 12-6-2250 for taxpayers whose principal business in South Carolina is manufacturing or any form of collecting, buying, assembling, or processing goods and materials within South Carolina, or selling, distributing, or dealing in tangible personal property within South Carolina. The three-factor apportionment method for a multistate taxpayer (based on property, payroll, and double weighted sales) changed to a single-sales-factor apportionment method. This change was phased-in for income tax years beginning in 2007 through 2010. For income tax years beginning in 2011, the single-sales-factor apportionment method in Section 12-6-2252 replaced the three-factor apportionment method in Section 12-6-2250. *See* S.C. Rev. Ruling #09-15.

[9] In 1995, the General Assembly repealed Chapter 7 and added Chapter 6 of Title 12. Accordingly, Section 12-6-2290 replaced Section 12-7-1190 as the statute that directed taxpayers how to apportion net income related to services. In 2007, the General Assembly amended Section 12-6-2290 by adding an additional sentence to the end of the existing statute. That sentence reads as follows: "For purposes of this section, items included in gross receipts are as provided in Section 12-6-2295." 2007 South Carolina Laws Act 110 (S.B 91).

[10] 2007 South Carolina Laws Act 110 (S.B. 91) also added Section 12-6-2295, the companion statute to Section 12-6-2290. *See* 2007 South Carolina Laws Act 110, § 51.A; eff. June 21, 2007. These additions were effective for DIRECTV's 2007 tax year.

(5) receipts from services if the entire income producing activity is within this State. If the income producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income producing activity is performed within this State[.]

Taxpayer Is a Service Provider

DIRECTV provides direct broadcast satellite services to customers throughout the United States. Its primary income is subscription revenue from providing these services and is not from engaging in manufacturing or dealing in tangible personal property. In a similar case, a Texas administrative law court found that a direct broadcast satellite company was a service provider for purposes of its apportionment laws. *Anonymous Taxpayer v. Texas Comptroller of Pub. Accounts*, 2013 WL 3490605 (Tex. Cptr. Pub. Acct.) (May 17, 2013). As a service provider, Section 12-6-2290 is the applicable statute to apportion DIRECTV's adjusted net income to South Carolina. Further, after 2006, Section 12-6-2295(A)(5) is the supplemental sourcing statute when determining the numerator of the gross receipts ratio, and requires DIRECTV to source receipts from South Carolina customers to South Carolina if the income-producing activity occurs in this State. Therefore, for all Tax Periods at Issue, DIRECTV must apportion its net income to South Carolina using a gross receipts factor in Section 12-6-2290.

As noted above, since 1958, the applicable South Carolina apportionment statutes have always mandated that gross receipts be used when apportioning net income to South Carolina for a corporation whose income is generated from the provision of services.[11]

Income-Producing Activity of DIRECTV

The Court must first determine whether any income-producing activity occurred in this State and then decide whether that activity occurred within or without South Carolina. Only after identifying the income-producing activity is there a need to quantify how much of the income-producing activity occurred in South Carolina.

Identification of the Income-Producing Activity

Effective for the 2007 tax year, Section 12-6-2295(A)(5) was applicable and supplemented Section 12-6-2290.[12] Section 12-6-2295(A)(5) added the "income producing activity" language

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[11] Section 12-6-2295(A)(5) is the applicable sourcing statute for the 2007-2011 tax years at issue. Only Section 12-6-2290 is applicable for tax year 2006.

[12] Notably, when adding Section 12-6-2295(A) for the 2007 tax year, the General Assembly stated the following in 2007 South Carolina Laws Act 110, § 51.A; eff. June 21, 2007: "To Amend . . . by adding Sections 12-6-2252 and

to the apportionment statutes for service providers. The Department argues that the identity of DIRECTV's income producing activity is the delivery of the signal into the homes and onto the television screens of its customers. Therefore, the Department contends that 100% of the subscription receipts from South Carolina should be sourced to the numerator of the gross-receipts ratio because there is no other income-producing activity related to DIRECTV's business in South Carolina. To the contrary, DIRECTV presented evidence that its income-producing activities in South Carolina could be identified using four "value drivers." Those "value drivers" are: 1) DIRECTV's content and programming; 2) DIRECTV's acquisition and distribution of the content to customers; 3) DIRECTV's marketing and sale of its service; and 4) DIRECTV's customer services.

The Court concludes that pursuant to Section 12-6-2295(A)(5), DIRECTV's income-producing activity includes the customers' subscriptions and delivery of the signal into the location and onto the television screens of its customers. In identifying this income-producing activity, the Court considered the activities of businesses in the direct broadcast services industry and the sources of income within the industry. DIRECTV derives income from monthly subscription receipts that customers pay to DIRECTV in order to view its video programs in their homes and businesses. These subscription receipts are received as a result of the delivery of the signal into the customer's home and onto the customer's television, and are therefore directly related to the primary income-producing activity of DIRECTV.

The Court, however, does not adopt the view of the Department that income-producing activity of businesses within the direct broadcast services industry is completely limited to the delivery of a signal into the customer's home and onto the customer's television. Rather, the Court agrees with Professor Richard D. Pomp that "opinions can differ on how to measure the extent to which income-producing activities take place in South Carolina, but answering that question by simply ignoring the outside activities is unacceptable."

In *Walter E. Heller W., Inc. v. Dep't of Revenue*, 161 Ariz. 49, 775 P.2d 1113 (1989), the Arizona Supreme Court analyzed how interest income earned on loans made to Arizona customers should be sourced under provisions that mirrored the Uniform Division of Income for Tax

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12-6-2295 so as to further provide for allocation and apportionment of business income for state income tax purposes by basing the determination only on a sales factor and to define the terms 'sales' and 'gross receipts' consistently and specifically for that purpose[.]"

Purposes Act (UDITPA).[13] In reaching its decision, the Arizona Supreme Court did not simply look to the location of the customer as the Department does here. Rather, the court determined that the income-producing activities consisted of the solicitation of new customers, the investigation of credit records of potential customers, and the servicing of such contracts, all of which occurred in Arizona. *Id.* at 53-54, 775 P.2d at 1116-17. Therefore, the court's reasoning implies that the location of customers does not necessarily identify the income-producing activities of the taxpayer and therefore is not a reasonable method of identification.

In this case, the evidence also suggested that there may be other activities, such as advertising, that influence the customer's decision to make the purchase. In explaining those activities from DIRECTV's perspective, Dr. Brian J. Cody testified that he employed DIRECTV's payroll and net value of assets as proxies in identifying DIRECTV's income-producing activities. Dr. Cody explained the "[t]wo measures which are proxies . . . [a]re not perfect, but they're proxies . . . ." However, that evidence is simply insufficient to satisfy DIRECTV's burden of proof.

Our Supreme Court "has long realized the practical impossibility of a state's achieving a perfect apportionment of expansive, complex business activities such as those of Appellant, and has declared that 'rough approximation rather than precision' is sufficient." *Covington Fabrics Corp. v. S.C. Tax Comm'n*, 264 S.C. 59, 66-67, 212 S.E.2d 574, 577-78 (1975). The Court also noted that "[a]lthough exactness in apportionment is desirable, all that is required is a reasonable approximation." Though this Court thus recognizes that an exact determination of the identity of the income-producing activities is not possible, I find that Dr. Cody's proxies in identifying DIRECTV's income-producing activities are so far from perfect as to be of no practical value. DIRECTV did not sufficiently explain the effect of its value drivers on income production in this State. In other words, DIRECTV's evidence is just too nebulous to properly identify whether DIRECTV's value drivers are income producing and the extent to which such production occurs. Therefore, though Section 12-6-2295(A)(5) provides "flexibility" in determining the relative amount of income-producing activities in the State, Dr. Cody's payroll-and-assets method does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina or the value attributable to such activities. Though its evidence did

[13] UDITPA was created in 1957 by the Uniform Law Commission as a model statute for the division of income for income tax purposes. The goal of the Uniform Law Commission in drafting UDITPA was to develop a model act that would be widely adopted..

reflect that its advertising probably produced some income, the evidence did not reflect what portion of DIRECTV's cost was either attributable to South Carolina customers or may have influenced South Carolina customers to subscribe to DIRECTV. Instead, the Court was left to speculate as to the extent to which DIRECTV's content and programming, acquisition and distribution thereof, advertising, and customer service in installing and maintaining its equipment within this State influenced customers' decision to subscribe to DIRECTV.

Moreover, it does not appear that some of the activities that DIRECTV attributes to income production are actually income-producing activities. DIRECTV argues that its cost to produce the content and broadcast of signals into South Carolina should be considered as an income-producing cost. The Department, on the other hand, argues that only the delivery of the signal into the customer's home and onto the customer's television is income-producing activity. Thus, the pertinent issue here is at what point DIRECTV's activities become income-producing. Both parties assert that the holding in *Mercury Motor Express, Inc. v. S.C. Tax Comm'n*, 244 S.C. 134, 135 S.E.2d 756 (1964) is applicable to this case. In *Mercury*, the South Carolina Supreme Court addressed the income-producing activity of an interstate freight hauler. The taxpayer argued that the apportionment formula produced an unconstitutional result because it apportioned 17% of its income to the State (reflecting that 17% of its mileage was in the State), while revenue from freight either originating or delivered to South Carolina accounted for only 1% of its gross revenue. The taxpayer asserted that when its trucks were merely traveling through South Carolina, they were not engaged in any activity that contributed to the taxpayer's net income. Rather, the taxpayer argued that the taxable event should only occur if it was delivering freight in the State of South Carolina; otherwise the State's mileage formula produced "an arbitrary, discriminatory and unconstitutional results, in violation of the commerce clause. . . ." In other words, the taxpayer in *Mercury* contended that the incidental act of transporting freight through the State should not be considered as a taxable event.

The Supreme Court listed a series of transactions that occurred in the freight hauling business: solicitation of the freight, picking up the freight, hauling the freight, dropping off the freight, and collecting the hauling charges. The Supreme Court held that while each of these transactions was "necessarily incidental to the production of [the business's] income," the activity that "primarily earn[ed] the income" was the hauling of freight "through and over the highways of the State of South Carolina." *Id.* Thus, the Court focused upon the company's primary activity in

determining whether South Carolina's tax was arbitrary. However, that focus did not specifically equate to the issue to be determined in this case.

In *Mercury*, the Supreme Court's inclusion of "incidental" in its definition of income-producing activities distinguishes that activity from the primary income-producing activity. However, the Court did not determine that those "incidental" activities were not income-producing. Nevertheless, the consideration of primary versus incidental activities does offer a point for analysis. Here, Petitioner engages in other out-of-state activities that cause satellite signals to be beamed into this State. But, it is not until a customer subscribes to Petitioner's services by purchasing a satellite dish to receive those signals and a set-top box to decode those signals that Petitioner's actions have any income producing value. Indeed, the national programming through the CONUS beams would exist regardless of whether there were **any** subscribers in South Carolina. Therefore, such broadcasting is an incidental activity to producing income until a customer subscribes to DIRECTV.

The beaming of the satellite signals through the air of South Carolina to the customer's dish, set-top box, and television screen and the collection of charges for such service, are also analogous to the loading, hauling, and delivery of freight following the customer's solicitation of that freight, and the collection of charges therefor in *Mercury*. The other prior activities that prepare the way for DIRECTV's provision of services, i.e., the infrastructure for producing and collecting the programming content and transmitting the signals, though necessary, are merely incidental to the income-generating activities themselves, i.e., the services that directly produce income for DIRECTV. In this case, the production and collection of programming content signals and transmission to broadcast centers and uplink facilities and then to the satellites would, in comparison to the facts in the *Mercury* case, be akin to the manufacturing and transfer of the freight through its infrastructure to a storage location, from which it is later – **only after an order is placed** (or "solicited," as the Supreme Court put it) – loaded, hauled, and delivered, and for which charges are collected.

In sum, DIRECTV failed to sufficiently identify its outside income-producing activities. Even as to local programming, though it is almost completely geared towards South Carolina residents, DIRECTV failed to prove what impact the availability of local programming has on South Carolina customers' decision to subscribe to DIRECTV. Consequently, the remaining evidence is that the transmission of the beams to the customers, as well as the subsequent activities

performed that allow South Carolina customers to experience DIRECTV's services – such as the sale/lease, installation, or repair of set-top boxes that are sold or leased to customers –are income-producing activities under Section 12-6-2295(A)(5); and all occur entirely within the State.

Sourcing of the Income-Producing Activity

DIRECTV argues that nearly all of the income-producing activities it identified in this matter occurring outside of South Carolina should be sourced to the location of the activities performed by DIRECTV. At the outset, the Court disagrees that DIRECTV has sufficiently identified its activities to be sourced.[14] Furthermore, even if it had identified those activities, DIRECTV failed to sufficiently establish that those activities should be sourced elsewhere.

Pursuant to Section 12-6-2295(A)(5), a service provider's gross receipts are sourced to South Carolina based on the location of the income-producing activity according to one of two prongs. In the first prong, all of the gross receipts are sourced to South Carolina "if the entire income-producing activity is within this State." S.C. Code Ann. § 12-6-2295(A)(5) (Supp. 2007). In the second prong, "[i]f the income-producing activity is performed partly within and partly without this State, [gross receipts are sourced to South Carolina] to the extent the income-producing activity is performed in this State." *Id.*

DIRECTV argues that its income should be sourced based upon payroll and assets/property factors, similar to the taxpayer in *Lockwood Greene Eng'rs, Inc. v. S. C. Tax Comm'n*, 293 S.C. 447, 361 S.E.2d 346, (Ct. App. 1987). The applicable statute for apportioning net income from a taxpayer whose principal profits were derived from services at the time of *Lockwood Greene* was Section 12-7-1190 (1976) which stated:

> If the principal profits or income of a taxpayer . . . are derived from sources other than manufacturing, producing, collecting, buying, assembling, processing, or selling, distributing or dealing in tangible personal property such taxpayer shall make returns and pay annually an income tax upon a proportion of its remaining net income computed on the basis of the ratio of gross receipts from within this State during the income year to the total gross receipts of such year within and without the State.

S.C. Code Ann. § 12-7-1190 (1976).

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[14] As noted above, DIRECTV argues its "value drivers," reflect its income-producing activity.[14] While DIRECTV may rely heavily upon "value drivers" in determining the value of certain components within its company, DIRECTV has, as aforementioned, failed to sufficiently demonstrate whether and to what extent those value drivers are income-producing activities as required by the applicable and mandatory language of Section 12-6-2295(A)(5) when calculating the numerator of the gross receipts factor.

The taxpayer in *Lockwood Greene* unsuccessfully argued that the then-applicable apportionment statute for net income related to services – Section 12-7-1190 – prescribed one rule (i.e., the origin-of-payment rule) for all businesses that do not deal in tangible personal property. The South Carolina Court of Appeals did not accept the taxpayer's argument that Section 12-7-1190 was a one-rule statute and that all net income to be apportioned under Section 12-7-1190 must be apportioned under the same method. Several facts support the Court of Appeals' determination: (1) the Court of Appeals did not believe that the use of different methods for different industries when applying Section 12-7-1190 created a constitutional problem;[15] (2) the Court of Appeals clearly suggested a distinction between finance companies and media broadcasters on one hand and personal *professional* service firms, such as Lockwood, on the other when determining where to source service receipts;[16] and (3) the Court of Appeals noted that the Lockwood firm "provides services to its clients through highly trained engineers and personnel in various offices" and that a "client pays an engineering firm for the **expertise and time** of its employees." *Lockwood Greene*, 293 S.C. at 449, 361 S.E.2d at 347 (emphasis added). Based on the specifics of Lockwood's business, the Court of Appeals then concluded, "Therefore, an engineering firm's business carried on in a state is reasonably measured by the services rendered by its personnel in the state," which "is epitomized by the 'place of activity' test advanced by" the Department. *Id.* Again, it would not have been necessary for the Court of Appeals to address the specifics of Lockwood Greene's business if Section 12-7-1190 was a "one-rule statute."

On one hand, the Court's decision in *Lockwood Greene* did **not** mandate that the net income of **all** service providers be apportioned based on a "place of activity" test that is quantified by a payroll factor or some other cost-based factor. The Court of Appeals specifically recognized that the Department's audit guidelines at the time sourced revenues of personal *professional* service

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[15] After hearing the taxpayer's argument (that the Department had not consistently applied Section 12-7-1190) and considering the guidelines (which illustrated the Department's policy of allowing the use of different methods for different industries), the Court of Appeals stated, "[w]e discern no constitutional basis for Lockwood's argument." *Lockwood Greene*, 293 S.C. at 450 n.1, 361 S.E.2d at 348 n.1.

[16] *Id.* at 450, 361 S.E.2d at 348 ("We are not persuaded [finance companies and media broadcasters] are comparable to Lockwood. By contrast, the Tax Commission guidelines concerning law firms, accounting firms, entertainment and sports companies, and hospital management companies all focus on whether the services are performed in South Carolina."). *Implicit in this finding* is the fact that the only reason for the Court of Appeals to distinguish a taxpayer like Lockwood from companies in other industries was the Court of Appeals' belief that Section 12-7-1190 was not a "one-rule statute," and that different methods could be used for different industries when applying Section 12-7-1190.

providers (e.g., engineering, law, and accounting firms) to the "place of activity."[17] *Lockwood Greene*, 293 S.C. at 450, 293 S.E.2d at 348. At the same time, the court was **not persuaded** that service industries, such as finance companies and media broadcasters, were comparable, thus implying that revenues of service industries were sourced to the "origin of payment" (i.e., location of the borrower or customer) *Id.* The Court of Appeals also held that no constitutional problem existed with the Department's policy of sourcing revenues of services providers in a different manner for different industries.[18] *Id.* at 450 n.1, 361 S.E.2d at 348 n.1.

Accordingly, the result of *Lockwood Greene* was the Court of Appeals' holding that (1) a personal professional service firm should source its gross receipts to South Carolina based on the "place of activity" test; and (2) affirmation that the Department's then-existing policy of using different methods for different industries to source service-related net income to South Carolina, was in compliance with Section 12-7-1190. Further, despite DIRECTV's contention, the Court of Appeals in *Lockwood Greene* did not impose a one-rule "place of activity" test for apportioning service-related income in South Carolina on *all* multistate corporate taxpayers. The Court of Appeals clearly supported the Department's use of different methods for different industries and did not reject Lockwood's "one-rule" argument only to replace it with a different one-rule requirement.[19]

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[17] The Department argues that it has had a longstanding policy in place regarding the sourcing of service-related net income and that it is therefore entitled to deference. However, this policy, though once apparently written down and acknowledged by the Court of Appeals in *Lockwood Greene*, is no longer written anywhere and apparently has not been for some time. As the finding of fact in *Lockwood Greene* is the only evidence of this policy, I find that this finding of fact is insufficient as a basis for deference, though the fact that DIRECTV previously filed its returns sourcing 100% of the South Carolina subscription revenue to South Carolina before filing the amended returns suggests that the Department had such a policy in place. Moreover, "[p]olicy or guidance issued by an agency other than in a regulation does not have the force or effect of law." *See* S.C. Code Ann. § 1-23-10(4) (2005). *See also Kirven v. Cent. States Health & Life Co., of Omaha*, 409 S.C. 30, 45, 727 S.E.2d 794 802 (2014) ("[A]n agency guideline does not have the force of law, and in any event, can never trump a regulation.... *Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law.*") (quoting *Doe v. S.C. Dep't of Health & Human Servs.*, 398 S.C. 62, 68 n.7, 727 S.E.2d 605, 608 n.7 (2011)).

[18] It is noteworthy that the payroll factor that was used by the Department to source Lockwood's gross receipts to South Carolina was used merely as a proxy for calculating Lockwood's actual gross receipts from within South Carolina. If the Department had had all of Lockwood's records, the Department would not have had to use the payroll proxy but could have examined all of Lockwood's invoices and added the fees billed for the work of South Carolina engineers. Here, DIRECTV has added up all of its actual subscription receipts from South Carolina customers for the applicable tax years; therefore, no cost-based proxy is needed.

[19] When Section 12-6-2295(A)(5) was enacted, the distinction between "place of activity" and "origin of payment" became irrelevant and the question then became whether the income-producing activity occurred completely within the State of South Carolina, and if only partly within the State, in what proportion it was conducted within the State. Lockwood Greene, in light of Section 12-6-2295(A)(5), still suggests that income-producing activity is the acts of a

Unlike the taxpayer in *Lockwood Greene*, a DIRECTV customer did not hire specific professionals and is not paying for those professionals' expertise and time, or that of any other DIRECTV employee or contractor. Instead, the customer is paying for video programming to be viewed on the customer's television at the time and place the customer demands. DIRECTV does not sell contract negotiations. It does not sell network management services. It does not sell broadcast infrastructure or satellite triangulation. Rather, DIRECTV is in the business of selling television broadcast subscriptions to customers; and without the actual delivery of that broadcast signal into South Carolina homes, it would not have generated the income at issue here. Indeed, as noted above, the national programming through the CONUS beams would exist regardless of whether there were any subscribers in South Carolina; therefore, such broadcasting is incidental activity. As to local broadcasting in South Carolina, though it is almost completely geared towards South Carolina residents, DIRECTV provided no evidence of what impact the availability of local programming has on South Carolina customers' decision to subscribe to DIRECTV.

Furthermore, as noted above, Dr. Cody testified that he employed DIRECTV's payroll and net value of assets as proxies in determining and sourcing DIRECTV's income-producing activities. However, as with the determination/identification of income-producing activities, the Court also rejects as too nebulous this approach to sourcing gross receipts to South Carolina. In sum, the payroll-and-assets method of Dr. Cody does not provide a reasonable approximation of the income-producing activities performed by DIRECTV in South Carolina, and the value attributable to such activities.

Moreover, the approach proposed by Dr. Cody unduly emphasizes what amounts to "costs of performance." It is clear that South Carolina is not a UDITPA State, and it does not apportion the net income of service providers based upon costs-of-performance elements. Although South Carolina's Section 12-6-2295(A)(5) is similar to UDITPA's Section 17, the General Assembly specifically chose not to include the phrase "based on costs of performance." South Carolina's applicable statutes merely require the apportionment of a service provider's net income using a gross-receipts ratio, and the gross receipts are attributable to South Carolina if the income-producing activity occurs within South Carolina or, if the income-producing activity

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business that directly result in the purchase of a product or service. Finally, as discussed supra, the location of income-producing activity will vary depending on the industry.

occurs both within and outside of South Carolina, to the extent that the income-producing activity is performed within South Carolina.

Likewise, the South Carolina courts also have never imposed a costs-of-performance approach to sourcing receipts of service providers to South Carolina. In addition to not being a costs-of-performance state, South Carolina also has never been a state that always sourced receipts to the state in which the market exists (i.e., to the location of the customer or where the benefit is received). While some states, such as California, have statutorily adopted a market-based approach to source gross receipts of a service provider,[20] South Carolina has not adopted any such "blanket" approach, be it market-based, costs of performance, or otherwise. Rather, its policy has been one of apportioning net income "upon a base which reasonably represents the proportion of the trade or business carried on within this State." *Lockwood Greene*, 292 S.C. at 449, 361 S.E.2d at 347 (citing *Hertz Corp. v. S.C. Tax Comm'n*, 246 S.C. 92, 142 S.E.2d 445 (1979)); *see also* S.C. Code Ann. § 12-6-2320(A) (Supp. 2000). Thus, the Court agrees with Professor Pomp that instead of mandating one method (*e.g.*, "costs of performance" or "market-based") for determining the amount and location of income-producing activities, S.C. Code Section 12-6-2295(A)(5) provides "flexibility" in determining the relative amount of income-producing activities in the State. This approach necessitates flexibility in application of law and policy to different and often diverse service industries. *See Dish DBS Corp.*, at *9-10 ("Lockwood Greene could be interpreted to apply a flexible standard based on where the income producing activity takes place, which varies upon industry type.").

Even in many states that **have** adopted the costs-of-performance language within their applicable statutes or regulations, such states have found that the income-producing activity was **not** located in the state(s) in which significant costs were incurred. For instance, in *Heller W., Inc.*, the Arizona Supreme Court determined that the taxpayer's income-producing activity occurred solely in Arizona despite the fact that the California-based commercial financing company that received income from loans it made to Arizona borrowers incurred most of its costs in California. 116 Ariz. at 51, 53, 775 P.2d at 1115, 1117. Importantly, the applicable Arizona statute was the same as S.C. Code Ann. § 12-6-2295(A)(5) except that the Arizona sourcing statute **actually used** the phrase "costs-of-performance." Even though this language in the Arizona

[20] *See* Cal. Rev. & Taxation Code (R&TC) § 25136; Cal. Code Regs. § 25136-2.

statute gave that taxpayer's costs-of-performance argument more merit, it was not enough to convince the court to find that the income-producing activity occurred outside of Arizona. The taxpayer argued that its income-producing activity was the borrowing of money by Heller Western through its Los Angeles headquarters to make loans to customers in Arizona. *Id.* at 50, 775 P2d at 1114. The Arizona Supreme Court held that "[t]hough borrowing of funds [in California] may be an important step in Heller Western's financing process, the direct generation of the loans occurred in Arizona. We conclude that Heller Western's sales activity in Arizona constituted the income producing activity contemplated by our tax regulations." *Id.* at 53, 775 P2d at 1117. That court went on to provide the following reasoning:

> Heller Western's costs in procuring the [product that it has sold to Arizona customers] are analogous to the costs of a merchandise retailer in procuring his inventory. Heller Western can no more argue that its receipts from Arizona loan consumers should not be taxed due to its out-of-state involvement in procuring its 'inventory' than a retailer who is engaged in extensive dealings out of state to buy his merchandise could argue that he should not be taxed on the goods he sells to consumers here."

Id. This reasoning is applicable in the instant case.

This is not to suggest that the Court should not consider out-of-state activity when determining whether activity is income-producing, nor does this suggest that no such out-of-state income-producing activity occurred in this case. For instance, it is possible that advertising performed within or without the South Carolina could be considered income-producing activity.[21] However, DIRECTV did not provide any evidence that reflected how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated in South Carolina. Therefore, the Court cannot consider advertising in this case.

Finally, even if this Court ruled that South Carolina was a costs-of-performance state, and that costs of performance therefore applied in this case, DIRECTV did not present sufficient

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[21] For example, in *Ameritech Publ'g, Inc. v. Wis. Department of Revenue*, 327 Wis.2d 798, 788 N.W.2d 383 (Ct. App. 2010) (unpublished), 2010 WL 2519583, the Wisconsin Court of Appeals affirmed the taxing authority's determination that the income-producing activity of a company that received advertising revenue by placing the advertisements in telephone directories distributed in Wisconsin "was performed in Wisconsin when the advertisement reached its intended, Wisconsin audience." *Id.* at 2010 WL 2519583, *5. Indeed, the court found that the income-producing activity occurred *solely* in Wisconsin, even though the vast majority of the taxpayer's costs to gather the advertising and to publish the telephone directory were incurred outside of Wisconsin and despite the fact that the applicable Wisconsin statute *included* the phrase "costs of performance" (unlike the South Carolina statute). The Court of Appeals concluded that the advertising company's customers were paying for the broad access that the company could provide to a Wisconsin audience, and that the taxpayer's income-producing activity was thus "the provision of access to a Wisconsin audience." *Id.* at *9-10

evidence to determine its income-producing activities or to quantify how much income-producing activity occurred in any applicable state. Furthermore, DIRECTV put no value on its subscriptions or the value perceived by its customers. DIRECTV simply did not provide sufficient information on how to apportion its subscription receipts between states in which it believes income-producing activities occur.

Substantial Understatement Penalties

Civil penalties are applied to every South Carolina tax law that requires a return unless otherwise provided. S.C. Code Ann. § 12-54-43. Such penalties are considered a tax owed to this State. *Id.* Further, "[i]f any tax is not paid when due, interest is due on the unpaid portion from the time the tax was due until paid in its entirety." S.C. Code Ann. § 12-54-25(A). Section 12-54-155(A)(1) states that "[i]f there is an underpayment attributable to . . . a substantial understatement of tax for a taxable period . . . there **must** be added to the tax an amount equal to twenty-five percent of the amount of the underpayment." (emphasis added). For purposes of this subsection, "understatement" means the excess of the amount of the tax required to be shown on the return for the taxable period over the amount of the tax imposed which is shown on the return. "[T]here is a substantial understatement of tax for a taxable period if the amount of the understatement for the taxable period exceeds the greater of ten percent of the tax required to be shown on the return for the taxable period or five thousand dollars." *Id.* § 12-54-155(B)(1)(a).

In the instant matter, the Department was correct to apply a substantial understatement penalty for underpayment of taxes owed for 2009 through 2011, and this Court concludes DIRECTV must be assessed the substantial understatement penalty.

Conclusion

After considering the evidence in the record and the pertinent legal authorities, I conclude that based upon the reliable evidence, DIRECTV's income-producing activity is the delivery of the signal into the homes and onto the television sets of DIRECTV's customers. All of those income-producing activities related to South Carolina customers occurred entirely within South Carolina; therefore, 100% of DIRECTV's subscription receipts from South Carolina customers must be sourced to the numerator of the gross receipts ratio. This Court rejects DIRECTV's attempt to source the subscription receipts from South Carolina customers outside of South Carolina based upon costs of performance. Finally, DIRECTV is liable for substantial underpayment penalties.

ORDER

IT IS THEREFORE ORDERED that DIRECTV's refund requests for its amended 2006, 2007, and 2008 income tax returns are denied.

IT IS FURTHER ORDERED that DIRECTV be assessed $6,646,168.00 in tax and license fees, $653,425.00 in interest, and $1,661,541.00 in penalties with regard to its 2009, 2010, and 2011 income tax returns.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

May 12, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

E. Harvin Belser Fair
Judicial Law Clerk

May 12, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DIRECTV, Inc. & Subsidiaries, Petitioner, vs. South Carolina Department of Revenue, Respondent.	)	**Docket No. 14-ALJ-17-0158-CC** **RESPONDENT'S RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION UNDER ALC RULE 29(D) AND/OR TO ALTER OR AMEND UNDER SCRCP RULE 59(E)**

COMES NOW, Respondent South Carolina Department of Revenue (Department) by and through its counsel and provides the Administrative Law Court (ALC or Court) with the following response to Petitioner DIRECTV, Inc. & Subsidiaries' (Petitioner or DIRECTV) Motion for Reconsideration Under ALC Rule 29(D) and/or To Alter or Amend Under SCRCP Rule 59(e) (Motion). As set forth more fully herein, the Court's Final Order and Decision dated May 12, 2015 (Order) fully and correctly addresses the issues in this case and therefore the Petitioner's Motion must be denied.

ARGUMENT

Petitioner's Motion presents numerous arguments which it asserts the Court did not properly address and/or evaluate in its Order. Contrary to Petitioner's assertions, the Court properly addressed the issues consistent with South Carolina law and properly considered the evidence in this case, and as such, Petitioner's Motion must be denied.

A. The Court Applied The Proper Burden of Proof And Correctly Found That Petitioner Failed To Meet Its Burden Of Proof

In its first argument, Petitioner asserts that the Court failed to apply the proper standard of review, but the Department believes that Petitioner's true argument is whether the Court applied the proper burden of proof. Based on South Carolina law and this Court's decision, this Court properly applied the burden of proof and appropriately found that Petitioner failed to meet its burden of proof in this matter. Petitioner was required to prove that the Department's determination was incorrect by a preponderance of the evidence, and it simply failed to do so.

The standard of proof in a contested case is by a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2014). It is well established that generally, "the burden of proof rests upon him who has the affirmative of the issue and does not shift to the defendant even when aided, in the first instance, by a rebuttable presumption." Ford v. Atl. Coast Line R. Co., 169 S.C. 41, 168 S.E. 143, 167 (1932). As the Petitioner stated in its Motion, "the complaining party bears the burden of proof." Leventis v. S.C. Dep't of Health & Envtl. Control, 340 S.C. 118, 132, 530 S.E.2d 643, 651 (Ct. App. 2000). The Court properly recognized that "[b]ecause DIRECTV is challenging a determination by the Department that it must source its South Carolina subscription receipts from South Carolina customers to the numerator of the gross receipts ratio, DIRECTV has the burden of proof." (Order at 7) (citations omitted). Frankly, the Court made it very clear that Petitioner did not satisfy its burden of proof because its evidence was insufficient to prove that there were other income-producing activities in South Carolina. (Order at 11-13).

It is important to note the posture of the instant case before the ALC. As properly stated by this Court, "[t]he hearing before the ALC is a contested case hearing and is heard de novo." (Order at 7) (citing Marlboro Park Hosp. v. S.C. Dep't of Health and Envtl. Control, 358 S.C. 573, 579, 595 S.E.2d 851, 854 (2004)). The ALC hears this case as the de novo fact finder. Young v. S.C. Dep't of Health and Envtl. Control, 383 S.C. 452, 680 S.E.2d 784 (Ct. App. 2009); Risher v. S.C. Dep't of Health and Envtl. Control, 393 S.C. 198, 207, 712 S.E.2d 428, 433, reh'g denied (July 21, 2011) ("The ALC, as the ultimate finder of fact in this action, was free to . . . draw its own conclusions therefrom."). As the finder of fact, the ALC can choose to accept in part or in whole the testimony of witnesses. MRI at Belfair, LLC v. S.C. Dep't of Health and Envtl. Control, 392 S.C. 314, 324, 709 S.E.2d 626, 631 ("[A]s the fact-finder, the ALC was free to make factual findings based on its view of the credibility and weight of the evidence."). The Court therefore makes its determination based upon its reasonable view of the facts. Petitioner carries the burden of proof, and as the finder of fact, the Court is entitled to assign as much or as little weight to evidence as it wishes. Id. Furthermore, the Court is free to reach its own conclusions of law. As such, after its review of the evidence, this Court properly concluded that "pursuant to Section 12-6-2295(A)(5), DIRECTV's income-producing activity includes the customers' subscriptions and delivery of the signal into the location and onto the

television screens of its customers." The Court further determined that Petitioner's "evidence is simply insufficient to satisfy DIRECTV's burden of proof." (Order at 10).

Additionally, Petitioner is required to establish by a preponderance of the evidence that the Department's determination is incorrect. Petitioner failed to satisfy its burden of proof as the preponderance of the evidence supported the Department's determination. Specifically, this Court stated the evidence presented in this matter "suggested that there *may* be other activities, such as advertising, that influence the customer's decision to make the purchase. . . ", it ultimately concluded "that evidence is simply insufficient to satisfy DIRECTV's burden of proof." (Order at 10) (emphasis added).[1] The following excerpt from the Order summarizes the Court's view of Petitioner's evidence:

> Dr. Cody's payroll-and-assets method does not provide a reasonable approximation of the income-producing activities performed by DIRECTIV in South Carolina or the value attributable to such activities. Though its evidence did reflect that its advertising *probably* produced some income, the evidence did not reflect that portion of DIRECTV's cost was attributable to South Carolina customers or may have influenced South Carolina customers to subscribe to DIRECTV. Instead, the Court was left to speculate as to the extent to which DIRECTV's content and programming, acquisition and distribution thereof, advertising, and customer service in installing and maintaining its equipment within this State influenced customers' decision to subscribe to DIRECTV. Moreover, it does not appear that some of the activities that DIRECTV attributed to income production are actually income-producing activities.

(Order at 10-11) (emphasis added).

Here, the Court properly applied the burden of proof. The Court noted that Petitioner's evidence suggested that there *may* be income-producing activities in South Carolina beyond the delivery of the signal into subscribers' homes and onto their televisions, but the Court made clear statements that Petitioner did not satisfy its burden of proof regarding any such additional income-producing activities.

Although the above discussion demonstrates that the Court properly applied the standard of review and the burden of proof in this case, Petitioner erroneously used a property tax case –

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[1] Even if Petitioner established that its advertising was an income-producing activity, it failed to prove that any such advertising occurred outside of South Carolina. See Ameritech Publishing, Inc. v. Wisconsin Dep't of Rev., 327 Wis.2d 798, 788 N.W.2d 383 (Ct. App. 2010) (unpublished), 2010 WL 2519583, ¶19 (ultimately concluding that advertising occurred in Wisconsin although many services provided by Ameritech such as "arranging, creating, developing, designing, assembling and producing the advertisement" occurred outside Wisconsin).

in which the Department was not a party – to assert that the Court should have dismissed this case because Petitioner allegedly met its burden of proof by showing that the Department's determination was incorrect. Unfortunately, the Petitioner solely relied on the Court's statement that Petitioner's evidence *may* suggest additional income-producing activities in South Carolina. As support for its argument, Petitioner cites Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988) to incorrectly assert that if Petitioner established that the Department's assessment was incorrect, then it met its burden of proof, and therefore, the Department's assessment should be dismissed. Specifically, the Petitioner cited the following:

> '[A] taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect' and that, although '[o]rdinarily, this will be done by proving the actual value . . . [t]he taxpayer may, however, show by other evidence that the assessing authority's valuation is incorrect' and '[i]f he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief.'

(Motion at 2) (citations omitted). The Petitioner then asserted that such "appropriate relief" was dismissal of this case. Nevertheless, even if Petitioner could somehow establish that it met its burden of proof by proving the Department's Determination is incorrect, Petitioner's suggestion that the appropriate remedy is dismissal of the determination is disingenuous at best.

First, Petitioner's use of Cloyd is misguided and not applicable in this case. At the outset, it should be noted that Cloyd was decided in the context of a property tax matter and not with regard to corporate income tax. Cloyd, 295 S.C. at 87, 367 S.E.2d at 172. Nevertheless, in that case, Cloyd was the Richland County Assessor, and Mabry was a landowner. Id. The South Carolina Tax Board of Review had made a final agency decision to reduce the property tax assessments by twenty percent (20%). Id. The circuit court affirmed the administrative agency's reduction of the property assessment, and the matter was subsequently heard by the Court of Appeals. Id., 295 S.C. at 88, 367 S.E.2d at 172.

Although the Court of Appeals stated that the landowner would be entitled to "appropriate relief" if the landowner proved that county assessor's valuation of the property was incorrect and thereby removed the presumption of correctness of the assessor's valuation, the Court of Appeals did not conclude that "appropriate relief" included absolving the taxpayer of any property tax liability through dismissal of the assessment. Id., 295 S.C. at 88-89, 367 S.E.2d at 173. To the contrary, to the extent a taxpayer were to prove the "actual tax assessment"

instead of the proposed assessment of the taxing authority, the taxpayer would be obligated to pay the actual assessment. Similarly, to the extent other evidence proved a proposed tax assessment to be wrong, the Court would then be required to decide the "appropriate relief" to be afforded to the taxpayer – not dismissal of any tax liability but instead some reduction of the tax owed based on evidence produced by the taxpayer. Because of Petitioner's failure of proof on these issues, it certainly did not show any "actual assessment" and further, produced insufficient credible evidence allowing the Court to determine a presumably lesser tax obligation.

Moreover, in another property tax assessment case, the Court of Appeals found that the administrative law judge properly determined a fair market value of a property even though it was not the value presented by any of the experts in the case. Smith v. Newberry County Assessor, 350 S.C. 572, 578-79, 567 S.E.2d 501, 504-05 (Ct. App. 2002). Accordingly, the ALC has the ability to determine the proper assessed value based on the evidence presented even when the county assessor's value is deemed incorrect. The ALC is not required to dismiss the case as the so-called "appropriate relief."

Put simply, Petitioner failed to meet its burden of proof to prove by a preponderance of the evidence that the Department's determination was incorrect. Because Petitioner failed to make such a showing and evidence supported the Court finding that the Department's determination was correct, the Court's decision was proper.[2] Additionally, Petitioner is not entitled to dismissal of this case by the ALC merely because Petitioner's insufficient evidence suggested that there may be income-producing activities in South Carolina in addition to the delivery of the signal into subscribers' homes and onto their televisions.

B. The Court Properly Interpreted The Burden Of Proof Imposed on Petitioner And Did Not Impose An Additional Burden On Petitioner

Petitioner also improperly asserts that the Court misinterpreted the burden of proof imposed on Petitioner and improperly imposed an additional burden on Petitioner. As discussed above, this Court applied the proper standard of proof and burden of proof and correctly found that Petitioner failed to meet its burden of proof.

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[2] See e.g., Order at 10 ("Our Supreme Court 'has long realized the practical impossibility of a state's achieving a perfect apportionment of expansive, complex business activities such as those of Appellant, and has declared that "rough approximation rather than precision" is sufficient.' Covington Fabrics Corp. v. S.C. Tax Comm'n, 264 S.C. 59, 66-67, 212 S.E.2d S.E.2d 574, 577-78 (1975). The Court also noted that '[a]lthough exactness in apportionment is desirable, all that is required is a reasonable approximation.'").

Nevertheless, Petitioner argues the Court further erred by imposing an additional burden on Petitioner by "requiring DIRECTV to establish the actual revenue attributable to South Carolina. (Motion at 5). As discussed above, Petitioner's burden of proof is to demonstrate by a preponderance of the evidence that the Department's determination is incorrect. In its Department determination, the Department identified the income-producing activity as the "delivery of the signal into the homes and onto the television screens of its customers." (Department Determination at 5). The Department then determined the location of the income-producing activity: "[t]he gross receipts that DIRECTV generates from the sale of subscriptions are directly produced from activity that occurs within this state." (Department Determination at 7). Accordingly, since all of the income-producing activity related to the subscription receipts from South Carolina customers occurred in South Carolina, pursuant to the first prong of section 12-6-2295(A)(5), the Department sourced all of those subscription receipts to South Carolina.

During the hearing, Petitioner alleged that the second prong of section 12-6-2295(A)(5) is applicable because income-producing activity related to the South Carolina subscription receipts occurs in multiple states. Under Petitioner's view, to prove that the Department's Determination is incorrect, Petitioner had the burden to prove by a preponderance of the evidence that it had income-producing activities outside of South Carolina and that some other subscription receipts should be sourced to another state. The Court made it clear that Petitioner failed to meet its burden of proof in this regard: Petitioner failed to prove that it had another income-producing activity – inside or outside of South Carolina – in addition to the income-producing activity concluded by the Court. Moreover, even if Petitioner identified an additional income-producing activity, it failed to sufficiently quantify that income-producing activity occurring outside of South Carolina to prove that the Department's Determination was incorrect.

In its Motion, Petitioner cites four passages from the Court's decision as apparent support for its assertion. (Motion at 4-5). However, in each cited passage and in opposition to Petitioner's assertion, the Court stated that Petitioner did not prove that income-producing activities occurred outside of South Carolina and/or that Petitioner failed to sufficiently quantify out-of-state income-producing activities. In the first passage, the Court stated that Dr. Cody's "payroll-and-assets method does not provide a reasonable approximation of income-producing activity by DIRECTV in South Carolina." (Motion at 4). The Court statements means that Dr. Cody's calculations did not properly quantify how much of Petitioner's payroll or property

contributed to income-producing activities occurring in South Carolina. By not being able to quantify income-producing activities in South Carolina, Dr. Cody's work failed to prove that additional income-producing activities occurred in South Carolina. In the second passage, the Court stated that Petitioner's "evidence did not reflect what portion of DIRECTV's costs was either attributable to South Carolina customers or may have influenced South Carolina customers to subscribe to DIRECTV." (Motion at 5). By failing to present such evidence, the Court is stating that Petitioner was unable to articulate what activities produced the subscription receipts from South Carolina; hence again, Petitioner failed to prove any out-of-state income-producing activities. In the third passage, the Court stated that Petitioner "did not present any evidence that reflected how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated at South Carolina." (Motion at 5). Here the Court is stating that, although Petitioner probably engaged in advertising, Petitioner did not present any evidence establishing how any advertising impacted its receipts from South Carolina customers; hence, Petitioner did not show that advertising was an income-producing activity or in what state it occurred. In the final passage, the Court stated that Petitioner "simply did not provide sufficient information on how to apportion its subscription receipts between states in which it believes income-producing activities occur." (Motion at 5). Again, to quantify how much income-producing activity occurs in multiple states, a taxpayer must be able to clearly identify each income-producing activity. Petitioner was unable to do either. In the two sentences before this final passage, the Courts stated that Petitioner "did not present sufficient evidence to determine its income-producing activities" and that Petitioner "put no value on its subscriptions or the value perceived by its customers." (Order at 19-20).

In conclusion, the Court applied the proper burden of proof on Petitioner and did not impose an additional burden on Petitioner. First, Petitioner did not prove that it engaged in income-producing activities related to the South Carolina subscription receipts outside of South Carolina. Second, it failed to prove that less than 100% of the South Carolina subscription receipts should be sourced to South Carolina.

C. The Court Appropriately Considered And Addressed The Evidence In The Record Offered by Petitioner To Establish Its Position on Income Producing Activities

Petitioner next asks the Court to reconsider its ruling, alleging that the Court failed to consider or overlooked substantial evidence in the record that established DIRECTV's income-producing activity. The Department adamantly disagrees with this contention. This Court's in-depth analysis within its Order demonstrates the Court thoroughly considered all of the evidence presented by both parties.

S.C. Code Ann. § 1-23-600 grants authority to the administrative law judges to preside over and decide cases arising as a contested case before the ALC. This requires the administrative law judge to hear the case, analyze the evidence, and to render a decision in the matter. The administrative law judge is the fact finder in the matter and has discretion. MRI at Belfair, 392 S.C. 314, 709 S.E.2d 626. Pursuant to ALC Rule 26, the administrative law judge is to follow the established rules of evidence as provided in S.C. Code Ann § 1-23-330, and as dictated by ALC Rule 26, "shall apply the tests under established rules of evidence otherwise relating to admissibility and credibility and determine the weight to be given such evidence." ALC Rule 26 (emphasis added). The qualification of witnesses as experts and the admissibility of testimony are matters largely within the discretion of the trial judge. MRI at Belfair, 392 S.C. 314, 709 S.E.2d 626. Likewise, the general credibility of witnesses and the weight the Court gives to the evidence presented is in the discretion of the judge when making his final decision. Id.

Petitioner argues the Court failed to properly consider the testimony of Mr. Goswitz, Dr. Cody, and Petitioner's SCRCP 30(b)(6) witness that the income-producing activity was considered by Petitioner to be the assets and employees that perform the services which puts the video programming onto the television. Similarly, the Petitioner argues that the Court failed to properly consider the testimony of Dr. Cody opining that income-producing activities are best reflected by payroll and assets, and his testimony that those measures are practical and commonly used. While the Court may have made a decision that was not in line with the Petitioner's argument, the Court did not fail to properly consider the testimony presented by the Petitioner before making its ruling.

S.C. Code Ann. § 1-23-350 requires a final decision from the ALC to be in writing and further states that findings of fact, if set forth in statutory language, "shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings." This in no way creates a duty upon the administrative law judge to methodically list all the things it considered in its analysis and rendering of its decision. The Court is not required to list all witnesses and evidence and then confirm each was considered by the judge to show that it properly considered the evidence presented. Nevertheless, the extensive analysis contained in the Order here would convince the most skeptical reader that the Court properly considered all of the evidence before it. In this case, the Court explicitly stated it has made the finding of facts, "having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses." (Order at 3).

The Court considered the evidence regarding the Petitioner's operations from Mr. Goswitz, its vice president of space and communications and video. (Hr'g Tr. 47:14-48:7, 49:16-81-11). The Court undoubtedly considered that testimony and the operational activities of Petitioner in its decision, as demonstrated by references to "content and broadcast of signals," "infrastructure" related to content and transmission, "production and collection of programming content signals and transmission to broadcast centers and uplink facilities and then to the satellites." (Order at 12-13).

The Court fully analyzed Dr. Cody's testimony and report but did not find it sufficient or persuasive. Indeed, the Court analyzed and/or referenced the testimony of Dr. Cody approximately four times within its Order. Specifically, the Court recognized in its decision that Petitioner presented evidence through Dr. Cody of the so-called four "value drivers" that could identify Petitioner's income-producing activities, and that Dr. Cody testified about his calculations using Petitioner's payroll and assets as proxies in identifying Petitioner's income-producing activities. (Order at 10-11). The Court discusses, in detail, Dr. Cody's testimony about value drivers, and the Court openly considers Dr. Cody's testimony to include reciting his analysis in the pages of the Order. Id.

Only after considering the testimony of Dr. Cody, could the Court find that Dr. Cody's payroll and asset proxies for identifying Petitioner's income-producing activities were "of no practical value," and that Petitioner "did not sufficiently explain the effect of [Dr. Cody's] value drivers on income production in this State," and further, that the Petitioner's evidence was "just

too nebulous" to make the connection between Dr. Cody's value drivers and income-producing activities. (Order at 11). The basic statement made by the Court that the testimony was unpersuasive clearly indicates the Court considered the testimony given by Dr. Cody and is enough to establish the Court properly considered the evidence in the record.

D. The Court Appropriately Considered And Addressed The Evidence In The Record Establishing The Portion Of Petitioner's Receipts That Should Be Attributed to South Carolina

Petitioner next asserts that the Court failed to appropriately consider and address the evidence in the record regarding a portion of Petitioner's receipts it alleges should be attributed to South Carolina. To the contrary, the Court did not ignore evidence in the record regarding Petitioner's argument of the portion of DIRECTV's receipts it alleges should be attributed to South Carolina. The Court considered the testimony of Mr. Goswitz, Dr. Cody, and the other witnesses in order to make its determination, as evidenced by the discussion of that testimony and evidence within the Order. See supra, § C. The Petitioner states it provided sufficient evidence for the Court to identify DIRECTV's income-producing activity, but the Court simply did not agree. The Court did not fail to consider or overlook the evidence provided by Petitioner's witnesses. Rather, it properly considered and weighed that evidence and disagreed with the witness' opinion. See Order at 16-18. Specifically, the Court concluded that following:

> This is not to suggest that the court should not consider out-of-state activity when determining whether activity is income-producing, nor does this suggest that no such out-of-state income-producing activity occurred in this case. For instance, it is possible that advertising performed within or without the South Carolina could be considered income-producing activity. However, DIRECTV did not provide any evidence that reflected how much of its advertising was directed at South Carolina and what impact such advertising had on revenue generated in South Carolina. Therefore, the Court cannot consider advertising in this case.

(Order at 18) (emphasis added).

Petitioner cannot ignore the discussion within the Order and claim the Court failed to consider testimony when it clearly studied that testimony and evaluated the same within its Order. This Court simply found that the evidence presented proved a conclusion other than the one asserted by Petitioner.

E. This Court Properly Interpreted Income-Producing Activity Language of S.C. Code Ann. § 12-6-2295(A)(5)

Next, Petitioner wrongly asserts that this Court misinterpreted the language of section 12-6-2295(A)(5) to require an examination of "primary" income-producing activities. Specifically, Petitioner wrongly asserts that this Court's consideration of Petitioner's "primary" activities to determine its income-producing activities ignores substantial evidence in the record of Petitioner's income-producing activities, misinterprets the plain language of section 12-6-2295(A)(5), and is inconsistent with Mercury Motor Express, Incorporated v. South Carolina Tax Commission, 244 S.C. 134, 135 S.E.2d 756 (1964).

First, this Court did not ignore substantial evidence in the record of Petitioner's income-producing activity. The decision establishes that the Court properly considered the testimony of Petitioner's witnesses on what they contended constitute Petitioner's income-producing activities and sufficiently understood the operations of Petitioner as was described by a corporate officer. See Order at 3-5, 9-14. Upon evaluation, the Court found that Petitioner failed to prove its contentions regarding non-South Carolina income-producing activities. (Order at 13).

In its decision, the Court recognized that it heard extensive testimony from and admitted a report by Dr. Cody, Petitioner's expert on economics, concerning Petitioner's income-producing activities, but the Court was not persuaded by Dr. Cody's testimony. See, e.g., Order at 11. Dr. Cody testified that he was engaged by Petitioner "to identify from an economic perspective the income-producing activities of" Petitioner. (Hr'g Tr. p. 204, lines 11-16). The Court recognized in its decision that Petitioner presented evidence through Dr. Cody that the so-called four "value drivers" could identify Petitioner's income-producing activities. (Order at 10). These value drivers included major components of Petitioner's operations, including (1) content and programming, (2) acquisition and distribution of programming content, (3) marketing and sales of its service, and (4) customer service. Id. Dr. Cody described these activities of Petitioner in great detail in his testimony. (Hr'g Tr. 206:2-221:1). Dr. Cody also testified about his calculations, using Petitioner's payroll and assets as proxies in identifying Petitioner's income-producing activities. (Order at 11).

The Court fully analyzed Dr. Cody's testimony and report but did not find it sufficient or persuasive. The Court found that Dr. Cody's payroll and asset proxies for identifying

Petitioner's income-producing activities was "of no practical value," that Petitioner "did not sufficiently explain the effect of [Dr. Cody's] value drivers on income production in this State," and that Petitioner's evidence was "just too nebulous" to make the connection between Dr. Cody's value drivers and income-producing activities. (Order at 11).

Despite Dr. Cody's testimony and report and after "consider[ing] the activities of businesses in the direct broadcast services industry, the Court properly concluded that Petitioner's income-producing activity includes the customers' subscriptions and delivery of the signal into the location and onto the television screens of its customers." (Order at 10). The Court also stated that Petitioner argued that its costs to produce the content and broadcasting of signals into South Carolina should be considered an income-producing activity, but the Court concluded that these and other incidental activities of Petitioner have no income-producing value "until a customer subscribes to Petitioner's services by purchasing a satellite dish to receive those signals and a set-top box to decode those signals" in his or her home. (Order at 12-13).

This Court also heard evidence of Petitioner's operations from Mr. Goswitz, its vice president of space and communications and video. (Hr'g Tr. 47:14-48:7, 49:16-81:11). The Court considered the operational activities of Petitioner in its decision as demonstrated by, for example, references to "content and broadcast of signals," "infrastructure" related to content and transmission, "production and collection of programming content signals and transmission to broadcast centers and uplink facilities and then to the satellites." (Order at 12-13).

Because the Court heard and considered extensive evidence from Dr. Cody, Petitioner's expert, who was engaged to identify Petitioner's income-producing activities, and from Mr. Goswitz, and because the Court found that Petitioner failed to sufficiently identify its non-South Carolina income-producing activities, this Court did not ignore substantial evidence in the record of Petitioner's income-producing activities. This Court merely found that the evidence presented proved a conclusion other than the one asserted by Petitioner.

Second, this Court properly interpreted the income-producing activity language of section 12-6-2295(A)(5). This provision states:

> (A) The terms "sales" as used in Section 12-6-2280 and "gross receipts" as used in Section 12-6-2290 include, but are not limited to, the following items if they have not been separately allocated:

> (5) receipts from services if the entire income-producing activity is within this State. If the income-producing activity is performed partly within and partly without this State, sales are attributable to this State to the extent the income producing activity is performed within this State.

S.C. Code Ann. § 12-6-2295(A)(5). The Court's reference to the primary income-producing activity of Petitioner was not a misinterpretation of this provision.

In its motion for reconsideration, Petitioner referenced a sentence in which the Court used the phrase "primary income-producing activity" of Petitioner when stating that Petitioner's subscription receipts are received solely as a result of the delivery of the signal into a subscriber's home and onto the subscriber's television. Further, Petitioner referenced the Court's statements of other activities of Petitioner being incidental to the production of income. Based on these statements, Petitioner asserts that the Court misinterpreted the language of section 12-6-2295(A)(5) presumably because the statute does not include the word "primary."

Petitioner's argument is without merit. If one looks beyond the Court's use of the words "primary" and "incidental," it is obvious that the Court's application of section 12-6-2295(A)(5) was on target. As clearly seen in the same excerpts of this Court's decision that Petitioner cited in its motion for reconsideration, the Court merely put activities performed by Petitioner into two buckets: one that produced income and one that did not produce income. In the first bucket, the Court put the delivery of the signal into the subscribers' homes and onto their television because the subscription receipts were received as result of this activity. (Order at 10). In the second bucket, the Court put other activities such as broadcasting, producing and collecting the programming content, and transmitting the signals because the Court found that these "incidental" activities have no income-producing value unless a subscriber subscribers and receives the unscrambled signal in his home and on his television set. (Order at 13).

It is clear that the Court considered whether Petitioner's other activities were income-producing activities but was not persuaded by Petitioner's evidence. The Court noted that Petitioner failed to sufficiently identify its outside income-producing activities and failed to prove the impact on gross receipts of its local programming activities. (Order at 13).

The Court made it clear that all activities of Petitioner were not income-producing activities and that its analysis was a means to make this distinction among Petitioner's activities. The Court stated, "[t]hus, the pertinent issue here is at what point DIRECTV's activities become

income-producing." (Order at 12). When the Court concluded that the delivery of the signal into the homes and onto the televisions of subscribers was the income-producing activity, the Court properly interpreted section 12-6-2295(A)(5) by identifying the income-producing activity, as shown by the evidence. Based on the above, the Court properly interpreted section 12-6-2295(A)(5). The mere use of the word "primary" in its analysis was not a flaw by this Court but a means to distinguish income-producing activities from non-income-producing activities. Additionally, the Court found that the Petitioner failed to prove that its other activities were income-producing activities.

Third, this Court's analysis of income-producing activities was consistent with applicable case law. Here, Petitioner asserted that the Court's decision was inconsistent with the South Carolina Supreme Court's decision in Mercury Motor. Despite Petitioner's assertion, the Court's analysis was wholly consistent with Mercury Motor. Mercury Motor was "a common carrier of freight for compensation." Mercury Motor, 244 S.C. 134, 136, 135 S.E.2d 756, 757 (1964). The Supreme Court stated that Mercury Motor was a unitary business and that its "series of transactions consists of the solicitation of freight, the picking up of freight, the hauling of freight, the delivery of the same and the collections of charges therefor. . . . [W]hile each transaction is necessarily incidental to the production of its income, the transaction which primarily earns the income is the hauling of the freight." Id., 244 S.C. at 141, 135 S.E.2d at 759. The Supreme Court continued by stating that, while Mercury Motor's trucks were traveling along South Carolina's highways, Mercury Motor "was engaged in income producing activity." Id. The result of Mercury Motor was to uphold the Department's use of the mileage formula, which used the hauling of freight as the income-producing activity and not the other incidental activities of Mercury Motor, to apportion its net income to South Carolina. See id. 244 S.C. at 141-42, 135 S.E.2d at 759-60.

In Mercury Motor, the Supreme Court clearly distinguished between a taxpayer's activities that primarily produce income and those activities that are incidental to the production of income. This distinction is proper. First, the General Assembly's use in section 12-6-2295(A)(5) of the limiting adjective, "income-producing," to describe the noun, "activities," means that all activities of a taxpayer, even if important to the overall service, are not income-producing activities and are not used to source gross receipts to South Carolina. Second, contrary to Petitioner's argument, the General Assembly did not say in section 12-6-2295(A)(5)

that – if the taxpayer operates a unitary business – all of its activities are to be used to source gross receipts to South Carolina. See S.C. Code Ann. § 12-6-2295(A)(5). Third, the Supreme Court in Mercury Motor referred to each of the transactions in the identified series of transactions as being "incidental to the production of income," but it referred only to the hauling of freight as an "income producing activity." Mercury Motor, 244 S.C. at 141, 135 S.E.2d at 759. Fourth, the Supreme Court's use in Mercury Motor of the phrase "incidental to the production of income" to describe the taxpayer's activities does not mean that each of those activities are also income-producing activities that should be used to source gross receipts to South Carolina. Consistent with the statute, activities that are incidental to the production of income are not necessarily income-producing activities. "Incidental" is defined as (1) "[s]ubordinate to something of greater importance" and (2) "having a minor role." BLACK'S LAW DICTIONARY 765 (7th ed. 1999). Therefore, incidental activities are merely subordinate to or have a minor role with the main, primary, and principal activities. In Mercury Motor, the hauling of freight, as the main purpose of the taxpayer, was the primary and principal activity. The other incidental activities, although important, were not income-producing activities but were subordinate to or played a minor role to the only income-producing activity of the taxpayer, which was the hauling of freight. Finally, Petitioner's expert, Dr. Cody, confirmed the different nature of income-producing activities and the other incidental activities. Dr. Cody stated that Petitioner performed the other incidental activities "in anticipation of – and in order to deliver that signal in anticipation of customers signing up and paying" and that these other incidental activities have "a risk" because Petitioner has only "an anticipation of future profits." (Hr'g Tr. 219:15-19, 220:1-5). These other incidental activities of Petitioner are distinguished from the delivery of the signal into subscribers' homes and onto their televisions because that later activity is the activity that actually creates the subscriber revenue.

Petitioner asserted in its motion for reconsideration that the Supreme Court in Mercury Motor rejected a narrow construction of income-producing activities and that this Court "acknowledge[d] that the Supreme Court considered 'incidental' activities to be income-producing activities." (Motion at 13). Both of these assertions by Petitioner are wrong. By stating that only the hauling of freight was the income-producing activity while excluding the other incidental activities, the Supreme Court did not reject a narrow construction of income-producing activities. Also, the Supreme Court did not refer to the other incidental activities as

income-producing activities. It referred to only the hauling of freight as an income-producing activity.

Based on the above, this Court's analysis of income-producing activities was consistent with Mercury Motor. Although Petitioner performs many important activities dependent upon or connected with the income-producing activity of delivering the signal into subscribers' homes and onto their television, activities such as content acquisition and development, satellite launches, and broadcasting and transmitting are not income-producing activities.

In conclusion, this Court did not misinterpret the language of section 12-6-2295(A)(5) by using the term, "primary," when determining Petitioner's income-producing activities. The Court heard and properly considered the evidence of income-producing activities presented by Petitioner. Additionally, the Court's analysis of income-producing activities was consistent with section 12-6-2295(A)(5) and a proper interpretation of Mercury Motor.

F. The Court Properly Construed Petitioner's Sourcing Methodology As Being A Costs-of-Performance Methodology

Petitioner wrongly asserts that the Court misconstrued Petitioner's methodology as being a costs-of-performance methodology. Petitioner states that its use of the "Payroll and Assets Method as a proxy for measuring the gross receipts attributable to South Carolina does not imply that DIRECTV is asserting that South Carolina is a cost of performance state. Moreover, the payroll and assets method is consistent with existing South Carolina law." Petitioner cites Lockwood Greene, 293 S.C. 447, 361 S.E.2d 346 (Ct. App. 1987), as support for the later statement. Petitioner is stating that although it is using costs-of-performance elements – payroll and assets – it is not using a costs-of-performance method. This is a distinction without a difference.

Petitioner's statement that it is not using a costs-of-performance method to source its gross receipts to South Carolina is hard to believe. The crux of Petitioner's case was that Lockwood Greene imposed a costs-of–performance method on service providers when sourcing gross receipts to South Carolina. See Pet'r Pre-Hearing Br. at 6 (stating that the issue is whether its subscription revenues should be sourced to South Carolina based on the location of its activities, which is the "place of activity" test used in Lockwood Greene where a payroll factor was used to source gross receipts to South Carolina). It also asserted that the General Assembly codified Lockwood Greene's so-called costs-of-performance requirement when it enacted

section 12-6-2295(A)(5). See Pet'r Pre-Hearing Br. at 11. Further, the Department presented evidence and the Court noted in its decision that, when Petitioner amended its South Carolina corporate income tax returns, it amended the returns to source gross receipts under a "cost of performance method" and that the costs of performance sourcing was "prescribed by statute." (Order at 5-6). Petitioner's tax policy expert, Professor Richard Pomp, stated that section 12-6-2295(A)(5) did not require costs-of-performance but that it is one option that may be considered by the Court. See Hr'g Tr. 522:20-523:5.

As previously stated, Petitioner is making a distinction without a difference. Regardless of whether the statute says to use costs-of-performance to source gross receipts or whether the statute is silent, Petitioner nonetheless uses costs-of-performance elements when sourcing gross receipts. The corresponding UDITPA statute, section 17, sources gross receipts "based on costs-of-performance." UDITPA Section 17. Section 17 is widely known as a costs-of-performance statute; however, costs-of-performance does not identify the income-producing activity or even its location but it merely is used to quantify how much income-producing activity occurs in various states when the income-producing activity occurs in more than one state. This is identical to what Petitioner is doing in the instant case. It is using payroll and/or assets, which are costs-of-performance elements, to quantify how much income-producing activity occurred in South Carolina. Therefore, Petitioner is certainly using a costs-of-performance method.

However, this allegation in Petitioner's motion for reconsideration is a red herring because the Court applied section 12-6-2295(A)(5) as written. Under the first prong of section 12-6-2295(A)(5), the Court determined the income-producing activity and that all of the income producing activity occurred in South Carolina. (Order at 13-14). Accordingly, there was no need to use the second prong of Section 12-6-2295(A)(5) which is used when income-producing activity occurs in more than one state. It is only in this second prong that costs-of-performance would be used at all. See UDITPA, section 17. Additionally, section 12-6-2295(A)(5) is similar to UDITPA, section 17; however, one of the two major difference is that the South Carolina statute omitted the phrase "based on costs-of-performance." Therefore, costs-of-performance is not required by South Carolina law.

In conclusion, this Court properly construed Petitioner's sourcing methodology as a costs-of-performance methodology. Although Petitioner was seemingly trying to determine how much income-producing activity occurred in South Carolina under section 12-6-2295(A)(5), it is

clear that Petitioner did so using costs-of-performance elements even though all of the income-producing activity occurred in South Carolina and the statute did not impose a costs-of-performance method.

G. The Court Considered and Addressed Petitioner's Argument That Penalties Must Be Abated When There Is Substantial Authority and/or The Taxpayer Acted In Good Faith

Petitioner wrongly asserts that the substantial understatement penalties should be abated because there was substantial authority for its position and it acted in good faith. Specifically, Petitioner argues that it presented testimony and evidence that its treatment of subscription revenue was correct, and that its position is supported by Lockwood Greene, Mercury Motor, and the position taken by Petitioner on its corporate tax return for the 2011 tax year. However, this Court properly concluded that the Department was correct to apply a substantial understatement penalty for the underpayment of taxes owed for tax years 2009 through 2011.

First, the Lockwood Greene decision does not explicitly or implicitly direct taxpayers such as Petitioner to file its corporate tax returns based on a costs-of-performance method or elements. As this Court recognized, the Court of Appeals decision in Lockwood Greene "did not mandate that the net income of all service providers be apportioned based on a 'place of activity' test that is quantified by a payroll factor or some other cost-based factor." (Order at 14). The Lockwood Greene Court recognized that the Department sourced revenues of service providers such as engineering, law, and accounting firms to the place of activity, while sourcing income from other service industries, such as finance companies and media broadcasters, to the location of the borrower and the advertisers, respectively. Petitioner is not like the taxpayer in Lockwood Greene: Petitioner's customers do not hire specific professionals and are not paying for those professionals' expertise and time. Rather, "the customer is paying for video programming to be viewed on the customer's television at the time and place the customer demands." (Order at 16). Petitioner and its operations are not comparable to the taxpayer in Lockwood Greene, and there is no basis in Lockwood Greene upon which Petitioner may rely when filing its corporate income tax returns.

Next, Petitioner asserts that the decision in Mercury Motor supports the position taken with respect to its tax returns at issue. Specifically, Petitioner argues that Mercury Motor "rejected a narrow view of income-producing activities . . . that would have considered only

activities for which the company was actually paid." (Motion at 13). While it was completely proper for Petitioner to appropriately rely upon Mercury Motor in filing its corporate income tax returns, Petitioner absolutely misinterprets the facts and application of the case to the instant matter. The court in Mercury Motor recognized that a taxpayer may engage in many transactions in its business, and that "while each of these transactions was 'necessarily incidental to the production of [the business's] income,' the activity that 'primarily earn[ed] the income'; was the hauling of freight 'through and over the highways of the State of South Carolina.'" (Order at 11) (citation omitted). As this Court properly recognized, the facts in this case "are akin" to the transactions discussed in Mercury Motor, and that "DIRECTV failed to sufficiently identify its outside income-producing activities." (Order at 12). Specifically, Petitioner engages in incidental activities such as "the infrastructure for producing and collecting the programming content and transmitting the signals." (Order at 12). However, as the Court succinctly noted, "it is not until a customer subscribed to Petitioner's services by purchasing a satellite dish to receive those signals and a set-top box to decode those signals that Petitioner's action have any income producing value." Id. Accordingly, from the plain reading of Mercury Motor, it is clear that Petitioner's reliance upon a taxpayer's total business activities to justify its position in this matter is unpersuasive.

Finally, Petitioner asserts that the position taken on its corporate tax return for the 2011 tax years demonstrates that it was acting in good faith to comply with sections 12-6-2290 and 12-6-2295(A)(5). It is important to note the filing history of DIRECTV with regard to the tax years in question. Initially, Petitioner sourced 100% of the subscription revenue received from South Carolina customers to the numerator of the gross receipts ratio. Petitioner subsequently changed its position, and on its amended 2006-2008 returns as well as its original 2009 and 2010 returns, Petitioner did not include any of the subscription receipts from South Carolina customers in the numerator of the gross receipts ratio. Finally, on its original 2011 return, Petitioner changed its method again by including approximately $22 million of its $410 million subscription receipts from South Carolina customers in the numerator. Petitioner did so by sourcing 0.11% of its total subscription receipts to South Carolina based on a ratio of its alleged payroll in South Carolina to its total payroll. Notably, this Court concluded that "the approach proposed by Dr. Cody unduly emphasizes what amounts to 'costs of performance.'" Finally, Petitioner's expert at trial presented another method by asserting that Petitioner may use a mixed payroll and property

factor. Petitioner's various approaches to filing in South Carolina is still changing despite the statute being static since 2007. As noted above, Petitioner is making a distinction without a difference – it advances a position in this case that is grounded upon costs-of-performance elements.

South Carolina is absolutely not a costs-of-performance state, and this is clearly established, in addition to the case law recited above, by the actions of our General Assembly. As noted by this Court in is Order, while South Carolina's section 12-6-2295(A)(5) is similar to UDITPA's Section 17, "the General Assembly specifically chose not to include the phrase "based on cost of performance." (Order at 16). Moreover, when adding section 12-6-2295(A) for the 2007 tax year, the General Assembly stated the following in 2007 South Carolina Laws Act 110, § 51.A; eff. June 21, 2007: "To Amend . . . by adding Sections 12-6-2252 and 12-6-2295 so as to further provide for allocation and apportionment of business income for state income tax purposes by basing the determination only on a sales factor and to define the terms 'sales' and 'gross receipts' consistently and specifically for that purpose[.]" The statutory amendment does not include the language "based on costs of performance" and there are no references to costs-of-performance elements, such as property and payroll. As such, Petitioner's reliance upon property and payroll factors to justify its position with regard to its 2011 tax return is unpersuasive.

Accordingly, Petitioner must be assessed the substantial understatement penalties as there is no substantial authority for its position and it did not act in good faith. During the course of this single audit period, Petitioner utilized three difference sourcing methodologies and presented a fourth method at trial. Moreover, Petitioner utilized a costs-of-performance method and/or elements, and the cases relied upon by Petitioner do not apply a costs-of-performance method – implicitly or explicitly – to services providers such as Petitioner. Finally, the General Assembly's statutory amendments and additions in 2006 and 2007 to the relevant statutory scheme clearly do not envision the use of a costs-of-performance method in light of the distinct deletion of "based on costs of performance" from section 17 of UDITPA's model act.

CONCLUSION

Petitioner has not put forth any grounds for which the Court needs to reconsider or amend its Order in this case. To the contrary, the Court's Order properly considered and addressed the facts and evidence in this matter and should not be reconsidered or amended.

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June 1, 2015
Columbia, South Carolina

PROOF OF SERVICE

I, Nicole M. Wooten, do hereby certify that I have caused to be mailed, via United States Postal Service, postage prepaid, a copy of the Department's Response to Petitioner's Motion For Reconsideration re: DIRECTV Inc. & Subsidiaries vs. South Carolina Department of Revenue, Docket No. 14-ALJ-17-0158-CC to R. Gregory Roberts, Esquire, 250 West 55th Street, New York, NY 10019-9601, and to John C. von Lehe, Jr., Esquire and Bryson M. Geer, Esquire, Nelson Mullins Riley & Scarborough LLP, 151 Meeting Street, Sixth Floor, Charleston, SC, 29401-2239 on this 1st day of June, 2015.

Nicole M. Wooten

Page 1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 14-ALJ-17-0158-CC

DIRECTV, Inc. & Subsidiaries,)
)
Petitioner,)
)
v.)
)
South Carolina Department of)
Revenue,)
)
Respondent.)
)

ADMINISTRATIVE HEARING
****
Tuesday, January 13, 2015
10:00 a.m. - 5:15 p.m.

Wednesday, January 14, 2015
9:00 a.m. - 5:03 p.m.

The hearing before the Honorable Ralph King Anderson, III, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 13th and 14th days of January, 2015 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

Page 2

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INDEX

PAGE

OPENING STATEMENTS:
MR. ROBERTS.....12
MR. CONDON.....28
MR. ROBERTS (Continued).....45

MR. GOSWITZ:
MR. ROBERTS.....DIRECT EXAMINATION.....47
MS. WOOTEN.....CROSS-EXAMINATION.....81

DR. POMP:
MR. VALLEJO.....DIRECT EXAMINATION.....85
MR. CONDON.....CROSS-EXAMINATION.....139

Page 3

DR. CODY:
MR. VALLEJO.....DIRECT EXAMINATION.....194
MS. WOOTEN.....CROSS-EXAMINATION.....246
MR. VALLEJO.....REDIRECT EXAMINATION.....263

MR. KING:
MS. WOOTEN.....DIRECT EXAMINATION.....279
MR. ROBERTS.....CROSS-EXAMINATION.....299
MS. WOOTEN.....REDIRECT EXAMINATION.....303

MR. DONOVAN:
MS. WOOTEN.....DIRECT EXAMINATION.....304
MR. ROBERTS.....CROSS-EXAMINATION.....314
MS. WOOTEN.....REDIRECT EXAMINATION.....318

MR. SWEARINGEN:
MR. CONDON.....DIRECT EXAMINATION.....319
MR. ROBERTS.....CROSS-EXAMINATION.....347
MR. CONDON.....REDIRECT EXAMINATION.....349

DR. HARRISON:
MS. WOOTEN.....DIRECT EXAMINATION.....382
MR. ROBERTS.....VOIR DIRE EXAMINATION.....390
MS. WOOTEN.....VOIR DIRE EXAMINATION.....394
MS. WOOTEN..DIRECT EXAMINATION (Continued).....398
MR. ROBERTS.....CROSS-EXAMINATION.....419

MR. SWAIN:
MR. CONDON.....DIRECT EXAMINATION.....423
MR. ROBERTS.....CROSS-EXAMINATION.....468
MR. CONDON.....REDIRECT EXAMINATION.....484

DR. CODY:
MR. VALLEJO.....DIRECT EXAMINATION.....489
MS. WOOTEN.....CROSS-EXAMINATION.....501

DR. POMP:
MR. VALLEJO.....DIRECT EXAMINATION.....503
MR. CONDON.....CROSS-EXAMINATION.....519

CLOSING STATEMENTS:
MR. VALLEJO.....526
MR. CONDON.....536

REPLY STATEMENT:
MR. VALLEJO.....556

Certificate.....563

Page 4

EXHIBITS

Petitioner's Exhibit Number One.....80
(Customer contracts)
Petitioner's Exhibit Number Two.....97
(Richard Pomp CV)
Petitioner's Exhibit Number Three.....97
(Expert report of Professor Pomp)
Petitioner's Exhibit Number Five.....123
(Transcript excerpt of John Swain)
Petitioner's Exhibit Number Seven.....126
(CV of Brian Cody)
Petitioner's Exhibit Number Eight.....195
(Expert report of Dr. Cody)
Petitioner's Exhibit Number Sixteen.....202
(UDITPA)

Joint Exhibit Number One.....110
(Deposition of William Spina)
Respondent's Exhibit Number One.....278
(Original SC corporate return 2006)
Respondent's Exhibit Number Two.....100
(First amended SC corporate return 2006)
Respondent's Exhibit Number Three.....100
(Second amended SC corporate return 2006)
Respondent's Exhibit Number Four.....100
(Original SC corporate return 2007)
Respondent's Exhibit Number Five.....100
(Amended SC corporate return 2007)
Respondent's Exhibit Number Six.....100
(Original SC corporate return 2008)
Respondent's Exhibit Number Seven.....100
(Amended SC corporate return 2008)
Respondent's Exhibit Number Eight.....100
(Original SC corporate return 2009)
Respondent's Exhibit Number Nine.....100
(Original SC corporate return 2010)
Respondent's Exhibit Number Ten.....100
(Original SC corporate return 2011)
Respondent's Exhibit Number Eleven.....100
(Field Audit report 2006-08)
Respondent's Exhibit Number Twelve.....100
(Field Audit report 2009-11)

Respondent's Exhibit Number Thirteen 100
(Department Determination February 18, 2014)
Respondent's Exhibit Number Fourteen 425
(CV Professor John A. Swain)
Respondent's Exhibit Number Fifteen.....389
(CV Dr. Glenn W. Harrison)
Respondent's Exhibit Number Eighteen 177
(Prof. Pomp's Hearing Officer Report (MTC) 10/25/13)
Respondent's Exhibit Number Twenty-one 337
(Portions of transcript from Lockwood Greene case)

(The original exhibits were retained by Judge Anderson.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

THE COURT: All right. This is a hearing in the matter of DIRECTV, Inc., and Subsidiary -- Subsidiaries, Petitioners, vs. South Carolina Department of Revenue, Respondent. The docket number is 14-ALJ-17-0158-CC.
Are there any -- I'll tell you what, before we even go forward, I want to state for the record, at least from an ethical standpoint, I am a DIRECTV customer; however, I do not believe that that will impact my -- or affect my decision in deciding this case. As a matter of fact, if DIRECTV wants to release me from my binding contract, I'll gladly get out of it and go look somewhere else, so. But with that said, I'm just going to let y'all know that.
So are there any motions or stipulations the parties wish to make before we proceed?
MS. GEER: Good morning, Your Honor, Bryson Geer for DIRECTV. We did have a few stipulations as to procedural matters. First of all, we filed the other day an actual stipulation as to certain facts and I'll be happy to hand the Court up a copy, if you would like one.
THE COURT: You filed it with us?
MS. GEER: Yes, Your Honor.

THE COURT: Any objection?
MR. CONDON: No, Your Honor, no objection.
THE COURT: All right.
MS. GEER: Thank you, Your Honor. Second, we have also -- this is not in those stipulations, but the parties have stipulated as to the authenticity of all the documents that each side has identified as exhibits in this matter --
THE COURT: All right.
MS. GEER: -- so that is not an issue in the case.
We have also stipulated as to the admissibility of the following documents: DIRECTV's original and amended tax returns, the Department of Revenue's audit reports, and the Department's Determination in this matter. So those we have stipulated that they are admissible.
And, lastly, we have some deposition -- joint deposition designations for a Mr. William Spina. And we had some issues where some things were included that shouldn't have been, and vice versa. So we are going to actually together today sign an amended deposition designation that has everything correct and we'll get that to Your Honor later today,

perhaps after lunch.
And then we intend to have Mr. Condon -- we'll have someone on the witness stand and he will read his questions and we will likely do that at the end of our case, because it contains things that we would want in during our case. And I don't know if we need to stipulate that the things that y'all designated came in during your case to me. It doesn't matter and they can all come in during our case, but whatever the Department prefers on that.
MR. CONDON: I don't think it matters. We can treat them as if they came in on your case, the whole thing.
MS. GEER: Okay. That's fine with us, if that suits the Court.
THE COURT: Well, that doesn't matter. I do want to address one issue.
MS. GEER: Yes.
THE COURT: So y'all can address that whenever you want, at least -- are you offering it now or ...
MS. GEER: No, Your Honor.
THE COURT: It's not complete?
MS. GEER: That's correct, so we will submit that

Page 9

later today.
THE COURT: Is this something I'm going to need to read?
MS. GEER: You will not. We will --
THE COURT: I'm going to need -- am I going to need to read it to understand your arguments or ...
MS. GEER: No, Your Honor.
THE COURT: Okay.
MS. GEER: We'll just -- we'll have it all read in
THE COURT: Okay.
MS. GEER: -- if that suits you.
THE COURT: That's fine.
MS. GEER: Okay. And then, lastly, we have some demonstrative exhibits that the Department has not objected to and we were hoping that Your Honor would be okay with us using an easel during openings and during examinations of witnesses.
THE COURT: Oh, definitely.
MS. GEER: If Your Honor has any preferences on where they go, we were just thinking somewhere here where they don't block anyone's view.
THE COURT: My preference is that I be able to see them.
MS. GEER: Okay. Perfect. We will definitely make

Page 10

sure that happens.
THE COURT: After that, y'all can deal with that.
MS. GEER: Okay. And that's all I have, unless the Department has any other initial issues.
MR. CONDON: No, Your Honor. We agree with the stipulations she referenced and we're ready to go.
THE COURT: All right. I will tell you, y'all submitted a pretrial brief?
MR. CONDON: We did, Your Honor, yesterday afternoon.
THE COURT: Yeah, it was kind of late yesterday afternoon, so I didn't get a chance to read it.
MR. CONDON: Okay.
THE COURT: So, I've read theirs, but if you -- in presenting your case at this point in time, don't assume that I am knowledgeable as to your brief yet. Probably after lunchtime I will be --
MR. CONDON: Okay.
THE COURT: -- but not at this point in time.
MR. CONDON: Thank you for letting us know, Your Honor.
THE COURT: Okay. All right.
MS. GEER: Thank you, Your Honor.

Page 11

THE COURT: I'm ready for openings.
MS. GEER: Okay. Your Honor, we'll set up these easels --
THE COURT: Okay.
MS. GEER: -- real quick and then we'll get started.
THE COURT: All right.
(Off the Record)
THE COURT: Mr. Condon, if you want to come around to see these, you're welcome to do that whenever you want to.
MR. CONDON: Thank you, Your Honor. I've read them, so I may --
THE COURT: Okay.
MR. CONDON: -- stay here. But if I get up, you'll know why.
MR. ROBERTS: Your Honor, I think we should move these so people can see. Would you prefer them over there in the corner or over here in the corner? Trying not to block anybody, but --
THE COURT: Probably over there.
MR. ROBERTS: Thank you, Your Honor.
THE COURT: And if you have that on a sheet of paper, you can always put it up on the ELMO.
(Off the Record)
THE COURT: Tell you what, before we proceed, let's

Page 12

go through your names so my court reporter can identify each one of you.
MR. ROBERTS: Your Honor, my name is Greg Roberts from Morrison & Foerster on behalf of DIRECTV.
MR. VALLEJO: Andres Vallejo on behalf of DIRECTV.
MS. GEER: Bryson Geer with Nelson Mullins on behalf of DIRECTV.
MR. VON LEHE: John von Lehe with Nelson Mullins on behalf of DIRECTV.
THE COURT: All right. Mr. Condon?
MR. CONDON: And I'm Bill Condon with the Department of Revenue.
MS. WOOTEN: Nikki Wooten with the Department of Revenue.
MR. THOMPSON: Tim Thompson with the Department of Revenue.
THE COURT: Oh.
MS. CAMPBELL: Mary Beth Campbell with the Department of Revenue.
THE COURT: I didn't see you hiding back there, Mary.
All right. Got them?
THE COURT REPORTER: (Nods head affirmatively.)
THE COURT: Okay. Proceed.
OPENING STATEMENT BY MR. ROBERTS:

Page 13

MR. ROBERTS: Thank you, Your Honor. As I said, my name is Greg Roberts from Morrison & Foerster on behalf of DIRECTV.
The issue in this case is whether South Carolina has adopted an apportionment statute that looks to where the services are performed or whether the State has adopted an apportionment statute that looks to the location of the customer.
Now, you're going to hear lots of testimony today from the Department and the Department's witnesses about how that simple explanation isn't sufficient and that all of DIRECTV's income-producing activities take place solely in South Carolina.
When you peel back the layers of the Department's argument, however, the Department is doing nothing other than looking to the location of DIRECTV subscribers for purposes of determining the gross receipts from within South Carolina.
Now, there's no dispute as to the relevant statutory sections at issue here, South Carolina Code Sections 12-6-2290 and 12-6-2295.
As you can see from the demonstrative here,

Page 14

Section 12-6-2290 provides that service providers like DIRECTV whose income is apportioned using a fraction, the numerator of which is gross receipts from within the state during the taxable year, and the denominator is total gross receipts from everywhere during the taxable year.
THE COURT: You're using 2290 for what year? Because I know they did 2013, I think, and then y'all had 2007 or 2006.
MR. ROBERTS: The relevant parts of 2290, which I just read, are applicable for 2006 through 2011 period, Your Honor.
THE COURT: Okay. That makes everything easier.
MR. ROBERTS: Yes.
THE COURT: Okay.
MR. ROBERTS: There is no dispute that receipts from services are gross receipts. The issue in this case is whether they're gross receipts from within South Carolina. And for tax years beginning 2007, 2290 instructs us to look to Section 12-6-2295. And as you can see, the receipts at issue in this case fall within Sections 22 -- 12-6-2295(A)(5).
THE COURT: The same thing, all applicable years?

Page 15

MR. ROBERTS: This applies for tax years beginning in 2007; so for 2007 through 2011.
THE COURT: Okay.
MR. ROBERTS: So for those tax years, receipts from services is the entire income-producing activity is within this state. If the income-producing activity is performed partly within and partly without the state, sales are attributable to the state to the extent that the income-producing activity is performed within the state.
The language of the statute is clear. For example, if 50 percent of the taxpayer's income-producing activities are performed in South Carolina, then 50 percent of the taxpayer's total gross receipts go in the numerator of the receipts fraction. Similarly, if only ten percent of the taxpayer's income-producing activities take place in the state, then ten percent of its gross receipts go in the numerator of the receipts factor.
There's no dispute that DIRECTV is a service provider. Therefore, the plain language of the statute instructs us to first identify DIRECTV's income-producing activities and then

Page 16

to determine the extent to which those income-producing activities are performed within this state.
Now, DIRECTV is engaged in the packaging and distribution of premium quality video entertainment. You're going to hear testimony today from a senior operations person at DIRECTV who will testify in great detail to the operations of DIRECTV.
The testimony will establish the importance of DIRECTV's content, particularly its original programming and programming such as the NFL Sunday Ticket, which are exclusive to DIRECTV subscribers.
You'll also hear about the importance of the broadcast centers and the up-link facilities and the sales and marketing activities and the customer service activities; all of those activities take place outside of South Carolina.
Now, DIRECTV readily acknowledges that it does have income-producing activities within the state. We have set-top boxes at customer locations. We have four local collection facilities within the state. We readily

Page 17

acknowledge that those are income-producing activities that are related to the provision of our programming services.
Now, you will also hear testimony from the Department and its witnesses that all of these activities that occur throughout the United States are completely irrelevant.
For instance, you will hear testimony from the Department's economist that you can't consider all these activities outside of South Carolina because those are costs. They don't generate income and that the only income-producing activity is the customer turning on its television and paying its bill.
You'll also hear testimony from the Department's tax policy witness who will say that the approach that the State is taking in this case is good for the State and that receipts factor should always be interpreted to apply a market-based approach. In fact, the --
THE COURT: I think we would all have to agree that if they get the maximum tax revenue out of you, it is probably good for the State. We have to decide if it's lawful, though.
MR. ROBERTS: We would probably concede that.

Page 18

In fact, if you take the Department's -- with the opinions of the Department's experts, DIRECTV itself conducts no income-producing activities at all.
The Department's attempt to squeeze its theory into the language of Section 12-6-2295 has to be rejected. At the end of the day, the Department is doing nothing other than looking to the location of the customer for purposes of determining DIRECTV's gross receipts from within the state.
And this approach is not only inconsistent with the plain language of the statute, Your Honor, it's also inconsistent with settled case law.
For instance, in Lockwood Greene the court adopted the place of activity approach, which looks to where services are performed and when it expressly rejected -- it expressly rejected the origin of payment view, which looked to where the customer was located.
You know, it's somewhat ironic that the same Department who in Lockwood Greene was advocating for place of activities is now advocating for an origin of payment view in our case.

Page 19

That being said, in reaching its determination, the court in Lockwood Greene explained that the business carried on by the engineering firm in the state was reasonably measured by the activities -- by the services performed by the engineers in the state.
The court didn't say you look to where the service was received. The court didn't say you look to where the customer was. You look to where the service was performed.
And, in fact, the court explicitly held that the origin of payment view would not recognize the proportion of the engineering firm's business actually carried on in South Carolina.
To determine the extent of Lockwood Greene's activities and the services performed in the state during this period, the court looked to the location of its payroll and it sourced its receipts -- sourced its gross receipts based on the ratio of its South Carolina payroll to its total payroll.
In 2007, this Court in Rent-A-Center explained that, "Furthermore, in 2007, Lockwood Greene's interpretation of gross receipts from within this state was codified at 12-6-2295(A)."

Page 20

Now --
THE COURT: And I've looked at that. I'm not so sure that it was fully codified. I know that's my own language. I'm going to have to rethink -- that doesn't mean I'm going to change my view in that case at all. It just means my view that Lockwood was codified in 2295 -- I started looking at the language again and I'm not so sure it completely codified it. I'll have -- I assume y'all will educate me on that today.
MR. ROBERTS: We will certainly educate you on that, Your Honor.
THE COURT: Okay.
MR. ROBERTS: What you're going to hear from the Department is that Lockwood Greene only applies to so-called personal service providers and that it doesn't apply to service providers like DIRECTV because of so-called Department -- long-standing Department guidelines that were referenced in Lockwood Greene.
Now, no one at the Department has been able to explain to us what a "personal service provider" is and the language in Lockwood Greene certainly doesn't say anything about

Page 21

personal service providers.
Moreover, we've asked the Department in discovery and in deposition of four witnesses for copies of these so-called long-standing guidelines and we haven't gotten a copy of them. In fact, not one of the four people that we deposed has ever even seen the guidelines.
Now, the Department's emphasis on the guidelines is somewhat of a distraction. The law in this case is clear. The statute and the case law say that services are sourced to the extent the services are performed in the state; that is the place of activity.
Now, as I said before, DIRECTV readily acknowledges that we have income-producing activities in the state and you will also hear testimony from DIRECTV's expert economist who will testify that an economically appropriate way of determining the extent that DIRECTV's income-producing activities take place in South Carolina is to look at the location of its payroll and assets.
Now, the Department will argue that DIRECTV is doing nothing other than adopting a cost-to-performance approach and that South

Page 22

Carolina is not a cost-to-performance state.
The Department entirely misconstrues DIRECTV's argument. DIRECTV is doing nothing other than looking to the place of activity and looking to where the services are actually performed as the statute and case law requires. In fact --
THE COURT: Can I stop you here?
MR. ROBERTS: Yes, sir.
THE COURT: I don't want you to lose track, so -- but you said a couple of things and I want to ask about. You said the economist will tell me that I can make my determination based on the location of the payroll and the assets.
Well, under that theory, you could have -- you could set up your payroll outside of the state, you could have assets outside of the state, but actually perform the services significantly within the state that argue that the percentage should be all outside of the state because that's where your payroll and assets are.
Isn't there a flaw in that argument?
MR. ROBERTS: Presumably one could do that, but that's -- that's not our facts and what the statute --
THE COURT: I know, but if that's your premise --

Page 23

I'm going with the premise.
MR. ROBERTS: Well, what the -- what this --
THE COURT: If that is the premise of the economist -- and I'm just trying to verify the authenticity -- the validity of the premise.
MR. ROBERTS: Let me try to explain what we're doing and hopefully this will answer your question.
The statute says you look to income-producing activity and the receipts are sourced to the extent that the income-producing activity is performed in the state.
So what our fact witness will do is we'll establish where the income-producing activities occur and all of the activities that DIRECTV does.
THE COURT: That will helpful.
MR. ROBERTS: But the statute then requires us to locate where those income-producing activities occur. And so -- and so what the economist will do is, is using sound economic theory, he's reviewed this and he's determined that a reasonable way of locating where the income-producing activities take place is to look at where the payroll occurs, where DIRECTV employees actually perform all of these

Page 24

services --
THE COURT: Okay.
MR. ROBERTS: -- that we're going to talk about, as well as the location of its assets, which would include the assets that we have in South Carolina.
THE COURT: Is there a distinction between activities and income-producing activities?
MR. ROBERTS: I think there could be. I think -- I think in this case, the testimony that you will hear today about DIRECTV's operations will establish that, you know, the content acquisition, all of these broadcast facilities, the up-link facilities, you know, the people who negotiate these contracts, those are all income-producing activities that DIRECT -- which are related to DIRECTV's provision of programming.
THE COURT: All right. I cut you off. Do you know where you were so you can get back on track?
MR. ROBERTS: I do, Your Honor. I just had one additional thought.
You know, DIRECTV's theory in this case is consistent with the plain language of the statute, with the theory of Lockwood Greene, as

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Page 25

well as with sound tax policy. Thank you.
THE COURT: Well, how about Mercury Motor Express? You cited that in your pretrial brief. How does that fit into this case from your perspective? I mean, I've read it, but tell me about that.
MR. ROBERTS: Well, Mercury Motor involved a case in which a taxpayer was a transportation company hauling freight and the taxpayer conducted activities both inside and outside South Carolina. And the special apportionment formula that applied to this type of company basically said you compute your tax based on miles in South Carolina over total miles.
THE COURT: Yeah.
MR. ROBERTS: And using that fraction, it was a 17 percent apportionment fraction. Now, the taxpayer says that that was distorted; that didn't fairly reflect its activities in the state because the activities -- the only activities that directly resulted in payment were the activities in which the taxpayer hauled freight into the state or picked up freight in the state and hauled it outside the state.

Page 26

THE COURT: All right.
MR. ROBERTS: And that accounted for only one percent of its activity -- sorry, that accounted for one percent of its income. And what the Supreme Court said in Mercury Motor is that, no, it was the solicitation, it's the hauling, it's the picking up, it's all of those activities that create the 17 percent. All of those activities are part of its unitary business and those were the activities that helped it produce the income that was at issue. And that's exactly -- that's on all fours with DIRECTV.
THE COURT: That's what I'm trying to figure out with -- if I could take the language out of Mercury Motor, it said, "While each transaction is necessarily incidental to the production of its income," comma, "the transaction which primarily earns the income is the hauling of the freight." It went with -- or the court said "primarily." So would I follow the tenets of Mercury Motors in analyzing this case regarding the -- looking for what primarily produces the -- I'm not -- I don't see the phrase right now -- the

Page 27

income-producing activity?
MR. ROBERTS: Well, the hauling of freight for DIRECTV, for instance, is akin to how its programming is produced and how it gets to the customers.
THE COURT: Yeah.
MR. ROBERTS: That's the up-link facilities, that's the broadcast centers, and that's the satellites. And what the court in Mercury Motor said is that there are all these activities, it's a unitary business, and all of these activities have to be considered. And it's the hauling of freight. We didn't say it was the picking up and delivering of freight only in South Carolina --
THE COURT: Well, I guess --
MR. ROBERTS: -- or else they would have sided with the taxpayer in that case.
THE COURT: I guess what I'm asking is, Mercury Motor seemed to be more of an "all or nothing" kind of approach; whereas, here, when you say "the extent," there's a percentage possibility, correct?
MR. ROBERTS: That is absolutely correct, Your Honor.

Page 28

THE COURT: All right. Thank you.
MR. ROBERTS: Thank you.
THE COURT: Mr. Condon?
OPENING STATEMENT BY MR. CONDON:
MR. CONDON: May it please the Court. This case is about a commoditized service that produces income only when it delivers its service onto -- into the homes and onto the television screens of South Carolina customers.
THE COURT: Wouldn't that be true with any service? Let's say I'm selling -- I'll go back to Lockwood. I mean, the engineers, they -- they did their schematic drawings and et cetera in South Carolina, but the -- under your -- how you just started out, they -- when they -- the client did not receive anything until -- or anything of value until they sent them the drawings and schematics. So, under that theory, then would the drawings and schematics be the service?
MR. CONDON: Well, Your Honor, what I just said was related to DIRECTV and we make a distinction
THE COURT: Okay.
MR. CONDON: -- for personal services in Lockwood. Because we are, as Mr. Roberts pointed out,

Page 29

looking at in both cases, Lockwood and in this case, what the income-producing activity is and really where it is.
And when you get to personal services, the Lockwood decision clearly stated that the customer's buying, quote, the expertise and time of an engineering professional. And that's what in Lockwood the customer was buying and primarily that's done when a Lockwood -- when an engineer sits at his -- or an architect or whatever sits at his desk in his home office, probably.
Here, similarly, we're just looking at the income-producing activity and what is the customer buying? The customer in this type of service is buying the receipt of the signal into his home and onto his TV screen. He's not buying the services of an engineer in California or a lawyer somewhere else negotiating contracts.

THE COURT: Those services don't make up that which he receives?

MR. CONDON: Could you repeat that?

THE COURT: Yeah. Those services, the engineer, the negotiating of the broadcast rights, et cetera,

Page 30

that doesn't make up that which the customer receives?

MR. CONDON: They are -- our position is they are important steps, but intermediate steps and similar to Mercury Motors that used the term "incidental" transactions or incidental steps to the income-producing activity.
So we certainly agree that they are important steps, but it's not what the customer is buying. It's not -- it's not what's generating the income from the service point of view.

THE COURT: All right.

MR. CONDON: Your Honor, you'll hear that DIRECTV does a lot of fancy things, you know, hiring -- you know, launching satellites, possibly, and hiring a lot of well-qualified engineers, rocket scientists, I'm sure. But these are, as I just stated, intermediate steps in a process whose ultimate goal is to deliver satellite TV onto the -- into the TVs and onto the screens of customers.
You'll likely be told -- and I think you were already told -- that the Department is ignoring all of these other activities, but we're not ignoring those activities. We're just

Page 31

determining where the income-producing activity is.
And, of course, as Your Honor knows, you know, DIRECTV will get a full -- or an appropriate income tax deduction for all of its costs related to all of its activities.
But, in fact, it is the -- it is DIRECTV that's ignoring the role of the customer subscriptions in producing income. And we take the position -- and you'll hear that in 2011, DIRECTV started to apportion a small part of subscription revenues to South Carolina based on a payroll factor. But that's a very small portion of South Carolina's subscription revenues and we don't think that's -- that rises to the level of recognizing the important role of customer subscriptions.
What the Department is doing is following Section 12-6-2290, which is now hidden up there, but that's the one that says you use a gross receipts ratio for service providers to apportion that income for service providers; that's what we're doing.
And we are -- have defined in our audit report and in our determination what the numerator is,

Page 32

and that's the gross receipts in South Carolina within South Carolina, and we believe those to be a hundred percent of the subscription revenues received from South Carolina customers.

THE COURT: Well, that's what I was going tell you. I don't think anybody is arguing about the gross receipts aspect. They're just arguing about the extent of the income-producing.

MR. CONDON: Right. And so that was my next point. So the next point, we're also following 12-6-2295(A)(5) which is the one, of course, that talks about income-producing activity and has that "to extent" language.
We are following that. We have identified the income-producing language -- or identified the income-producing activity, the delivery of the signal into the homes and onto the television screens of its customers for South Carolina customers. We know where that's happening. That's happening right in South Carolina living rooms all over the state, so.
So -- and then we are also following the "to the extent" language, because we're only apportioning to South Carolina the South

Page 33

Carolina subscription receipts. We're not apportioning North Carolina or Michigan or any other subscription receipts in South Carolina. So we're following that part, as well. We are only apportioning the receipts to the extent that they -- the income-producing activity is in South Carolina. The Department concluded, as you know in the determination, that it's --

THE COURT: Well, can I stop you here?

MR. CONDON: Yes -- yes, Your Honor.

THE COURT: When you say -- when you just said that, then do you interpret 2295 to be "the extent" language applies not based on an analysis of what may occur within and without of this state -- I don't know how -- I have trouble wording that. It seems to me that the way you did that is you -- you said, okay, the "extent" language only affects the analysis of how this state is affected, as opposed to other states are affected, and that is the purpose of that language; as opposed to getting a specific analysis pertinent to the state of South Carolina as to whether or not to what extent

Page 34

occurs within this state and what extent the business model has activity outside of the state.

MR. CONDON: Yes, Your Honor, I think --

THE COURT: Did you follow that? Because I --

MR. CONDON: Yeah, I did. I think I did, Your Honor.

THE COURT: All right.

MR. CONDON: And I think the result would be the same regardless of how you interpreted what I just said. But what I really -- what the view is is -- and I don't know how many customers DIRECTV has nationwide, but let's say they have a hundred customers nationwide and we've got ten percent in South Carolina.

THE COURT: Okay.

MR. CONDON: There are a hundred income-producing activities all over the country and -- you know, because they're happening in living rooms all over the country. Ten percent of those income-producing activities are happening in South Carolina because South Carolina customers are receiving those -- ten South Carolina customers are receiving those here. So we are looking at the income-producing

Page 35

activity on a global basis, on a nationwide basis. It's just when we get to the extent of, we only have to look at the South Carolina customers, because only those are in South Carolina, because those living rooms are here in South Carolina.

THE COURT: All right.

MR. CONDON: Okay? So DIRECT -- so DIRECTV's income-producing activity is -- for every one of those South Carolina customers is right here in South Carolina. Based on this, of course, we believe that a hundred percent of the subscription revenues from South Carolina customers should be in the numerator, the gross receipts ratio. And you will hear that that's how -- that's how DIRECTV originally filed their income tax returns for 2006 through 2008, by putting all the South Carolina -- all the subscriptions from South Carolina customers in its numerator. Of course, it then filed amended tax returns to move to a cost-to-performance approach to justify taking a hundred percent of those subscription receipts out; which, of course, gave rise to this review of their tax returns

Page 36

by the Department. You'll hear from the Department's economic and tax policy witness that the Department's position on including the gross receipts or the subscription receipts from South Carolina customers in the numerator is justified and there is sufficient evidence -- Mercury Motors being one -- but there's sufficient evidence and sufficient justification from other cases and from an economic analysis to do that. You will hear from the Department's employees that this position that the Department has taken in this case is consistent with how we handle apportionment for cable television companies and it's consistent with the Department's long-standing guidelines.

THE COURT: Where are those guidelines?

MR. CONDON: Those guidelines were developed in the '70s and, to our knowledge, they no longer exist in written form, except that they were written and entered into the record in Lockwood. And so we hope to have Your Honor take a look at those later, but -- so we do have them in a written form. They were stipulated to in Lockwood. But it appears as

Page 37

though they've been so ingrained into our culture that a document no longer exists.
THE COURT: Well, that's interesting.
MR. CONDON: But the Tax Commission --
THE COURT: It becomes so ingrained that it nothing -- it no longer needs to be in writing.
MR. CONDON: But you will hear -- well, one of the reasons for that is, is years ago -- and I'm not an expert at this, but maybe '70s -- '60s '70s, maybe even into the '80s, nexus -- you know, South Carolina or any state getting nexus against an out-of-state company was a big issue.
THE COURT: Yeah.
MR. CONDON: And so until that got resolved -- because now taxing authority states can get nexus over companies that don't have a physical presence in the state.
So until that got resolved, it was very -- it was -- it was a new thing for taxing agencies to kind of try to figure out how to source revenues from various types of service companies that may have a lot of activities in other states, or maybe all their property or payroll in other states, so. So it was

Page 38

developing at that time and I think that has now changed because the nexus issues were resolved quite a while ago.
THE COURT: All right.
MR. CONDON: Sorry for that long-winded answer or explanation.
But you'll also hear that South Carolina is not a cost-to-performance state for at least two reasons. It's not in the statute, the 2295(A)(5) that was listed over here. The -- it is not there and I'll talk about that in a minute.
And then, of course, our position is that Lockwood Greene -- and not just our position, but the Department's position since Lockwood Greene is that Lockwood Greene did not impose a cost-to-performance approach or a place of activity test on all service providers.
Personal service providers, yes, but not all service providers.
Regarding the Statute 12-6-2295(A)(5) --
THE COURT: Can you give me the theory for that distinction, the theory for having a distinction for personal service providers versus other providers?

Page 39

MR. CONDON: Well, the -- there's really two issues related to those.
THE COURT: And if I'm throwing you off and you want to respond later, I --
MR. CONDON: No, no, I'm happy to do it now, Your Honor.
But, as I stated earlier, in Lockwood, the court used the phrase "experience and time."
It really focused on the customer of a professional service firm was buying the experience and time of a professional engineer, in this case.
So -- and then it said looking at -- it didn't use the word "payroll." Payroll had been addressed in a previous paragraph, but, in essence, I think it was referring to payroll.
"Looking at the time spent," I think it said, of the engineer is a reasonable way to measure what he's doing.
So looking at the experience and time -- even though Lockwood did not use the term "income-producing activity," it's clear, I think, in the opinion that looking -- it found that the location, the place of activity of the engineer, his office, was where he was using

Page 40

that experience and time for the benefit of the customer.
Alternatively in DIRECTV, we're still looking at the income-producing activity, but the customer is not buying the experience and time of anybody; i.e., that's the distinction with personal services. He's buying a service; in this case, it's a viewable program.
THE COURT: All right.
MR. CONDON: So -- and then the other thing, the other part of that is whether cost-to-performance plays a part in any of that.
In Lockwood, the Department actually used -- I guess during its audit, used a payroll formula to, in fact, estimate the gross receipts of Lockwood from within South Carolina to put in the numerator.
The Department didn't have all of -- I mean, I think it could be taken for granted, the Department wouldn't have had all of the taxpayer's records. The taxpayer likely could have used invoices that it billed its customers to actually come up with an actual number. So payroll was really just used as a proxy to

Page 41

calculate actual gross receipts from within South Carolina.
So that's the position of why Lockwood -- the distinction Lockwood makes in personal services, time and experience, and that it really didn't require a payroll or any other cost factor. It used it as a proxy when the Department didn't have another -- didn't have records of the taxpayer to make a more accurate determination.
THE COURT: All right.
MR. CONDON: So I talked about the statute. 2295(A)(5) does not have cost-to-performance. There's a model act about apportionment you probably know about, the Uniform Division of Income and Tax Purposes Act, or UDITPA.
THE COURT: Don't know about that.
MR. CONDON: You don't know about that? You'll hear about it, but --
THE COURT: I'm going to dip into UDITPA, huh?
MR. CONDON: Yeah. So UDITPA -- but it's the Uniform Division of Income for Tax Purposes Act. It's a model act for apportionment. It was created in the late '50s and it hasn't changed since.

Page 42

It's Section 17 is the section that's applicable to apportioning net income for service providers. So its Section 17 is synonymous to our 2290, basically, and 2295(A)(5) -- or the purposes are synonymous. What you'll see is twenty -- is when our General Assembly in 2006, effective for 2007 tax years, adopted Section 12-6-2295(A)(5) to help explain gross receipts that were in 12-6-2290, when our General Assembly adopted that, it basically adopted Section 17 of UDITPA. But our General Assembly omitted the last five words of UDITPA Section 17 and those last five words were, quote, "based on cost-to-performance."
So it's absolutely clear that our General Assembly if it wanted to make South Carolina a cost-to-performance state, that it absolutely could have by adding those five words. It took the rest of Section 17. It could have added those five words, but it chose not to.
THE COURT: And that is significant to me for what reason?
MR. CONDON: That's significant because I think it shows legislative intent, that the Legislature

Page 43

did not mean South Carolina to be a cost-to-performance state. So using all of the payroll and property from out of state as the general rule, as a mandated general rule to apportion income for all service providers.
THE COURT: And I would like to know down the road under what theory of statute -- or can I pursuant to the laws of statutory construction come to a conclusion that the failure to adopt a new -- a portion of the Uniform Act carries significance as to the meaning of our current act? That goes for both sides.
MR. CONDON: Okay. Thank you, Your Honor.
THE COURT: All right.
MR. CONDON: So, just briefly, and then I'll close -- and also -- so that was talking about the statute not including cost-to-performance. Also, in Lockwood Greene, you'll hear that for decades -- that was a 1987 case. Since that time, the Department has never treated Lockwood Greene as imposing the place of activity test on all service providers.
THE COURT: All right.
MR. CONDON: Only on personal service providers. And, of course, since Lockwood Greene, we've --

Page 44

the Department has never interpreted Lockwood to mandate a cost-to-performance approach on all service providers.
Thank you, Your Honor, and we're ready to begin.
THE COURT: Well, not quite.
MR. CONDON: Not ready? Okay.
THE COURT: How about the audience approach? Because I haven't read your response. Are you -- or your pretrial brief. Are you arguing that approach in the pretrial brief?
MR. CONDON: No, Your Honor. The audience approach
THE COURT: Okay. If you're not arguing that, I don't need to ask you about it.
MR. CONDON: I mean, it's a similar approach to what we're arguing --
THE COURT: Okay.
MR. CONDON: -- because in the audience approach -- that was a Florida statute that -- I believe it was Florida.
THE COURT: Well, I think they said y'all argued the audience approach that 23 states had adopted?
MR. CONDON: That was in a footnote in our Determination, in our Department Determination,

Page 45

but --
THE COURT: So I don't need to consider that now?
MR. CONDON: I don't think so, Your Honor.
THE COURT: Okay.
MR. CONDON: I mean, that was an analogy of what other states are doing that are similar to what we're doing.
THE COURT: Okay. All right. That's one more thing I can delete off my outline.
MR. CONDON: Okay. Thank you.
THE COURT: All right.
MR. ROBERTS: And, Your Honor, I have four quick points, if I may.
THE COURT: Are we having counterpoint on opening statements? Never done that before, but -- all right. Do you believe that they've made a statement that is inaccurate that you need to correct?
MR. ROBERTS: I believe there are -- there's at least one statement that I would like to correct which is inaccurate.
THE COURT: Okay.
OPENING STATEMENT BY MR. ROBERTS (Continued):
MR. ROBERTS: Your Honor, they will talk about the tax returns and the position that DIRECTV took

Page 46

in its tax returns. I would just like to clarify for the Court that we're in court now and the position that we are taking in this case is that a percentage of its total subscription revenue should be included in the numerator of the receipts factor.
In fact, you will hear the testimony from our economist who will testify that on average for this period, .85 percent of DIRECTV's income-producing activities took place in South Carolina. And so, mechanically, the way that this would work would be that we -- similar to -- almost exactly what happened in Lockwood. We are using payroll and assets as a proxy. Lockwood used payroll as a proxy, exactly as Mr. Condon just discussed.
And what we would do, then, is take that .85 percent times DIRECTV's total subscription revenue and then that would go in the numerator of the receipts factor and then you would calculate your receipts factor numerator divided by the -- with denominator. So I just wanted to clarify that for the Court.
THE COURT: All right.
MR. ROBERTS: Thank you, Your Honor.

Page 47

THE COURT: Mr. von Lehe, did you ...
MR. VON LEHE: No, Your Honor. I put him up to that, so I was going to kind of --
THE COURT: Oh.
MR. VON LEHE: -- support him in it. So I just -- he said it, so.
THE COURT: All right.
MR. VON LEHE: Thank you.
THE COURT: Okay. Call your first witness.
MR. ROBERTS: DIRECTV would like to call Phil Goswitz to the stand, please.
PHILIP GOSWITZ, having been duly sworn, testifies and examines as follows:
MR. GOSWITZ - DIRECT EXAMINATION BY MR. ROBERTS:
Q: Can you please state your full name for the record?
A: Philip Joseph Goswitz.
Q: And who is your current employer?
A: DIRECTV.
Q: And how long have you been employed by DIRECTV?
A: I started with the parent to DIRECTV in 1979 as a satellite technician and then worked through school at Hughes Electronics, Hughes Space and Communications Group. I worked on all of the different aspects of building satellites and

Page 48

then in 1996, after building the first satellite for DIRECTV Latin America, I moved over to DIRECTV and I've been with DIRECTV ever since.
Q: And what's your current position at DIRECTV?
A: I'm the senior vice president of space and communications and video.
Q: And what are your responsibilities in your current position?
A: I've got three principal areas of responsibility. I am responsible for all of our video processing, so everything that has to do with processing the video signal and creating a very high quality video service. We bring in very high data rate video and my group is responsible for all of the video compression.
And we also do the space part of it -- that's the video part. The space part is the satellites and the rockets. I guess I'm the rocket scientist. And that's what most of my career was; that's my expertise.
And then we also do all of the communications, so the communications from the broadcast centers up to the satellites, the satellites

Page 49

themselves, and then the equipment in the subscriber's home, the rooftop dish, and all of the communications through the home.

Q: And what position did you hold at DIRECTV during the 2006 through 2011 period that we have at issue here?

A: I was -- in 2006, I was the vice president of space and communications and then in 2010 was promoted to senior vice president, and included the video and the broadcast engineering, in addition to space and communications.

Q: Okay. And what were your responsibilities in that position?

A: I was just the rocket and satellite part of that.

Q: And as the result of your position at DIRECTV during 2006 through the 2011 period at issue here, can you just please describe your familiarity with the various aspects of DIRECTV's business operations?

A: Sure. DIRECTV -- DIRECTV started as a company that did direct to home satellite distribution of video. So our principal aim is to package and deliver high quality video entertainment and we use satellites as the principal delivery

Page 50

mechanism.

We use -- we spend a lot of our time trying to procure the highest quality content, to set up exclusive arrangements with content that we believe will set us apart.

We like to think we have a premier brand at DIRECTV, so we provide things like the NFL Sunday Ticket so that our subscribers can see every game; that's an exclusive arrangement that we have with the NFL. Very expensive, but we think worth it.

We do special coverage of events like the Masters, close by here at Augusta, that puts up a mosaic mix on a particular channel so that you can see the leaders, Amen Corner, a lot of different views around the course that you can appreciate the event. And then our customers can go to that and select whichever -- whichever particular view they would like and that gives our customers an exclusive, differentiated kind of sporting experience.

So it's the creation of a unique video experience, along with the delivery of classic video content, like ESPN and HBO, that kind of builds our brand and that we use to try to set

Page 51

us apart.

So the biggest part, I think, is the -- is the -- is the procurement and the curation of high quality content and all of the broadcast operation associated with collecting, processing that signal, and distributing it to our customers through our broadcast infrastructure, which includes the satellites.

You know, we take a lot of pride in our marketing and sales. You know, we try to have very distinctive advertising. Like it or not, most people probably know about the Rob Lowe commercials and things like that. And then we, of course, have our customer service, which we spend a lot of time and a lot of -- a lot of effort into making that as good as possible.

Q: Thank you. And what do you consider to be kind of the principal value drivers of DIRECTV's business?

A: Pretty much what I just said. It's kind of content, the broadcast operations and distribution, the marketing and sales, and the -- and the customer care.

Q: All right. Now, what activities do you consider to be necessary for DIRECTV to provide

Page 52

its programming activities or what activities are related to its programming services?

A: We -- we do a -- we do a lot of negotiation with content providers, to try to set up deals that allow us to provide the highest quality programming without having to carry a lot of sub-tier programming.

Programming providers like to monetize all of their content and most of it -- a lot of it is not as popular with our customers, so we use our -- the size of our company and our brand in order to negotiate only the highest quality programming that we carry.

We do put a lot of effort into creating a unique sporting experience for sports fans. So, for example, we're at the Super Bowl now and we're creating an entire week of events called SuperFan around the Super Bowl. We'll do the same thing with the Augusta National Golf Tournament and other tournaments that take place.

So we put a lot of effort into our own content creation and positioning our content uniquely. So I think a lot of it has to do with the creating a -- just a premier quality video

Page 53

entertainment that we then package and distribute.
Q: Where is DIRECTV's corporate headquarters located?
A: The company started in Los Angeles and -- and that's principally where all of our -- all of the business units within our company reside. We started to have a -- also a corporate office in -- as you can see there (indicating) in New York. So we have a corporate office in Rockefeller Center and -- and that's where we're principally located.
Q: And what functions are housed at the headquarters in California that you mentioned?
A: We've got the bulk of our operations, so we have all of our executive offices. We have finance, legal, human resources, IT. We have our core engineering functions that are there. We also have the -- the areas of sales and marketing and customer care.
Q: All right. You mentioned a few minutes ago that content acquisition was one of the principal value drivers. Why is the type of content important to DIRECTV?
A: Well, that's what -- as much as I like to think

Page 54

that they love the satellites, it's the -- actually the football and the HBO and the movies and the entertainment experience. So our customers -- we like to say "content is king" and so the procurement and the -- the positioning of that content is -- is -- is really the key.
Q: Okay. And during the 2006 through 2011 period at issue, what types of general types of programming were offered?
A: We have -- you know, we -- the first type of programming that we have are movies, so we get movies through negotiated arrangements with the studios. Then we have network television, so we have the major classic premier networks like HBO and ESPN and Starz and things like that. And then -- so that's the second type.
The third type are kind of our premier sporting events, NFL being the -- the marquee that we have that exclusive arrangement for Sunday Ticket with. But all the other leagues and -- and we try to have unique experiences for our customers; things like, for tennis fans you -- you have this unique DIRECTV mosaic where you can go in and watch several matches at once at

Page 55

Wimbledon, for example.
And then the fourth would be local channels, so that people get their -- within a given market area, they get their ABC, CBS, NBC, FOX, as well as all the -- all the local channels in a given market.
Q: What type of original programming is offered by DIRECTV?
A: We do -- we do several types. We do our own series, so we have a series like "Rogue" or "Sunday Night Lights" -- "Friday Night Lights", which is kind of a football show, high school football show.
We've got our own originated series. We have our own originated sports. We do specials around Super Bowl or around major events. We do morning -- morning sportscast shows that are on our audience network. We do special pay-per-view events for boxing. We have our own branded kind of ultimate fighting, called "Bare Knuckle Boxing," BKB, and we have our own sporting events like that. And then we also have Guitar Sessions. We have musical specials that we film.
Q: And where are the employees who are responsible

Page 56

for developing that programming located?
A: In Los Angeles.
Q: And you mentioned a few minutes ago about the Masters experience. Can you provide a little more detail as to exactly what that is?
A: Sure. We have an arrangement, exclusive arrangement with CBS and the Masters in order to put multiple cameras out on the course so that we can see -- you see the -- the network coverage of the tournament that's provided by CBS, but we also have a fixed camera on Amen Corner.
We have a fixed camera on some of the marquee groups, the leader group, and -- and then the 16th hole, some of the classic holes, 11, 12, 13. And customers can -- if they love a particular hole, they can select and watch only that hole, or they can watch -- go back to the network coverage or they can just follow the leaders.
Q: And how does DIRECTV develop that programming?
A: Well, we -- our content group and engineering work together to create a new technology that provided this multi-pane experience, our so-called mix channel. And by working

Page 57

together, we were able to brainstorm and create this kind of unique technology that -- that we've trademarked and patented and it allows us to create just an immersive differentiated experience for, you know, kind of high-end sports fans.

Q: And, again, I think you briefly touched on this, but what exactly is the NFL Sunday Ticket?

A: The NFL Sunday Ticket is an exclusive arrangement with the NFL whereby we can show, and we do show, all -- every single NFL game. So there's two sets of games on any given Sunday, the morning and the afternoon games, and we show all of them at once.

So in order to view that, a customer goes to -- in the 700s. You watch -- there's a mix channel, for example, that shows all of the games at once and then you're allowed to, by selecting on that pane, watch whichever game you want or you can watch the mosaic that has all of them.

Then we have two kind of special feature additional channels that we actually create and produce in our Los Angeles broadcast center.

Page 58

One is called the -- the Red Zone and the Red Zone refers to the scoring -- you know, you're in the red zone when you're within ten yards of the goal line.

It refers to the highlights, so it shows highlights around the league, special plays. That allows our customers to instead of trying to frenetically go between games, if they don't have a favorite team, they can just watch the highlight channel.

And then the other thing we've created is called Fantasy Zone, that has a special focus for people who are fantasy football fans. It allows you to track individual player performance and scores so that you can keep up with your fantasy football, which has become -- we just started that this year and it's very popular.

Q: And you mentioned several types of original programming. Was that type of programming offered during the 2006 through '11 period, as well?

A: Yes. From what I just talked about, the only thing that was -- that just recently innovated was that Fantasy Zone, the Red Zone, and the

Page 59

NFL Sunday Ticket all at this ...

Q: What's the importance of these types of exclusive arrangements that DIRECTV has with third parties like the NFL?

A: You know, our goal is to create a differentiated experience, something that our customers can turn to or that -- from a competitive perspective, when a customer is looking at different entertainment options, Comcast or AT&T U-verse or Verizon FiOS or whatever other services are available in your area, DIRECTV wants to have a distinct brand. We like to -- we believe our brand we've created over the last 20 years is around a premiere video experience and especially for a premier sporting experience.

Q: Okay. You also mentioned that DIRECTV acquired programming from third parties and you mentioned, I think, ABC and ESPN and several others. How are DIRECTV's arrangements with those content providers memorialized?

A: Well, we -- we have a large group of hard-working lawyers that negotiate with the studios and with all the leagues to kind of around the -- around the -- year-around

Page 60

negotiations with all the different content providers.

The cost of content has become one of the biggest costs of our business. We -- we just negotiated an NFL deal which is about, I think, one and a half billion dollars a year for that, for those rights, so they're one of the largest costs of our business.

Q: And where are the employees located who negotiate those agreements?

A: Los Angeles.

Q: And which legal entity are those employees employed by?

A: DIRECTV, Inc.

Q: Which legal entity holds the contracts with the content providers?

A: DIRECTV, Inc.

Q: Okay. How does -- would DIRECTV collect the programming content from the national broadcast networks like CBS and ABC?

THE WITNESS: Is it okay if I talk to the chart? Your Honor, may I --

THE COURT: Talk to the chart?

THE WITNESS: May I approach the chart?

THE COURT: Okay.

Page 61

THE WITNESS: I can kind of show you from up here.
THE COURT: I'll let you use the chart --
THE WITNESS: Okay.
THE COURT: -- and talk to the rest of us.
THE WITNESS: So the content comes from -- for example, I'll take HBO, for instance. HBO is in New York and our up-link -- all of our national up-links are in California, here in Los Angeles.
So what we typically do is fiber the content across the country. Our satellites are actually sitting up here. You can see we have 11 satellites that are kind of sitting over the center of country. They're actually 22,000 miles above the earth and they're actually going about mach ten, so they're going very fast, 7,000 miles per second, and -- but they appear stationary because they're rotating once every 24 hours, their orbital period, so they look stationary to the Earth that's rotating at the same rate.
And so what we do is we either -- we collect most of that via fiber. So our national -- we put down two types of beams of energy. One is a beam of energy from the satellite that covers

Page 62

the entire United States, as well as Alaska, Hawaii, and Puerto Rico. Or we put down tight little beams of energy that just provides local channels to a given market.
So our -- for the various types of content that we have, from the studios, we fiber the content, the movies from the studios to our broadcast centers.
For our sporting events, we pick up the content that's provided either by the service provider satellites. For example, if ESPN is doing the College National Championship, like last night, we picked that up from a satellite that was broadcasting it that was used by ESPN to go from the game in Texas back to our broadcast center, or we use fiber.

Q: All right. I think you mentioned that -- about the broadcast centers. Where are the broadcast centers located during the 2006 through 2011 period?

A: We have two central broadcast centers, the first is Castle Rock, Colorado; that was the original broadcast center when the company started in 1994. And then in 1998, we created the second broadcast center, which is in Los

Page 63

Angeles. So those are the two central broadcast centers.

Q: How does -- would DIRECTV collect the programming from the local broadcast stations?

A: Local broadcasts are -- you know, we have a lot of channels. We have several hundred -- over 200, for example, high definition national channels, but we have over 1500 local channels. So what we have to do is, every single market -- there's 210 markets in the United States, designated market areas which are Nielsen assigned areas for -- that have -- going way back to the original off-air broadcast of satellites of -- excuse me, the original off-air from antenna towers distribution of television back in the '50s and '60s.
Those designated market areas each have their own ABC, CBS, NBC, FOX, et cetera, public stations, free-to-air stations. And so they pose a particular challenge to get the programming to the satellites.
So what we do in those instances is in each market, each of the 200 -- in the 50 states, there's 210 designated market areas. We have

Page 64

to collect the off-air signals and fiber them to an up-link facility.
So what we do is, each market has a local collection facility, which is just an antenna and a video encoder; usually an antenna and a small rack of equipment. That signal then collects from all 210 markets and takes them to six different up-links throughout the United States.
We've got one in LA. You can see one in Arizona, one in Washington, one in Minnesota, one in Virginia, and then one in New Hampshire. We also have an antenna that we use for up-linking in Atlanta, but -- so the basic architecture for local channels is that within each of these 210 markets, an LCF is used to distribute back to the six up-links which go to the satellite and then down to our customers.

Q: And how many local collection facilities were in South Carolina during the 2006 through '11 period?

A: We had four.

Q: And where were those facilities located?

A: We have Charlotte, Columbia, Greenville, and Myrtle Beach.

Page 65

Q: And which legal entity owned of the local collection facilities?
A: DIRECTV, Inc.
Q: What geographic area are local collection facilities typically located in?
A: Well, the -- they're close to the central tower that used to -- back before satellite and before cable, when there -- every city has kind of a central high-point location that it broadcasts its radio signals, its television, using UHF frequencies and VHF frequencies, so -- and people used to put up aerial antennas on their roofs. So everything is kind of developed around that. So our local collection facility is typically near that radio frequency tower.
Q: A few minutes ago you discussed designated market areas. What exactly is a designated market area?
A: A designated market area is a designation from the Nielsen company that for a long time has been measuring consumer behavior, and with the advent of television and -- well, radio before and then television after, they broke the United States up into 210 markets.

Page 66

Q: And how many designated market areas cover South Carolina?
A: Seven.
Q: And what counties in South Carolina are covered by those DMAs?
A: Well, you've got the four that I just listed. You've got Charlotte, Columbia, Greenville, and Myrtle Beach. But then you've also got one from Charlotte, North Carolina, that comes down into -- it covers part of South Carolina. You've got Savannah, Georgia, and you've got Augusta, Georgia.
Q: And what's the relevance of what we've designated market area to the local programming that a customer can watch?
A: By law, you can only view local channels in your -- from your designated market area. So the challenge for DIRECTV is we have to -- for example, in Columbia, South Carolina, we have to take channel four and get it to the satellite, send it up to the satellite, send it back down, and it has to be viewable only to consumers in Columbia, South Carolina.
Q: And you mentioned, for example, that the Charlotte, North Carolina, designated market

Page 67

area covered areas in South Carolina, as well. What local programming would South Carolina customers in that designated market area watch?
A: They watch the -- they watch the local programming that's in that designated market area. So if you're in a part of South Carolina that's near Charlotte and you're in the Charlotte designated market area, then you watch Charlotte local programming. If you're in Savannah, you watch Savannah local programming. If you're in Augusta, you watch Augusta local programming, if you're near the edges of those -- if you're in those designated market areas which actually cover both states.
Q: And let's just take Charlotte, North Carolina, for example. Would the programming in that designated market area be collected from local collection facilities in South Carolina or in North Carolina?
A: The -- the local collection facility for Charlotte is in Charlotte; it's in North Carolina.
Q: You mentioned before that the national programming from the HBOs, things like that, were sent to the broadcast centers. Can you

Page 68

describe the functions of the broadcast centers?
A: Sure. The broadcast center has a lot of functions, but for each of the different content types, for movies, they -- we receive all of the movies in a very secure format from the studio, so piracy is one of the biggest problems in our -- in our industry. So having a highly secure protected environment, encrypted and highly secure environment for movies is critical.
And then we have play-out of the movies. So the movies are sent through all of our video processing equipment to compress the signals. Quality assurance is done to make sure that the copy is perfect and then it's sent to the satellite and down to our customers.
For network programming, we receive all of the fiber feeds and everything comes in with different video formats, so we have to convert those to a standard format, we then compress it, and then send it to the satellite, which goes down to our customers. We have sporting events, sporting -- sports, we do a lot more of our production around.

Page 69

So, for example, the NFL feeds all come in, we create a mix channel for the NFL Sunday Ticket experience. We then have a production studio that takes all the games, views them in real time with a producer, actually creates a show called The Red Zone that then shows the highlights with a live commentator and host taking you from game to game.
So sporting events has a lot of production in addition to the video distribution and then we have our local channels. Local channels are done not -- are done at the broadcast centers, but they're also done at these other up-link facilities, so we have the six up-links that I described earlier.

Q: And what types of employees are involved in the operations of the broadcast centers?

A: We have all sorts of broadcast technicians and broadcast engineers of various types, from electrical to software to -- to encryption specialists.
We have all of the entertainment types. We've got cameramen. We've got production experts. We've got video operators. We've got all kinds of entertainment technical direction. So

Page 70

you've got a diversity of personnel from broadcast technicians to real sports production.

Q: Okay. And where do those employees primarily work?

A: In Los Angeles.

Q: You mentioned that --

A: We have --

Q: Sorry.

A: -- in Los Angeles for the Los Angeles broadcast center and then in Castle Rock, Colorado, south of Denver for the Colorado broadcast center.

Q: You also mentioned that local programming was sent to the regional up-link facilities.
Please describe the functions of the up-link facilities.

A: The up-links facilities are pretty much, they collect the local channels for, on average, 210 divided by six different markets, so each one is responsible for collecting all of the local channels from the local collection facilities in their area.
So a local collection facility receives the off-air signal, interactive equipment compresses the signal, puts it on fiber, that

Page 71

goes to the up-link facility, and the up-link facility uses a large antenna to broadcast the signal to the satellite. The satellite receives it and sends it to the -- our customers.

Q: Which legal entity owns the broadcast centers?

A: DIRECTV Operation.

Q: And which legal entity owns the up-link facilities?

A: DIRECTV, Inc.

Q: Where's the local programming sent after it reaches the up-link facilities?

A: The local programming after it reaches the up-link facility is sent up to the satellite.

Q: And where is the national programming sent after it reaches the broadcast centers?

A: Let me just answer the last one a little more precisely. The -- the local channels are sent up to the satellites but they're down-linked in little spot beams.
So we create two types of beams from our satellites, one covers the entire United States with the same programming, and one puts down a little spot of energy that contains only the local channels for one or a small set of

Page 72

designated market areas.
So for local channels, the LCF sends signals to the up-link that goes to the satellite and it comes down in spot beam, a tight little spot beam on that market.

Q: You mentioned that national programming would -- I think you described as conus beam.
So would people all throughout the country receive the same signal?

A: Right.

Q: Okay. And with local programming and the spot beams that you mentioned, is it possible that people in separate DMAs could receive the same programming?

A: Yes. So we put down this -- as tight a beam of energy as we can, but we typically cover multiple designated market areas. So each beam of energy carries multiple DMA's worth of content, of channels, of local channels. And then we use conditional access to only allow the customers in a given designated market area to see their programming. They're blocked from seeing, for example, NBC in the adjacent DMA.

Q: How many satellites did DIRECTV own during 2006 to '11 period?

Page 73

A: Eleven.
Q: And which legal entity owned the satellites?
A: DIRECTV, Inc. I'm sorry, DIRECTV Enterprises.
Q: What's the importance of the orbital slots that the satellites occupy?
A: They're just a vital crown jewel of the company. They -- we have orbital slots that see the entire United States, so they're very centrally located. So customers from the tip of Florida to Texas up to Washington or to Maine, wherever you are in the United States, you have a clear view of the satellites. So we have a single dish that can see all of our satellites.
And that's the -- they represent the spectrum, the pipe; that is often referred to as our broadcast pipe. We have a very -- a very, very high band width, high through-put fast pipe into people's homes that represents the spectrum from our satellites into our subscribers dish.
Q: Okay. So we've got the programming up at the satellites. Please describe how a customer receives the programming.
A: The customer puts a dish on their roof and, as

Page 74

I said, the satellites are orbiting but they appear motionless. So an installer puts a satellite on our customer's home and the satellite is pointed -- the dish is pointed at the satellites to receive the signal.
THE COURT: Did you say -- I think you might have misspoke. Did you say puts the satellite or satellite dish on the customer's home?
THE WITNESS: Yeah.
THE COURT: I didn't hear "dish."
THE WITNESS: The dish.
THE COURT: Okay.
THE WITNESS: Sorry. The -- sorry, Your Honor.
A: The dish is positioned on a customer's home to view the southern sky where the satellites are and then the signal is received by the dish.
The installer then routes a coaxial cable to our set-top box, which is then connected to the customer's television and they can view the programming.
Q: Which legal entity owns the set-top boxes?
A: DIRECTV, Inc.
Q: And does DIRECTV have set-top boxes in South Carolina?
A: Yes.

Page 75

Q: Does DIRECTV have set-top boxes in all 50 states?
A: Yes.
Q: Are customers charged a fee for the set-top boxes?
A: Yes. In -- I think it was 2008? I can't remember what year, but we started -- we transitioned during this time frame to a lease model where the customer -- the company owns the set-top box and the customer pays a lease fee.
Q: Shifting gears a little, you described previously that customer service in your mind was one of the value drivers of DIRECTV's business. Where are -- would DIRECTV's customer service functions handled?
A: DIRECTV customer care is headquartered -- it has a large executive presence in Los Angeles and kind of a core organizational center in Denver, but it's -- our call centers are where customer care occurs.
When customers have questions, technical questions about their equipment or their bills or about the programming, programming packages, they call one of our six customer care

Page 76

facilities, which are shown on the map there (indicating) with the little phone, the headset.
Q: How does a customer go about scheduling installation?
A: They call 1-800-DIRECTV. So the goal of all of our advertising and all of our print media and all of our Rob Lowe ads or any ads that we're running is to get people to call 1-800-DIRECTV and to place their order with the company.
Q: Who owns and operates the call centers?
A: DIRECTV Customer Service.
Q: Were all the call centers owned by DIRECTV?
A: No, they're both -- some of them are -- some of them are third party and some of them are owned by the company.
Q: Where were the owned call centers located during the 2006 through 2011 period?
A: We had six of them and they're kind of shown on the map there (indicating) in Missoula, Montana; Boise, Idaho; Colorado; Tulsa, Oklahoma; then we've got one in Alabama there and one in Virginia.
Q: All right. Were there any owned call centers in South Carolina during the 2006 through '11

Page 77

period?
A: No.
Q: Were there any third party call centers in South Carolina during that period?
A: No.
Q: You mentioned that one of the functions handled by the call center was to schedule the installation of the equipment. Please describe the installation process.
A: A call center representative takes the order from a customer, which involves understanding how many television sets they have, where they would like to view the programming, and what kind of programming.
They then convert that into an order, which is a certain set of equipment, that an installer drives around in a van. The installer goes to a home services center in his area, picks up the equipment in the morning, calls the customer, and there's an appointment made. The -- at that appointment time, hopefully, our installer shows up and goes on the roof, installs the dish, points the dish, and routes the coaxial cable into the customer's home to the various set-top box locations and connects

Page 78

it, checks the signal, and enables service.
Q: Are those installation services provided by DIRECTV employees or by third-party employees?
A: Both. There's -- there's an effort being made to bring most of that within the company, but there's still both third party, as well as DIRECTV.
Q: And which legal entity would employ the in-house installers?
A: DIRECTV, Inc.
Q: You also mentioned before and you touched on it just now that one of DIRECTV's value drivers was its sales and marketing activities. What's the purpose of DIRECTV's sales and marketing activities?
A: The purpose of the sales and marketing activities is to communicate the services that we provide and to show that distinctly with the distinct brand flair. So we try to appeal to a premium subscriber that wants the highest end video experience, as well as kind of a sports centric experience.
Q: What types of advertising campaigns does DIRECTV engage in?
A: We do -- we do national advertising

Page 79

that's -- we try to have a very distinctive advertising. You've probably seen -- currently we've got a set of hopefully humorous Rob Lowe advertisements, various forms of Rob Lowe selling -- distinguishing himself from his cable alter ego.
So we try to have creative -- our marketing group likes to say they create advertising as a feature film, as a feature event. They try to use the same production value and writing that is put into -- an investment that usually goes into feature length films.
Q: How does a subscriber sign up for DIRECTV?
A: They go to -- there's two ways. They -- principally we drive customers to call 1-800-DIRECTV or they can go to the -- to our website DIRECTV.com and order.
Q: Okay. I'd like to introduce Petitioner's Exhibit One. Can you just take a look at this, Mr. Goswitz and -- are you familiar with those documents?
A: Yes.
Q: And what are those documents?
A: This is our customer agreement, contract with our customers.

Page 80

Q: And all customers would then turn to those?
A: Yes.
MR. ROBERTS: I'd like to -- well, I move to have this entered into evidence as Petitioner's Exhibit One.
THE COURT: Any objection?
MR. CONDON: No, Your Honor.
THE COURT: It's admitted.
(Petitioner's Exhibit Number One was admitted into evidence.)
THE COURT: You seem hesitant. Y'all stipulated on the authenticity, but not on the admission, correct?
MR. ROBERTS: Correct, Your Honor.
THE COURT: All right.
Q: Mr. Goswitz, you just spent a lot of time discussing content acquisition, broadcast operation, and the up-link facilities. Those are expensive. Why does DIRECTV incur all these costs?
A: Well, it's the -- the cost of procuring the highest quality content is very high, especially with sports, and it's climbing higher and higher, but that's the cost -- cost of our business.

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Page 81

You know, you spend money to make money, so our cost is in a -- in procuring -- is dominated by the cost of the content and then our costs associated with -- with distributing that signal. Satellites cost $200 million, a hundred million dollars to launch, 300 million each, so it is costly. But we -- we -- with our 20 million subscribers across the United States, we have a very efficient delivery platform. So even though it's costly, we still are considered a cash cow business.

MR. ROBERTS: Thank you, Your Honor. I have no further questions right now, Your Honor.

THE COURT: Ms. Wooten?

MS. WOOTEN: Thank you, Your Honor.

MR. GOSWITZ - CROSS-EXAMINATION BY MS. WOOTEN:

Q: Just a few questions for you -- Mr. Goswitz? Am I pronouncing that correctly?

A: You are, yes.

Q: Okay. Thank you. You stated earlier that you are employed by DIRECTV. Are you employed by the taxpayer in this matter or an affiliate company?

A: DIRECTV, Inc.

Q: DIRECTV, Inc., okay. And just jumping to the

Page 82

set-top boxes. Are new customers required to own or lease the set-top box from DIRECTV in order to obtain the programming?

A: Correct.

Q: Okay. And can an individual or company purchase or rent the set-top box without obtaining the programming --

A: No.

Q: -- or purchasing the programming?

A: No.

Q: Okay. And you talked briefly about the installers. Does DIRECTV employ any installers in South Carolina?

A: Not that I'm aware of.

Q: Okay. And Mr. Roberts asked you -- or you -- y'all talked about value drivers. Is "value driver" an income-producing activity? The value drivers you talked about, the content acquisition, the broadcasting, the marketing, is that an income-producing activity?

A: I don't know. I'm a satellite engineer.

Q: Okay.

A: I don't know -- I wouldn't weigh in on definitions.

Q: Okay. And you talk about content development

Page 83

process that -- you know, the negotiation with content providers. Do customers have any input in that or is that between the attorneys with DIRECTV and the content providers? Is there any kind of customer input into that process?

A: I'm not sure I understand the question.

Q: Do customers have a role in content acquisition? The contracts that are negotiated between content providers and DIRECTV, do customers have a clear role in that?

A: No, we have the -- if I understand your question, the content acquisition is a direct exchange between DIRECTV's programming acquisition department and the programming provider, hopefully satisfying our customers.

Q: All right. And you also said that "As much as I'd like to think customers like the satellites, they're really interested in the content, that the goal is to provide the premium video experience to customers." Is that correct?

A: Correct.

Q: So the goal of really all of this is to provide -- to get customers to call and subscribe to DIRECTV. Is that a fair

Page 84

statement?

A: I'm not sure I understand the question.

Q: The customers are not interested in satellites. The customers are calling and subscribing to the service in order to get the programming and the content; is that correct?

A: Correct.

MS. WOOTEN: May I have a few moments, Your Honor, please? Thank you.

(Off the Record)

MS. WOOTEN: Okay. Just a couple more follow-ups.

Q: The installers you said not -- DIRECTV does not employ any in South Carolina. Are those done by third-party installers?

A: Correct.

Q: Would those be independent contractors?

A: Right.

Q: Okay. And then, lastly, just a clarification point. You were talking about the local collection facilities and you stated that there are four in South Carolina. You mentioned Columbia, Greenville, Myrtle Beach, and Charlotte.

A: Oh, I'm sorry, I meant Charleston.

Q: Charleston is the fourth one, okay.

Page 85

MS. WOOTEN: All right. That's all from the Department, Your Honor.
THE COURT: Redirect?
MR. ROBERTS: No further questions, Your Honor.
THE COURT: You may step down.
THE WITNESS: Thank you, Your Honor.
THE COURT: All right. We're going to take a five-minute break here.
(Off the record from 11:31 a.m. to 11:42 a.m.)
THE COURT: Y'all going to call your witness?
MR. VALLEJO: Yes, we'd like to call Professor Richard Pomp to the stand, please, Your Honor.
RICHARD D. POMP, Ph.D., having been duly sworn, testifies and examines as follows:
DR. POMP - DIRECT EXAMINATION BY MR. VALLEJO:
Q: Good morning, Professor.
A: Good morning.
Q: Could you please state your full name for the record?
A: Richard D. Pomp.
Q: And, Professor, where are you currently employed?
A: I hold two appointments. I am the Alva, A-L-V-A, P. Loiselle, L-O-I-S-E-L-L-E, Professor of Law at the University of

Page 86

Connecticut, and then Adjunct Professor of Law at NYU in the LLM program in taxation.
Q: How long have you worked for your current employer?
A: I've been at the University of Connecticut since 1976 and at NYU since 1989.
Q: I'd like to introduce exhibit, Plaintiff Exhibit Number Two to the Professor. This is a copy of your CV is it, Professor?
A: Yes.
MR. VALLEJO: Your Honor, would you like a copy?
Q: And is this an accurate reflection of your professional experience?
A: Yes.
Q: And is it up to date?
A: Yes.
Q: Could you please describe your educational background for us, please?
A: I have a Bachelor of science degree from the University of Michigan, suma cum laude. I have a JD degree from Harvard Law School, magna cum laude.
Q: And can you describe for us your teaching experience?
A: I have taught in the area of taxation,

Page 87

primarily state and local taxation, but other courses, federal income tax, American Indian taxation, but certainly every year at NYU, I do a two course state tax sequence.
Q: And could you please describe for us your professional experience as it relates to policy issues regarding state and local taxation?
A: I have lectured, taught, published, consulted, testified on issues of state taxation for nearly 40 years.
Q: What about any publications that you have authored? Can you describe those for us?
A: Yes, on -- on, let's see, page five of the CV, books and monographs are set forth and then articles.
Q: And have you ever testified before on issues of policy in connection with state and local taxation in the United States?
A: I have.
Q: How many times?
A: I would say nearly a hundred times.
Q: And have you testified on behalf of governmental taxing authorities before?
A: I have.
Q: And how many times on behalf of governmental

Page 88

taxing authorities?
A: I would say about 40 percent of my appearances have been for state tax departments or state subject.
Q: What about the Department of Revenue in South Carolina, have you ever consulted for them?
A: I have consulted with the Department and testified on its behalf two or three times.
Q: And have you ever served as an expert witness on policy involving state and local taxation in a South Carolina court?
A: I have.
Q: So you're familiar with policy considerations of various types of state and local taxes in the United States?
A: I am.
Q: And have you ever spoken publicly or do you speak publicly on the issues related to state and local taxation and the policy underlying those issues?
A: I probably speak at maybe 15 major tax conferences a year.
Q: What about more specifically state and local apportionment issues; that is, the manner in which income is apportioned to a particular

Page 89

state?
A: That's a major part of what most people teach in the state tax area, major part of what we write about, what we talk about.
Q: And more specifically, what about the assignment of receipts from services for the purposes of the sales factor apportionment; are you familiar with that?
A: Yes, that has become a very hot issue.
Q: Are you familiar with the term "income-producing activity" and how that applies in the context of assigning receipts from services?
A: I am.
Q: Are you familiar with the term "market-based approach" and how that applies to assigning receipts from services?
A: I am.
Q: What about any awards in the field of state and local taxation, Professor?
A: Those are set forth on page two. The end of last year, I received the Council on State Taxation's Excellence in State Taxation award. In 2013, Tax Analysts selected me as the State Tax Person of the Year. In 2011, I received a

Page 90

Bureau of National Affairs Distinguished Service in State and Local Tax Law. 2010, I was a part of State Tax Note's All Decades State Tax Team. In 2008, I won the NYU Institute on State and Local Taxation, Outstanding Achievement in State and Local Taxation award.
MR. VALLEJO: At this time I'd like to move to have Professor Pomp admitted as an expert in policy matters regarding multi-state taxation, including policy concerns surrounding apportionment of income.
MR. CONDON: No objection.
THE COURT: He's so qualified.
MR. VALLEJO: Thank you very much.
Q: Professor, did you prepare a written expert report in this case?
A: I did.
MR. VALLEJO: And if I may approach the witness, Your Honor.
Q: Is this report labeled Petitioner Exhibit Number Three the report that you prepared?
A: It is.
Q: And could you please review the exhibit quickly and let me know if this is an accurate

Page 91

reflection of your expert opinion in this case?
A: It appears to be.
Q: Thank you, Professor.
MR. VALLEJO: I'd like to move to admit the report into evidence as Exhibit Three?
MR. CONDON: Your Honor, the Department objects based on Rule 702. We believe the Professor's testified -- or at his deposition that his opinions are on the last page and at two of three -- at least two of the three opinions we believe give legal conclusions.
THE COURT: Any response?
MR. VALLEJO: Yes, Your Honor, Section 702 very clearly states that --
THE COURT: I'll tell you what. Hold on just a second. Let me get there. All right.
MR. VALLEJO: Section -- first, I'd like to -- like to say in South Carolina, as in most jurisdictions, whenever you have a nonjury trial, the Rules of Evidence are generally relaxed because, of course, Your Honor is perfectly competent to make a determination about admissibility and, therefore, also perfectly competent to make a determination as to what weight to give evidence.

Page 92

Now, of course, legal conclusions I understand --
THE COURT: Is there a case that says that out there?
MR. VALLEJO: Yes, sir, I could --
THE COURT: In South Carolina?
MR. VALLEJO: Yes, there's a South Carolina case that cites some federal authority and, in fact, I think very specifically states that in a nonjury trial, the role of the court is to admit all evidence and then look at the relevance and give proper weight to that evidence. I can cite that case for you --
THE COURT: I'd like to get it.
MR. VALLEJO: -- in a couple minutes --
THE COURT: Okay.
MR. VALLEJO: -- if that's okay with you. But that's just a general matter. 702 very clearly states that an expert witness can testify to the extent that it will help the trier-of-fact in understanding the evidence, in other words the facts in the case.
We believe that both Professor Pomp's report and his testimony will do just that. He will be providing, as he does in the report, context

Page 93

for the historical and policy development of the term "income-producing activity" and "market-based approach."
He'll be explaining, for example, UDITPA, which you've heard about earlier, and I understand that the Court may not be intimately familiar with it. And that's really the context of his testimony. We will not be asking him to apply the law in South Carolina to the facts and give you an ultimate conclusion of law in this case.
THE COURT: Any response to that?
MR. CONDON: Yes, Your Honor. In the -- Professor Pomp's report itself on page five under number three, he says he wasn't asked to opine on legal issues. But if you flip back to page nine -- or to nine, the conclusion, the next to the last -- or the third paragraph from the bottom in the last paragraph both give a legal conclusion as to whether the Department interpreted "income-producing activities" correctly. And Professor Pomp says, you know, the taxpayer -- the tax department disregards the -- these activities are lacking intrinsic value, is what he will say and we're not -- we didn't include them as income-producing

Page 94

activities.
MR. VALLEJO: Your Honor, that part of the report is quoting the Department Determination. The part of the report that Mr. Condon just read is quoting the Department Determination which states that those activities have no intrinsic value.
THE COURT: Can you hand that report to me?
MR. VALLEJO: Of course.
THE COURT: What page are we talking about?
MR. CONDON: Page nine. Second full paragraph on page nine.
THE COURT: Hang on a second. Let me look at the ...
All right. Following the holding of Vortex Sports versus Ware -- the cite is 378 South Carolina 197 in 2008 -- the Court in addressing another opinion set forth that the Supreme Court noted an opinion is not objectionable simply because it embraces the ultimate issue to be decided by the trier-of-fact. Supreme Court also found the affidavit contained, quote, "some helpful information," end quote, such as Professor's previous opinions as to value of stock and selling it for significantly

Page 95

less in the value than that value was proper.
Following that line of thinking, I'm going to allow that -- or at least that paragraph, if that's what you're objecting to, I think I can sufficiently distinguish it if it does touch on the conclusion of laws; although I think Professor Pomp is a very erudite individual.
I think my past history shows that I can go my separate way if I believe I should, so.
MR. CONDON: Okay. Your Honor, I also refer to the very last paragraph in the report.
THE COURT: All right.
MR. CONDON: Because I think essentially that says the same thing that -- that, you know, that the Department ignored outside activities and, hence, we got the income-producing activities incorrect.
MR. VALLEJO: Your Honor, I would have the same response to that. By the way, I mentioned a case that I would cite for you. It's Brown v. Allstate, 344 South Carolina 21, 2001, where the South Carolina Supreme Court stated, "A trial judge's role in a bench trial is to admit all evidence and then evaluate it in a nonjury setting." I think that's exactly what you were

Page 96

talking about doing earlier and I fully agree, of course, but the --
THE COURT: What trial -- what court was the appellate court reviewing?
MR. VALLEJO: This was a South Carolina Supreme Court decision.
THE COURT: What court was the Supreme Court reviewing?
MR. VALLEJO: It was reversing the Court of Appeal and determining that the Court agreed with the Court of Appeal's dissent. So it was a Court of Appeal decision that was being reviewed by the South Carolina Supreme Court.
THE COURT: And what court was the Court of Appeals reviewing, is what I'm getting at?
MR. VALLEJO: I don't know. I would have to look that up for you.
THE COURT: Okay. I don't think the Supreme Court is -- at least on the case law I've read reviews us based on the -- whether something is admissible under the Rules of Evidence.
And it almost sounds like you're taking an end run on the APA where it sets forth that we're here to -- we hear cases based on the Rules of Evidence. So I'm not going to follow that

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Page 97

theory. I'm going to stick with reviewing the case on the -- as I said Vortex.
I just overrule your objection. The first sentence certainly doesn't come to a legal conclusion and the final sentence sets forth that "but from a policy perspective" -- I mean, he's setting forth a policy perspective and not specifically how I should interpret it. I mean, I know that the -- they're pretty closely connected.
MR. CONDON: Right.
THE COURT: But you've allowed him to be qualified from the policy perspective, so I'm going to allow him to pursue that line of testimony.
MR. CONDON: Thank you for your consideration, Your Honor.
MR. VALLEJO: Thank you, Your Honor. I also would like to move to introduce into evidence Professor's CV, which was Exhibit Number Two.
THE COURT: Any objection?
MR. CONDON: No, Your Honor.
THE COURT: All right. So we're admitting Petitioner's Two and Petitioner's Three?
(Petitioner's Exhibit Numbers Two and Three were admitted into evidence.)

Page 98

MR. VALLEJO: Thank you very much. And I think, Your Honor, as we discussed earlier, this might be a good time to break for lunch. The next set of questions are my substantive questions for the Professor.
THE COURT: All right.
(Lunch break from 12:01 p.m. to 1:05 p.m.)
THE COURT: Y'all ready?
MR. CONDON: Yes, Your Honor. We just have one administrative item.
First, earlier this morning, the parties stipulated to 13 -- the admissibility of 13 exhibits, but we never identified them. So we figured we'd better identify them and get them properly numbered.
And so the 13 exhibits are actually in the Respondent's or DOR's exhibit notebook and they are labeled as Respondent's One through Thirteen.
These are tax returns, 13 tax returns, two field audit reports, and then the Department Determination. And so if it pleases the Court, we were thinking maybe those could just be labeled as Joint Exhibit One through Thirteen.
THE COURT: Well, has the court reporter already

Page 99

marked them?
THE COURT REPORTER: (Nods head affirmatively.)
MR. CONDON: Oh, has she? Okay. So we'll keep them as Plaintiff's One through Thirteen?
THE COURT: No.
MR. CONDON: I mean, not -- I mean Respondent's.
THE COURT: There you go.
MR. CONDON: Respondent's, yes.
THE COURT: And it's Petitioner's, too, so.
MR. CONDON: Okay.
THE COURT: It's not -- we don't have a plaintiff in the courtroom.
MR. CONDON: I understand. I'm thinking ...
THE COURT: I know. I'm just messing with you.
MR. CONDON: Yeah. So is that okay, they're marked as ...
MS. GEER: Your Honor, I just wanted to say, we don't care how they're marked as long as there's a stipulation in the record that those exhibits are jointly offered, that we are offering them in as evidence, as well.
MR. CONDON: We agree.
MS. GEER: Okay. Thank you.
THE COURT: When I was a trial lawyer, my goal was to get it in. I didn't care how.

Page 100

MS. GEER: Right.
MR. ROBERTS: Exactly, Your Honor.
THE COURT: So it's in.
MR. CONDON: All right. Thank you.
THE COURT: Respondent's One through Thirteen is admitted, so now it's in.
(Respondent's Exhibit Numbers One through Thirteen were admitted into evidence.)
THE COURT: I'm ready.
MR. VALLEJO: Shall I continue?
THE COURT: Yes, you may.
Q: Professor Pomp, right before we broke for lunch, I had handed you your report as I believe Exhibit Three. And I would like, if you would, to keep it handy. You might want to refer to it throughout your testimony. But, first, let me ask you a couple of foundational questions here. Have you reviewed the relevant income tax statutes that govern this case?
A: I have.
Q: And are you comfortable that you generally understand how they operate?
A: Yes.
Q: And are you familiar with how the South Carolina corporate income tax works in general?

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Page 101

A: Yes.
Q: I wonder if you could give us a brief description of the process that you would go through in order to calculate South Carolina corporate income tax.
A: Sure. And I
THE WITNESS: Your Honor, may I stand and not talk to the chart but approach it?
THE COURT: Yeah.
THE WITNESS: All right.
THE COURT: You could even mess with it.
THE WITNESS: I may flip it. And I know you are well-versed in what I'm about to do. I think some others here may not be and just for the record.
So, you know, we have before us a multi-state taxpayer and here is South Carolina and here's the rest of the country (indicating). And the issue that any state, of course, has to deal with is, all right, we know what the income is of a multi-state taxpayer and we could kind of use a pizza pie to reflect the income. What is South Carolina's slice of that income? What slice of that pizza pie can South Carolina tax? And so, in general terms, we start with the

Page 102

size of the pizza, which would be South Carolina taxable income, and then South Carolina, like almost every other state, will apply an apportionment formula to determine its slice.
And in the case of a service provider, South Carolina says, okay, let's use South Carolina gross receipts in the numerator of this fraction and let's use gross receipts everywhere in the denominator.
Q: Professor, if I could stop you for one second. How would you normally compute the taxable income in general terms?
A: Generally this -- this tees off of federal taxable income and then South Carolina will make certain unique South Carolina adjustments, so. None of that is at issue in this case. I think everyone agrees on what the starting point is in taxable income.
So now we have this fraction: South Carolina gross receipts divided by gross receipts everywhere. And that is essentially what -- I'm having trouble reading these, but that is essentially what 2290 says.
And this whole case is about the numerator.

Page 103

Everyone agrees, as Your Honor indicated in your opening comments, that the gross receipts here are going to be included in the South Carolina fraction, that there's no question but gross receipts for the performance of services will be gross receipts from everywhere.
The question is: Okay, those are the total gross receipts. How do we bore down and get the South Carolina gross receipts numerator? That's the question. That's what this whole case is about.
And there, 2295 cap (A)(5) gives us the South Carolina rule. It says, "If the income-producing activity is performed partly within and partly without the state" -- I think the whole purpose of our fact witness and that chart is to certainly support the proposition there's income-producing activity performed within and without the state -- "then sales are attributable to South Carolina to the extent the income-producing activity is performed within this state."
So we're looking to try to figure out the extent to which income-producing activity is performed within South Carolina. And you're

Page 104

going hear testimony from Dr. Cody as to how from an economic perspective one would answer that question.
But that's what we're talking about, is how to come up with the numerator of this fraction: South Carolina gross receipts. And we are told here's what we do. We've got to figure out the extent to which the income-producing activity is performed within South Carolina.
Q: And, Professor, you've mentioned the term reading from the statute "income-producing activity." I wonder if you could give us some historical and policy perspective on how that term "income-producing activity" developed.
A: And for that, Your Honor, we have to dip into UDITPA. There's no avoiding it because that, as you heard from State's counsel, is based on UDITPA, Uniform Division of Income for Tax Purposes Act.
And we turn the clock back, 1957. There's a lot of debate in this country about how the state should tax interstate corporations. The corporations are complaining the rules aren't uniform; they're being overtaxed. And the states are saying the rules aren't uniform and

Page 105

the corporations are escaping tax. And so there was a push to come up with a uniform statute.
And so the same group of people that brought us the UCC, the Uniform Commercial Code, got together and they formulated UDITPA.
And UDITPA takes two fundamentally different approaches to how you're going to source receipts to a state depending on whether you're talking about tangible personal property or whether you're talking about services.
And so I think Mr. Condon referred to Section 17 of UDITPA. There's Section 16 and Section 17. Section 16 deals with tangible personal property. And there, the Act sets forth this three-factor formula; payroll in -- I'll use South Carolina for convenience -- payroll -- I'll just make it U.S. for convenience.
It's interesting, long before Lockwood Greene in 1957, there's a payroll factor for tangible personal property. After that, we can look at property in South Carolina, property everywhere, and then, of course, the sales factor. Sales in South Carolina divided by sales everywhere. Call it U.S. And it's an

Page 106

evenly weighted three-factor formula. So A plus B plus C divided by three gives us some fraction.
This is Section 16. What's the definition of "sales" in South Carolina? Well, it's -- if the property is shipped or destined for South Carolina. So we actually do have some kind of destination principle. "Delivered or shipped" is the statutory language, delivered or shipped into South Carolina.
There were other approaches that the states use. This was a nice one and I'll tell you why it was nice. The Uniform Law Commission wants to be successful. And success for them is getting their statutes to be widely adopted. Uniform Commercial Code has been widely adopted. The states, of course, tinker with it, but it's been widely adopted, one of their great successes.
So if you're coming up with a uniform statute and you want it to be attractive to all the state so that they will get behind it and vote it in, you've got to have something in it for all the states.
The payroll factor, the property factor, that's

Page 107

great if you're a manufacturing state. The sales factor is great if you're a state that doesn't have much manufacturing but you got a lot of people in your state buying products that are made somewhere else. So you get to eat some of the pizza. The -- this is what we call the "origin states." Not to be confused with Lockwood Greene which talks about the origin of the payment. Very different concept. This is where the income-producing activities take place, the origin of the income: Labor and capital.
This takes into account the market. So a very nice political compromise. There is no grand economic theory. There is no rigorous science that underlies this formula.
As a matter of fact, there's a Nobel Prize winning economist who sort of made fun of the formula. He said, "Ah, concocted by a group of lawyers who if they ever knew anything about economics forgot what they knew."
But it's practical and it takes something that you really don't know where its earned income and you're going to answer that question with something that's knowable. We know where

Page 108

payroll is, property. The beauty of destination or shipped with tangible is you can see it.
So it's -- it was an attractive formula. And that's 1957, where a manufacturing economy, a mercantile economy, a lot of effort went into getting this right.
Then the commissioners said, "Well, what do we do about services?" And they have a separate section of UDITPA, Section 17. It says, "Okay, everything that's not the sale of tangible personal property." So our case services, that would be one of the things that's not tangible personal property.
So what do we do about services? And that's where they came up with, let's look at where the income-producing activities take place.
And the commissioners did something that you did not do here in South Carolina, to your credit, I think. I think the Legislature is one step ahead of the Uniform Law Commission.
The UDITPA formula -- I don't know. Do we have a copy for His Honor of Section 17?
But it says that we will do a ratio of income-producing activity that takes place in

Page 109

your state versus everywhere and we'll do this state by state. And then the State that has the plurality of the cost-of-performance will be the state that gets a hundred percent of the receipts.
So I'll demonstrate. It's kind of odd. I mean, you folks haven't done that, which is really good.
So let's suppose there are 32 states and when I look at the cost-of-performance that occurs in each of these 32 states, I determine it is three percent in each of these 32 states. In the 33rd state, however, my cost-of-performance turns out to be four percent. That 33rd state, because that's the state that has the plurality of the cost, gets a hundred percent of the gross receipts from this service provider.
THE COURT: I'm missing the cost-of-performance, how you move from that or to that from the income-producing activity.
THE WITNESS: Yes, that's why -- could you give His Honor the actual language of Section 17?
MR. VALLEJO: Yes, this is Exhibit Sixteen, which has been labeled.
THE COURT: Labeled but not admitted?

Page 110

MR. VALLEJO: Not admitted yet.
THE COURT: Okay.
THE WITNESS: Is there a copy for me?
MR. VALLEJO: We can move to have it admitted at this time, if you'd like.
THE COURT: Any objection? Any objection?
MR. CONDON: Can I make sure --
MR. VALLEJO: Sure.
MR. CONDON: -- this is what you gave me?
MR. VALLEJO: This is it right here, yeah, Exhibit Thirteen (sic), which the clerk (sic) has labeled.
MR. CONDON: Okay. No objection.
THE COURT: It's admitted.
THE COURT REPORTER: You said Thirteen?
MR. VALLEJO: Thirteen.
THE COURT: Well, this says Sixteen.
MR. VALLEJO: Oh, my apologies, that's Sixteen. I was looking at the three when I handed it over to you. It should be Sixteen.
THE COURT: All right. Sixteen is admitted.
(Petitioner's Exhibit Number Sixteen was admitted into evidence.)
THE WITNESS: All right. So let us take a look at Section 17 on page ten of eleven in my version.

Page 111

And it says, "Sales other than sales of tangible personal property" -- so that would include services -- "are in this state" -- and if you look at cap B -- small (B) -- "the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state based on cost-to-performance."
THE COURT: Okay. There you go.
THE WITNESS: So that's -- that's where they're setting forth how to measure an income-producing activity, how to compare it from state to state. And they are saying, well, use cost-of-performance.
The Legislature here did two very positive things, in my opinion. One, as Mr. Condon already indicated, they dropped the "based on cost-of-performance." So they haven't prohibited it. They haven't mandated it. They're just giving the taxpayers and the Department some flexibility in how to go about determining the proportion of income-producing activity that takes place.
The second major improvement by the

Page 112

Legislature -- this is what we call "all or nothing" -- that sales from services will be in the state if this state has a greater proportion of the income-producing activity than any other state does.
So this 33rd state that has four percent of the income-producing activity would have a greater proportion than these other 32 states that have three percent and that 33rd state would get a hundred percent of the gross receipts.
And that's been a well-criticized rule because it is "all or nothing." Look at the virtue of the South Carolina rule: "Sales are attributable to this state to the extent the income-producing activity is performed within this state."
So what that means, in a state that has the South Carolina rule, each of these 32 states would pick up three percent of the gross receipts, the 33rd state would pick up four percent of the gross receipts. It mitigates the harshness of the "all or nothing" rule.
So two very notable changes, both very positive at least in my opinion from a policy

Page 113

perspective.
Q: And, Professor, I believe Mr. Condon said in his opening statement that South Carolina had adopted Section 17 but omitted the cost-to-performance language, which is what you were just telling us about.
You've also added that the proportionality portion of this statute is different and you've explained why you think that's better. But could you explain to us why you think dropping "cost-to-performance" from the statute is better from your perspective as you just testified?
A: That UDITPA Section 17 ties the hands of both the tax department and taxpayers by mandating the rule for determining income-producing activity.
It says in Section 17, "based on costs of performance." So they are telling taxpayers, they are telling the tax department, this is how you measure income-producing activity. The South Carolina Legislature is not telling anyone how to go about it. Just do presumably what makes sense, what's reasonable, even if you deviate from a cost-of-performance

Page 114

standard.
Q: Professor, how did you come to be so familiar with UDITPA and its history?
A: A lot of time on my hands, huh? In 2007, Your Honor, the Uniform Law Commission decided it was time to revise UDITPA. They've held it forth as a model unchanged from 1957.
Absurd to think of anything from 1957 is going to be a model, but it had never been changed, and they took on the project. They said, okay, it's been long enough. We're going to revise it.
They hired myself and a well-known person in the state tax field to serve as co-reporters.
And we met with them and we said, "You know, this is a pretty contentious project," and they said, "Don't you worry. We have a backbone here at the Uniform Law Commission." And we said, "It's not the Anatomical Gifts Act. You know, this is series stuff." "Don't you worry."
Well, they should have worried because they experienced a well-orchestrated pushback by the business community. And with real egg on their face, in 2009, they abandoned the project.

Page 115

Their budgets are dependent on state legislatures and the lobbyists were clever enough to try to cut their budgets if they were to push forward on this project. No more nice meetings in San Diego. And so they saw the handwriting and they said, "No, no, maybe we'll do this sometime in the future but not for now."
The Multistate Tax Commission, which is an organization that represents the states, voluntary basis, took on the challenge. The Multistate Tax Commission is the administrative arm for something called the Multistate Tax Compact and that compact adopts UDITPA.
So they said, "Okay, you know, we administer UDITPA. We issue regulations. We're going to step into the vacuum because we have a backbone, because we take on big business all the time and we're not coward by big business."
So in about 2009, they formed some working groups to come up with proposals to amend UDITPA. They had a hearing in 2013. I was the Hearing Officer. So we had awful lot of input. I issued a report in 2014. They studied the report, my recommendations, and they have

Page 116

pushed forward on a number of fronts, one of which is to revise Section 17 by moving to a market-based approach.
And this is what we would call "origin based." This is where the corporation generates its income, where its income-producing activities take place. Market is destination; that says, okay, well, where were your customers? I mean, the problem with market, Your Honor, is it can mean different things because it's not so self-defining what the market is.
Well, the proposal by the MTC when it comes to services is, look to place of delivery. Where is the service delivered? Other states say, "Oh, look to where the benefit of the service is received." Some states have shorthanded those problems by saying, "Well, let's look at the billing address. Let's look at the office from which the order was placed."
There's a variety of approaches around the country right now. So it's not -- you know, people say, "Oh, market-based sourcing." You have to ask the next question: What do you mean by that? Well, we know what the MTC means by that. It means, where is the service

Page 117

delivered?
And that can be quite tricky. It's not so obvious. And if you want to just take a simple example of a law firm that is hired to deliver an opinion and they send the client an e-mail with the opinion as an attachment, which general counsel reads on a flight over the U.S., you know, where was the place of delivery?
They FedEx it to the hotel where the general counsel is staying. The general counsel comes and picks it up at the location of the law firm. The law firm posts the opinion letter, password protected on their website, as some law firms do, and they say to the client, "Look, just access our website, here's the password, and you'll download your opinion -- our opinion letter."
So it sounds good, market-based sourcing, but lots of wrinkles in how you're going to implement it. The MTC is struggling with that right now. They're trying to come up with regulations to answer some of these questions; many of them I've raised in my report and they're now dealing with it.

Page 118

Q: So, Professor, if I heard you correctly, you were saying that originally Section 17 was an income-producing activity test and that based on your recent experience with the MTC, they are proposing a market-based sourcing approach. Could you tell us the difference between the two as you grappled with this --
A: Uh-huh (affirmatively responds).
Q: -- through the MTC process?
A: Yes. Let me -- let me go back to law firm since it's one we're familiar with. Under Section 17, as it now exists -- hasn't been changed yet, but the MTC is just in the process of suggesting regulations -- if I do all of my legal work here in South Carolina and deliver it in North Carolina, however we define "deliver," then under the income-producing activity approach, the gross receipts will be viewed as occurring here in South Carolina. Under a market approach, if that is viewed as being delivered in North Carolina, then the gross receipts will be sourced to North Carolina.
Now, what makes this all much more complicated than it would have been 25 years ago if we

Page 119

embarked on this project, 25 years ago -- let's see if I have the math right -- early 1980's; I guess that's a little bit more than 30 years ago -- most states still had the evenly weighted three-factor formula.
Today, there has been a movement for economic development reasons to go to just the sales factor, which, again, it's kind of interesting. South Carolina was ahead of that movement when it came to services. And South Carolina went to a single factor quite early on, but only for services. Now it's transitioning, as you noted, and it will eventually do that for manufacturing, too.
When you're dealing with just a single factor sales formula, the world looks a little different. Because if you go back to my law firm situation, I am going to apportion income to South Carolina using only one fraction, South Carolina gross receipts divided by gross receipts everywhere. And if I deliver that report to a customer in North Carolina, client in North Carolina, and if that is viewed as a delivery of my service in North Carolina, then South Carolina will receive no income on that

Page 120

transaction.
Because the formula says the numerator is South Carolina gross receipts as determined by place of delivery. You know, if you were to change your law and go to a market-based sourcing and use place of delivery or perhaps where even benefit occurs, then you're going to have a zero in that numerator and you'll, of course, have gross receipts in the denominator, but you'll get zero.
Under current South Carolina law, if I do all my income-producing activities here in South Carolina, we don't care where I send my report, South Carolina will tax me on a hundred percent of my income.
So which result is a better measure of where my income was really generated? Zero when I do all my work here in South Carolina or a hundred percent?
And in a sense, this is what Lockwood Greene was struggling with, because in Lockwood Greene, you didn't have a law firm, you had an engineering firm doing a lot of work in South Carolina and they were actually arguing for, without using the word, a market-based

Page 121

approach. They were saying, "Well, where is the payment made from? What's the origin of payment? Oh, that's not South Carolina. And, therefore, we should not have any gross receipts in the numerator."
So Lockwood Greene is actually one of the earlier cases that represents a clash between an origin approach, look to the place of activity, which is what the court ultimately said in Lockwood Greene, and now let's look to where you get your payment, where the customer is, the client. And the court in Lockwood Greene said, "No, that's not the South Carolina rule; place of performance, place of activity."
Q: And, Professor, in your view, is that case that you just mentioned consistent with the policy and the historical development of the income-producing activity approach to assigning receipts?
A: Yes. Lockwood Greene is certainly consistent with the policy underlying the use of income-producing activity. And if the South Carolina Legislature wants to have a different policy, they wouldn't be a renegade, of course. A lot of states are moving to a market-based

Page 122

approach. But we've had that kind of statute a long time here and, of course, we've had Lockwood Greene a long time and the Legislature has shown no interest to date, anyway, but they certainly could change the law if they wanted to.
Q: Professor, if I could switch subjects for just a second, could you give us your understanding of the Department's position in this case?
A: Well, it's changed a little bit, but I think the Department is applying a market-based approach, where the customer is. And I say that really based on communication from the auditor to the taxpayer. I think that's exactly what the Department says. If you look at --
Q: If I may introduce Exhibit Four, which I think you have, Professor.
MR. VALLEJO: And this is a courtesy copy for the Court.
Q: Have you seen Exhibit Four before, Professor?
A: What is Exhibit Four?
Q: I think you should have it in front of you.
A: It's not marked, so I don't ...
Q: It's right here.

Page 123

A: Okay.
Q: This is it.
A: Okay. What I have is Exhibit Four.
MR. VALLEJO: Exhibit Four is the audit determination dated January 28.
MR. CONDON: Okay.
MR. VALLEJO: That's Exhibit Four.
Q: And have you seen Exhibit Four before, Professor?
A: I have.
Q: And could you tell us what it is?
A: Yes. This is a report of the field audit which explains the proposed notice of adjustment from the Department of Revenue to DIRECTV.
MR. VALLEJO: I'd like to move to introduce Exhibit Four into evidence.
THE COURT: Any objection?
MR. CONDON: Yeah, administrative issue. It was Four on yours, but the way they were entered into the record was based on our exhibit numbers.
MR. ROBERTS: So you want to --
MR. CONDON: So the -- this report would -- it looks like it would be Respondent's Number Eleven. Well, let me make sure this is the right years,

Page 124

the first report and the second report. This is the second report.
MR. VALLEJO: Respondent's Thirteen?
MR. CONDON: I think it would be Twelve. Thirteen is the Department directive.
MR. ROBERTS: Department Determination is Thirteen.
MR. VALLEJO: No, this is the audit determination.
(Off the Record)
MR. VALLEJO: Okay. So, apparently this has already been admitted into evidence as Respondent's Exhibit Twelve.
THE COURT: I gathered that.
MR. VALLEJO: I apologize for the confusion.
THE COURT: That's fine.
Q: Professor, could you take a look at the Department's audit determination, which you were just looking at, and could you please turn to the last page of that determination and read the highlighted language under "sourcing of receipts" where it says page one on the bottom right-hand corner?
A: Okay. Just for His Honor's reference, it is next to the last page in what I have, so -- but it is marked. I have two page ones. I don't know if there -- if it's just misstapled. But,

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Page 125

in any event, the -- the correct page says "sourcing of receipts" at the bottom. And under that heading, the second sentence says, "The apportionment ratio is determined on a market-based sourcing of South Carolina customer receipts over all receipts as provided by the taxpayer."

Q: And would you agree with that statement in the Department's audit determination?

A: I think that is what they are doing. Now, they are getting there today looking at -- or listening to Mr. Condon by claiming there's only one income-producing activity and that's performed in South Carolina. So I think that's the way they are attempting to get themselves out of the box of adopting market-based sourcing. Because if you have only one income-producing activity and it takes place in South Carolina, then you're going to reach the same result, but you're not going to call it "market-based sourcing."

Q: If I could introduce Exhibit Five, labeled Exhibit Five, Petitioner's Exhibit Five, which is --

MR. VALLEJO: This is a courtesy copy for the Court.

Page 126

Q: Professor, have you seen Exhibit Five before?

A: Exhibit Five is the deposition of my good friend, John Swain.

Q: And could you tell us whether this seems like an accurate copy of pages 29 and 30 of that deposition?

A: It certainly looks to be.

MR. CONDON: Objection; no basis for that.

Q: Professor, have you reviewed the deposition of Professor Swain in the past?

A: I have.

Q: Do you have any reason to believe that this is not an accurate copy of page 29 and 30 of the deposition?

A: Well, the statements I am looking at certainly appeared in the copy I previously reviewed, so.

MR. VALLEJO: Thank you. I'd like to move to admit this into evidence.

THE COURT: Any objection?

MR. CONDON: No objection.

THE COURT: It's admitted.

(Petitioner's Exhibit Number Five was admitted into evidence.)

MR. VALLEJO: Thank you. Professor, could you --

THE COURT: Just so we can be clear.

Page 127

MR. VALLEJO: Sorry, Your Honor.

THE COURT: When you made your previous objection, I thought we were -- everyone stipulated on the authenticity of the exhibits and if that's true, then I don't really need to hear that objection that you made, so I was missing it. But I was just letting you know that that's something that I will consider in the future.

MR. CONDON: You're right, Your Honor.

THE COURT: Okay.

MR. CONDON: I apologize.

THE COURT: Don't apologize.

MR. VALLEJO: Thank you, Your Honor.

Q: Professor Pomp, could you please to turn to page 29 of Professor Swain's deposition?

A: I have it.

Q: Could you please read the highlighted language that starts on line eight and goes through line ten of page 29?

A: Question: "Has South Carolina adopted a market-based approach to interpreting statutes?" Answer: "In this case it has."

Q: Thank you. Could you turn to page 30 and could you please read the highlighted language that goes from line three to line four of Professor

Page 128

Swain's deposition?

A: "Certainly the result in this case reaches a market-based result."

Q: And, Professor Pomp, is it your understanding that Professor Swain is one of the experts for the State in this case?

A: Yes.

Q: And would you agree with Professor Swain's statements that you've just read?

A: I would and it's consistent with what the Department said in their audit report.

Q: And, Professor, you've gone into this to some extent, but I'd like to ask you from a policy perspective, what's the difference between an income-producing activity approach to assigning receipts versus a market-based approach, which we've just been talking about in these two exhibits?

A: Market-based, depending on how it's defined, will look to where the service is delivered or where the customer is or where the benefit of the service takes place; where under an income-producing activity, we're focusing on where the income was generated.

Q: Do you think that one or the other,

Page 129

income-producing activity on the one hand, market-based approach on the other hand, is better or worse from a policy perspective?

A: I think that depends on the kind of activities you are dealing with, so -- and certainly the Legislature could decide they like market for some things, not for others; that would be within the realm of the legislative decision-making.

Q: Could the result, the ultimate result, be the same under a market-based approach and an income-producing activity approach depending on circumstances?

A: Yes, I think if you're providing an activity and it takes place entirely in South Carolina -- like I'm getting a haircut. Well, the service is provided in South Carolina. Under an income-generating -- income-producing approach, it will be performed entirely in South Carolina, we would conclude that the gross receipt is within South Carolina. It so happens that the customer is also receiving the delivery, the benefit, however you want to define it, of that service here in South Carolina. So it's co-terminus. The

Page 130

service happens to be co-terminus with the customer.

But the reason we are concluding it's a South Carolina gross receipt is not because the customer is here. It's because the income-generating activity takes place entirely in South Carolina. It so happens the customer is here, but we don't look to the customer. We look to see where the income-generating activity is.

Q: Professor, if I could direct you to the bottom of page seven and the top of page eight in your report. There is an example there that I'd like you to explain to the Court in the context of your testimony so far.

A: Bottom of seven, I have a taxpayer performing all of its services in state A and mails a document embodying those services to a customer in South Carolina.

"Assume that South Carolina Department of Revenue attributes the receipt for the service as being attributable to the state because that is where the customer is located. Assume further the net income from the service is a hundred dollars. The Department's position

Page 131

would mean that a hundred dollars of the net income would be taxed by South Carolina" -- that's because there's only a single factor formula here -- "thus disregarding all of the income-generating activities that took place outside the state."

"This position would be problematic under the external consistency test, which is a test the Supreme Court developed under the Commerce Clause."

You have to have some relationship between what's going on in the state and what you're claiming the income is. You know, it's very loosey goosey, but here you would be saying as the State of South Carolina a hundred percent of this income was earned here, regardless of the fact, disregarding the fact, were indifferent to the fact that all of the income-producing activities occurred outside of South Carolina.

THE COURT: So even though the test is loosey goosey, this goes beyond --

THE WITNESS: I think it does --

THE COURT: -- the parameters of loosey and goosey?

THE WITNESS: I think it does, Your Honor. If you

Page 132

have good books and records that would show how much actually occurred outside the state.

There is a case called Moorman --

THE COURT: Moorman?

THE WITNESS: Moorman, M-O-O-R-M-A-N -- in the late '70s. Iowa had a single factor formula from the time it adopted corporate income tax, 1934, and the taxpayers based in Illinois selling into Iowa and if you just make believe it did all its manufacturing in Iowa and made all its sales -- I mean, sorry, all its manufacturing in Illinois and made all its sales in Iowa, Iowa said, "Okay, a hundred percent of that income is ours."

And the taxpayer did not put anything into the record. It could read as a failure of proof case. The taxpayer thought this was so obvious that we don't need anything further. It's just logic. All income can't be attributable to Iowa. What about all the manufacturing in Illinois?

And the court said, "Oh, for all we know, maybe you manufactured at a loss and all the income was earned through distribution and marketing. You haven't given us anything in the record

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Page 133

that shows the opposite." So there is this case, a failure of proof case, they did not do what you're going to hear Dr. Cody did in this case, so.

Q: Professor, you told us earlier that there are different ways of implementing a market-based approach to assigning receipts. What's your understanding of the way the Department is approaching the market-based approach that you testified you believe they're using in this case?

A: Well, I first go to the audit report and they say that the apportionment ratio is determined on a market-based sourcing of South Carolina customer receipts. So I think they are looking to customers of DIRECTV that are here in South Carolina and they're saying, "Okay, that's a South Carolina receipt."

Q: And, Professor, a hypothetical for you. If you had an engineering services firm and they provided all -- they did all of their work here in South Carolina, but at the last minute, the client said, "I'd like you to deliver the plans that you put together after the work that you performed to North Carolina and I'd like you to

Page 134

drop them off in my office in North Carolina." Under the Department's approach, where would the receipts be assigned?

A: Well, under market-based sourcing, those receipts would be assigned to North Carolina because that would be the market. You know, if they're consistent, that would be the market. And I know Your Honor, in one of your early questions, raised the possibility of kind of manipulating the rules, which, of course, always is a possibility; that's where we all make our living, right, in playing with the rules. But in the case of place of delivery, it seems to me that raises so many more possibilities rather than income-generating. DIRECTV -- you're not going tell the operations people, "Oh, you know what? You should really put some more people in this state because it will help us with South Carolina taxes." Now, you could imagine what they're going to say to you. And there's, of course, a lot of economic literature that says businesses don't do anything dramatic because of the corporate income tax. The decision where to expand, where to locate, it's driven by so many

Page 135

factors -- cost of labor, cost of land, transportation, is it a place where your CEO wants to live, is it convenient to suppliers, convenient to this -- that the corporate income tax is such a tiny part of the cost of doing business.

Sure, if we can change the form, merge easily, break up easily, tax lawyers might do that, but you're not talking about changing the -- where your people are; at least that's what the literature seems to say.

Nonetheless, politicians act as if the Holy Grail is, "Oh, let's just change our apportionment formula and we'll jump-start this economy." I wish it were that easy, but ...

Q: Professor, you've told us a lot about your opinion about the differences between an income-producing activity approach and a market-based approach. Do you think that those two approaches, income-producing activity on the one hand, market-based approach on the other hand, are conceptually mutually exclusive approaches to assigning receipts?

A: Yes. I mean, it's possible, as my haircut example shows, you could read the same result

Page 136

if you do all of the income-generating activities in one state and that's where your customer is. But as a conceptual matter, they are the antithesis of each other.

Q: You told us earlier, Professor, that you thought the South Carolina statute provided flexibility to do what the Department and taxpayers might think is more reasonable. So, from a policy perspective, what's the problem with applying a market-based approach under an income-producing activity statute like the one we have in South Carolina?

A: The flexibility is with respect to determining the extent to which income-producing activities are performed within South Carolina; that's your flexibility. You're not handcuffed by cost-to-performance. It may be a useful way to proceed, but you're not told you must do that; that's your flexibility.

There's nothing in the statute that says, "Hey, tax department, you could do market if you don't like income-producing activity," so. I mean, look at A(5). So the flexibility is with respect to determining the extent to which the income-producing activity is performed in South

Page 137

Carolina. There you have some flexibility, more than in other states.
Q: Professor, I'd like to prefer to Respondent's Exhibit Thirteen, which has already been introduced into the record.
MR. VALLEJO: Courtesy copy for the Court.
Q: Have you seen this document before, Professor?
A: I have.
Q: And could you tell us what it is?
A: This is the determination letter, the Department's Determination letter.
Q: And could you turn to the second to last page where you will see some highlighted language in the middle of the page?
A: (Witness complies.) Yeah, just in my version it is the third from the end.
Q: Fair enough. The document for the record does not have page numbers, but do you see the highlighted?
A: I do.
Q: Okay. Could you please read the highlighted language for the Court?
A: Yes. "Meaning all of the specific activities identified by DIRECTV lack any and all intrinsic value without the actual provision of

Page 138

television programming to South Carolina customers. It is vital to note here that each and every one of the activities the taxpayer attempts to characterize as income-producing has no direct causal effect upon the generation of income."
Q: Professor, from a tax policy perspective, what is your view of the language that you just read from the Department's Determination in this case?
A: I think this would come as a complete shock to our opening fact witness that everything he is involved in, everything that takes place up until the point the homeowner turns on the TV is somehow has no direct causal effect upon the generation of income and lacks all intrinsic value.
I think, Your Honor, this was really the question you asked Mr. Condon. Your argument called always say that, that it's the only last act that has the income-producing activity. Well, it's the last act which makes sure you get paid, but if you didn't have all these other rather critical activities, like the positioning of the satellite and the

Page 139

negotiating for content and negotiating with the NFL, you wouldn't have anything to sell. So I am -- I'm just puzzled by how anyone could think this.
But it gets the Department out of the box by saying there's only one income-producing activity and it takes place here in South Carolina, then they avoid having to make the determination to the extent the income-producing activity is performed within South Carolina, because that applies only if the income-producing activity is performed partly within and partly without.
And so, Your Honor, this, of course, one of the issues where the income-producing activities take place and we heard quite a bit of evidence on that.
MR. VALLEJO: Thank you, Professor. I have no further questions at this time.
THE COURT: Who's going to be asking questions? Mr. Condon?
MR. CONDON: (Indicating.)
THE COURT: Okay.
DR. POMP - CROSS-EXAMINATION BY MR. CONDON:
Q: Professor Pomp, let's take a look at your

Page 140

report. I believe it's Plaintiff's Number Three. I did it again. Petitioner's Number Three. And specifically page six.
A: (Witness complies.)
Q: Now, we've had another exhibit that introduced Section 17 of UDITPA, but right here in the middle of the page, your report includes it also, doesn't it?
A: It does.
Q: Okay. And UDITPA -- this Section 17 deals with service providers only; is that right?
A: No, it deals with sales other than the sale of tangible personal property.
Q: Okay. Right, that's the distinction from before --
A: Right, it includes --
Q: -- so I apologize.
A: It includes services.
Q: And so this statute, Section 17 of UDITPA, or this model law, should I better say it, Section 17, for everything other than tangible personal property, it would source revenues or source receipts based on cost-of-performance, right?
A: Well, it sources it based on the state that has the greatest proportion of income-producing

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Page 141

activity and how we measure that will be the use of cost-of-performance.
Q: And in Petitioner's Number Sixteen -- that is the copy of UDITPA -- it, of course, has Section 16 in there.
A: Yes.
Q: I believe on page nine of 11 it starts Section 16 of UDITPA. So this is the section that deals with tangible personal property, right?
A: That is correct.
Q: Okay. Is income-producing activity, is that term used in Section 16 of UDITPA?
A: It is not.
Q: Okay. So even though you were using -- talking about Section 16, it's not relevant to the income-producing activity issue in this case; is that right?
A: I was drawing the contrast between the rules for tangible and the rules for services. We, of course, are a service, so we're Section 17.
Q: Okay. Did South Carolina adopt UDITPA?
A: Not as a formal matter, no.
Q: Are you aware of the -- that South Carolina is now a single sales factor only -- has a single sales factor only test for tangible personal

Page 142

property and manufacturing?
A: When you say now, you mean in 2015?
Q: Yes.
A: I know you were transitioning to it and since this case doesn't involve tangible, I didn't focus on the transitional period. But I know -- if you're not there in 2015, it's the direction you are moving in. I'm aware of that.
Q: And our combination of Section 12-6-2290 amplified by 12-6-2295, that also is -- has a single factor, but it's a gross receipts test; is that right?
A: Well, here's what is going on. When it's tangible, we use the word "sale" because by custom and tradition, you sell tangible personal property.
By custom and tradition, I guess professionals don't like to view us as selling our services to customers. And so we are service providers to clients. You know, this is all part, I think, of just our mind set. And so the word "sale" would suggest a concept that we really don't use in normal discourse. So when we move to services, many states do change to the use

Page 143

of gross receipts.
Now, gross receipts would cover the sale of tangible property, too, and the MTC in its proposal is getting rid of this dichotomy for tangible and for services.
But what I think you're seeing is the reflection of a historical mind set, that we don't sell a service, and so we really don't have sales receipts. We provide a service and we have gross receipts. That's all that's going on. Nothing conceptual, nothing substantive.
Q: Okay. So just to clarify, in 2295, it's defining both sales, the single sales factor for tangible personal property, and gross receipts for basically everything else. So there are -- is just one factor for both types of property; is that right?
A: Well, I know during the audit period, you had one factor for services; that's the only thing I focused on, so.
Q: Now, I think I heard you say that -- and I hope I get his name right -- that the first -- the first witness for the Petitioner, Mr. Goswitz, that his testimony showed that DIRECTV had

Page 144

income-producing activities outside the state; is that what you said?
A: Absolutely.
Q: Now, did you hear -- were you here during his testimony?
A: I was.
Q: Didn't -- when Ms. Wooten asked him about income-producing activities, didn't he say he wasn't going to make that legal opinion?
A: I don't know that he said legal. I think he used the word definitional; entirely appropriate response from someone who's a rocket scientist and not imbued in taxation the way we are. He's -- it's a term of art. He has no great facility with a tax term of art.
Q: Right, understood. But he -- but from his testimony, one -- especially after that answer, one can't -- can't make that leap that he said they're income-producing activities; is that right?
A: From listening to his testimony and looking at that chart, and listening to his whole narrative about how much it takes to produce a signal, starting with negotiation for content and getting the satellites right and all the

Page 145

steps in between, I don't know how anyone could conclude the opposite, that these are not substantial, significant income-generating activities.

Q: Right. But that's your conclusion, not his, correct?

A: Yes. He doesn't know what Section 2295 is all about and he's clueless as to what UDITPA is all about, so why would he have an opinion.

Q: Can you point to any law that uses the word or the phrase "intrinsic value" as part of a definition of income-producing activities?

A: I have not done a Lexus search.

Q: Okay. California adopted the market -- is one of those states that adopted this market-based approach to sourcing of revenues; is that right?

A: That is correct. And they use where the benefit is received.

Q: Right. So California would not source any of the subscription receipts from South Carolina customers to California, would it?

A: You know, I have no idea. They have extensive regulations. I've not looked at them. I've been focused really on South Carolina. I have

Page 146

no idea what California would do.

Q: Okay. So let's flip back to your report, please, again, Petitioner's Number Three, and this time page seven.

A: (Witness complies.)

Q: In the first full paragraph, there at the end of the first full paragraph, you have stated that "Since South Carolina does not include 'cost-to-performance' in Section 12-6-2295, that there are alternatives available." Is that right? Do you see that?

A: Yes.

Q: Okay. And then I want to focus on the next sentence in which you wrote, "These alternatives would properly include payroll, time spent in a state, or the location of income-generating assets." Is that right? Did I read that right?

A: You did.

Q: Okay. Aren't all of those alternatives you listed cost-related alternatives?

A: Everything a corporation does to help generate income is more than likely going to be a cost. Think of the law firm that pays an associate a hundred dollars an hour and bills their time

Page 147

out at $200 an hour. That associate is an income-producing activity and, of course, there's a cost associated with the associate, the salary. It takes money to make money. I think I heard Phil say that. So the whole idea of business is you spend "X" in order to make "X" plus "Y."
"Cost-of-performance" is a term of art. The MTC regulations go on to talk about direct cost-of-performance versus indirect cost-of-performance.
The South Carolina Legislature presumably did not want to be saddled by some of the baggage that comes along with the term "cost-of-performance." It doesn't mean they're prohibiting the use of costs at all. Indeed, it doesn't mean they're prohibiting the use of what another state might call "cost-of-performance." All they're saying is, "You have flexibility here, Tax Department. You have flexibility, Taxpayers."

Q: So why wouldn't one of those alternatives be -- or one of those alternatives could be market sourcing, market -- the location of the customer, couldn't it?

Page 148

A: That is not an income-generating activity, income-producing activity of the taxpayer. Could be there are activities that happen to take place, like the haircut situation, but the fact that a customer sends you a check is not the taxpayer's income-producing activity.

Q: But at this phase, aren't we after that question? You're talking about income-producing activity. Is not this talking about how to allocate it amongst the states to the extent of the income-producing activity?

A: When you say at this point, you mean the first full paragraph on page seven?

Q: Yes, yes.

A: Well, once the income-generating activities are identified, the next step is to determine the extent to which the activities are performed in South Carolina. So how are you going to measure the extent to which income-producing activities are performed in South Carolina for purposes of the numerator of that sales factor, gross receipts factor?
The paragraph goes on to say that South Carolina does not explicitly reference cost-of-performance; that's a term of art.

Page 149

There's cases talking about it. The MTC has regulations about it. The Legislature is freeing the State, freeing taxpayers, from that baggage saying, "Look, you're not tied into cost-of-performance as defined -- as used by other states. You could use it. We're not prohibiting it. There's not a statute that says, 'And by the way, you cannot use cost-to-performance.' It's simply saying you're not mandated to use cost-to-performance. There's other possibilities." That's all that paragraph is saying.

Q: So if we're trying to figure out or determine -- put a number in the numerator by determining the extent to which the income-producing activity is in South Carolina, why don't we just add up the gross receipts in South Carolina?

A: Well, you --

Q: That's an alternative, right?

A: You have the gross receipts of the taxpayer. You now have to determine out of those gross receipts. They represent gross receipts from all sources across the country. You now have to determine the extent to which those gross

Page 150

receipts are going to be attributable to South Carolina; that's the goal.

You have all of these gross receipts. Which of those will be attributable to South Carolina? And we are told to determine the extent to which the income-producing activity is performed within South Carolina. So we're told, that's the way you go about doing it.

Q: Right. So -- and it's kind of the same question, but -- but if DIRECTV -- there's been testimony earlier that DIRECTV had 20 million, I think, customers in the United States. So if we have a hundred thousand of those in South Carolina, are we not determining the extent to which the income-producing activity is in South Carolina if we just add up the gross receipts for those 100,000 customers in South Carolina?

A: You are not. That is market-based sourcing. You are not looking at where the income-producing activity is being performed. You're simply looking to where the customer is; that's market based, the antithesis of income-producing activity.

Q: But, again, you understand that the Department's Determination has determined that

Page 151

the income-producing activity is in the living rooms of the customers, right?

A: Well, in one place I understand that you are -- according to the heading "sourcing of receipts" in the report of the field audit, you are determining the apportionment ratio on market-based sourcing; that's what you say under a heading "sourcing of receipts." And in another place, you are saying that none of the activities that take place out of state have any intrinsic value and there's no direct causal effect upon the generation of income. So I think that's an attempt to justify market-based sourcing.

Q: Okay. You've got Respondent's Number Thirteen there, the Department Determination?

A: Let me just make sure.

(Off the Record)

Q: Okay. And, now, I do believe that the Department's Determination has been labeled as Respondent's Thirteen.

A: Okay.

Q: Okay. So we both said "okay," we're ready.

A: We're ready.

Q: Do you know that the Department's Determination

Page 152

is -- in this administrative law area, it's the decision of the Department. Do you understand that?

A: It's the decision of the Department. Is that what you said?

Q: Yes, sir.

A: As opposed to what?

THE COURT: Well, I think you need to answer his question.

THE WITNESS: I guess --

THE COURT: Is the Department's Decision a decision of the Department?

THE WITNESS: Okay, yes.

Q: And generally in this case, it has affirmed the -- at least the results of the numbers of the audits from 2006 to 2011. Is that your understanding of what its purpose was or is?

A: So it has upheld the audit.

Q: Yes.

A: Yes.

Q: Okay. So let's flip to -- and, again, it's not numbered, but I think it's the third page from the end and it has a -- just to identify it, it has a bolded three words in the middle that says "this final act."

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Page 153

A: I am with you.
Q: Okay. And so exactly that sentence I want to ask you about. Regardless of what was in the audit reports, based on the nature of the Department's Determination, do you see that the Department's Determination was that the income-producing activity was, quote, "The delivery of the signal into the homes and onto the television screens of its customers"?
A: I see that sentence, yes.
Q: Okay. Let's stay on page seven of your report, Professor Pomp.
A: Right.
Q: So back to Plaintiff's Number Three -- or, I apologize again, Petitioner's Number Three, page seven.
A: Yes.
Q: And that's where you were talking about external consistency.
A: Correct.
Q: Was that also the issue in that Moorman case that you referred to?
A: The term had not yet been developed by the Supreme Court at the time of Moorman. Moorman predates a case called Container, maybe six,

Page 154

seven years later, and it is Container that develops the external consistency test.
Q: So in Moorman, the issue was whether Iowa's single factor sales test was okay, was constitutional; is that right?
A: They were attacking it on the grounds that it violated both the due process clause and the Commerce Clause. They did not have the external consistency test to rely on because that test had not yet been developed.
Q: Has the Moorman case in Iowa been overruled?
A: No.
Q: Okay. On page seven, when you were talking about external consistency, you stated that "The South Carolina Supreme Court has held that a factor or factors used in an apportionment formula must reflect a reasonable sense of how the income is generated." Is that right?
A: I'm sorry, what page?
Q: I believe it's page seven.
A: Page seven? And which paragraph?
Q: The second full paragraph and the second line of the second full paragraph.
A: "The United States Supreme Court." I see why I got -- I thought you said "South Carolina,"

Page 155

but I may have misheard you. "The United States Supreme Court has held that the factor or factors used in the apportionment formula must reflect a reasonable sense of how income is generated." That is correct.
Q: And courts have held that a single sales factor satisfies that Supreme Court statement, right?
A: Well, there's no case after Moorman in which the U.S. Supreme Court has revisited this issue, so.
Q: A lot of jurisdictions use a single sales factor test, don't they?
A: It's getting increasingly popular and there are situations where we have not talked about Section 18 of UDITPA because it is not at issue in this Court -- in this case, but just for background, for His Honor, Section 18 of UDITPA is what we call "equitable apportionment" or "alternative apportionment." It's a recognition that Section 16, Section 17 really can't possibly anticipate every possible fact pattern and one size can't fit all. And so Section 18 is a safety valve. It's an exculpatory provision. It allows the tax department on its own, it allows a taxpayer to

Page 156

request from a tax department a different approach, one not in the statute, in order to get a better reflection of income. And so there are lots of Section 18 situations where a taxpayer is coming in and attempting to burnish their rough edges of single factor.
Q: Okay. So when a taxpayer is doing some business in South Carolina that is going to file a corporate tax -- you know, a multi-state taxpayer is going to file a corporate income tax in South Carolina and then when the Department looks at it, we're going to use this gross receipts ratio, right? A service provider. And when we're talking about the numerator, we're trying to figure out how much of the denominator the total gross receipts should go up in the numerator; is that right?
A: That's right. The denominator gross receipts everywhere, numerator South Carolina gross receipts.
Q: Right, okay. So let's turn to page six of your report, please.
A: (Witness complies.)
Q: Okay. In the very last paragraph that looks like it tabs over to the next page, in the

Page 157

first sentence of that very last paragraph it says, "South Carolina can be characterized as sourcing gross receipts from the provision of services on a proportional basis." Do you see that?

A: I do.

Q: Okay. And that gets back to the whole thing that our General Assembly chose not to be a greater proportion state but a "to the extent of" or proportional state; is that right?

A: Correct.

Q: Okay. So isn't the Department -- isn't it true that the Department is proportioning that total receipts everywhere when it only puts South Carolina receipts in the numerator?

A: No, you are not determining the extent to which DIRECTV's income-producing activity is performed in the state. You are simply adopting a market-based approach. The customer is in South Carolina, they pay "X," that goes into the numerator. That's not what 2295 cap (A)(5) says. So you are not following that statute.

You could describe it any way you want, but you're not following that statute. You are not

Page 158

making any determination of the income-producing activity that is being performed in South Carolina other than by saying, "There is no other income-producing activity. There is only one income-producing activity and that takes place in South Carolina." That's the way you justify market-based sourcing, as I understand all these documents.

And it couldn't be any clearer. You have the Department saying, "Oh, there's no value at all to these activities that take place outside of South Carolina. They have no intrinsic value." Well, I am a little taken aback by thinking: There's no intrinsic value to programming, to getting a satellite in a synchronous orbit, to be able to transmit the programming?

Q: But your conclusion -- when I asked you whether putting the South Carolina receipts in the numerator was, in fact, proportional, your conclusion was "no," and the reason was -- well, isn't it true that the reason was you've just got a different definition of "income-producing activity" than the Department?

Page 159

A: Well, it is true that I am looking at if the income-producing activity is performed partly within and partly without. The Department takes the position there is no income-producing activity performed partly within and partly without. There is only one income-producing activity and that is when the consumer turns on the TV, sees the signal, pays the bill, that that is your understanding of what the income-generating activity is.

And, A, that -- the paying the bill is not income-generating activity by DIRECTV and that's what the statute is looking to. What's the income-generating -- income-producing activity by DIRECTV? That's activity by the consumer.

But, second, I do disagree in terms of there being only one income-producing activity and it takes place in South Carolina. I mean, I listened to the testimony as you did and I have come away with a completely opposite conclusion.

I don't think the auditor ever talked to anyone in the company other than the tax people to really learn the operations at the time they

Page 160

wrote that determination letter, so.

Q: So the denominator of the gross receipts factor that I think both parties are using -- I don't think we disagree on that -- but the denominator is the gross receipts from all of the 50 states in the United States; is that your understanding?

A: That's my understanding.

Q: Okay.

A: I think both sides agree on that.

Q: Okay. And, of course, DIRECTV has 20 million customers -- we've already heard 20 million customers all over the United States, right?

A: Whatever the number is, yeah.

Q: Yeah, yeah, whatever. So based on the Department's view, wouldn't there be income-producing activities in living rooms all over the United States, not just in South Carolina?

A: Well, I think that's your view. You would then go to North Carolina and say, "Oh, there's one income-producing activity that takes place in North Carolina and that -- for the same reason, that's when the North Carolina person turns on their TV and they pay the bill." And that's

Page 161

what you and I and the Department and the taxpayer fundamentally disagree, whether they're income-producing activity that is performed partly within and partly without South Carolina.

Q: But under the Department's Determination and view, we wouldn't tax DIRECTV on its revenues in other states, would we?

A: No, under your market-based approach, you're looking only to the South Carolina market. It's not what the statute says.

Q: Okay. Let's flip to page nine of your report, please.

A: (Witness complies.)

Q: And the second full paragraph beginning with "The Tax Department." Again, you've mentioned it several times, this is the -- at least one of the paragraphs where you said -- referred to the Department saying that the taxpayer -- the non-South Carolina activities are lacking intrinsic value, right?

A: Yes, this is really just a quote from the Department's own document.

Q: No -- and you are correct, yes. When I brought that up earlier, yeah, I realize -- even though

Page 162

there's no quotes in your text here, I do realize that's in the -- in our Department Determination.

So let's go to the Department Determination, which, again, is Respondent's Number Thirteen. And I didn't write down my page number reference here, so let me find it.

MR. CONDON: One moment please, Your Honor.

Q: Unless you can find it ...

A: Well, there are no page numbers, in fact.

Q: Yes, but I'm looking for the reference to "intrinsic value."

A: I think that's the issue. You might encourage the Department to start using page numbers in the future. It's just so much easier.

THE COURT: That should be a policy consideration?

THE WITNESS: Yes, I think it ought to go to the highest levels or we wouldn't be sitting here trying to figure out where anything else.

Q: Okay. I'll find that if I need to. But do you remember that right after the Department's comments about "lacking intrinsic value" that it stated -- it included the words "lacked intrinsic value," quote, "without the actual provision of television programming to South

Page 163

Carolina customers"?

A: I really have to see the entire context.

Q: Okay. I'll try to see if I can find that and let you look at it before we --

MS. WOOTEN: (Indicating.)

MR. CONDON: Oh, we've got it?

Q: Okay. It looks like -- it's the third page from the back that has that quote or that phrase highlighted, "The final act -- this final act"?

A: Yes.

Q: Okay, yeah. So -- and about in that same paragraph, just about six lines up from that highlight, there's a sentence that starts with "meaning." Do you see that?

A: One, two, three, four, five, six, in that paragraph, six lines up. And what is the first sentence of that?

Q: It says, "Meaning all of the specific activities identified." That's the beginning of that sentence?

A: Boy. Oh, the sentence or the line?

Q: The sentence, please.

A: The sentence?

Q: Yes.

Page 164

A: One, two, three, four, five, six. I have "That produces income for DIRECTV" is my six one up. What is the beginning of the line?

Q: "Satellite." "Satellites into the homes."

A: Huh, this is interesting.

THE COURT: Are you in the paragraph that starts with "Furthermore DIRECTV argues"?

THE WITNESS: That's the paragraph I'm in. Is that the one you're in, Mr. Condon, "Furthermore" --

MR. CONDON: Yes, sir.

THE WITNESS: -- "DIRECTV argues."

And you're saying that on the left side -- oh, "Satellites" -- oh, it's not up from the bottom. It's down from the top. One, two, three, four -- I'm sorry, I thought you said up from the bottom. Okay. I see it. I'm with you.

Q: No, I probably didn't make that clear, I apologize.

A: Okay.

Q: Okay. So the sentence that starts with "meaning," comma, "all the specific activities."

A: Yes.

Q: Do you see that?

Page 165

A: I do.
Q: Okay. Would you take a minute and read that, please, to yourself?
A: Uh-huh (affirmative response). (Reading.) Okay.
Q: Okay. So isn't it true that the Department qualified its statement that these activities -- out-of-state activities have no intrinsic value when it said "without the" -- quote, "without the actual provision of television programming in -- to South Carolina customers"?
A: I am trying to find the "without" now. So just help me. The "without" is found in which sentence?
Q: Same sentence.
A: "It is this final act"?
Q: No.
A: Which -- oh, the one that begins -- yeah.
Q: There's "meaning" (indicating).
A: "Meaning" -- okay, "meaning all of the specific activities identified by DIRECTV lack any and all intrinsic value without the actual provision of television programming to South Carolina customers." Is that ...

Page 166

Q: Yes, that's the sentence I'm referring to.
A: Okay.
Q: So isn't it -- isn't that a statement that the -- that the Department's qualifying its statement that these non out-of-state activities have no intrinsic value without the actual provision of television programming to South Carolina customers?
A: Well, you know, this is what we call the "but for" fallacy. You're saying that but for the ultimate sale to South Carolina customers, there is no value at all in anything that you have done previously.
And we call that the "but for" fallacy because one could go on each step of the production and say, "Well, but for the satellite, there would be no signal that could be delivered to the customer; therefore, the customer is no intrinsic value. All the value is in the satellite." And that is known as the "but for" fallacy. First year law students learn this in torts when they study causality.
Well, but for the alarm being defective, you wouldn't have been late, and if you wouldn't have been late, you wouldn't have been at that

Page 167

intersection, and if you wouldn't have been at that intersection, you wouldn't have been in that accident, so it's but for the alarm clock.
And this is the same thing. It's just a tax application of the "but for" fallacy.
The point is, you need each step to have occur for there to be something at the end to sell to the customer. It's all critical steps. Take away the satellites, you don't have anything to sell. Take away the content, you have nothing to sell. Take away the NFL franchise, you have nothing to sell. So I don't know what this actually shows, so.
Q: Okay. Let's move to the very next sentence in that same paragraph that begins with "it is vital."
A: Let me catch up to you. Yes.
Q: Okay. So this is the sentence -- you referred to it earlier, because I think it was referred to in your report, but it was referred in your report about -- about the -- "has no direct causal effect upon the generation of income." Do you remember including that --
A: Yes.
Q: -- language in your report?

Page 168

A: Well, I'm happy to talk about it, whether it's in the report or not, so.
Q: Well, isn't it true that without customers in South Carolina subscribing to and then watching DIRECTV's -- the video screen, the television screen coming from DIRECTV, isn't that a direct link, causal link to the revenues?
A: It is no more direct causal link than are the satellite a direct causal link. So, again, you're just restating the "but for" fallacy, I'm afraid.
You know, two things are critical. We need -- well, there's more, but I'll just simplify to two things. We need content and we need a way of getting that content to the consumer.
It's -- as a matter of a priori logic, you can't tell me one is the cause and the other's not. Both are necessary.
Q: Okay. Let's flip to the very last paragraph of your report, page nine, bottom of page nine.
A: Okay. I -- okay. I am with you.
Q: Okay. So this -- based on what I see on the first line, this paragraph seems to be talking about how we measure the extent to which income-producing activity is performed in a

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Page 169

state; is that right?
A: I will read it.
Q: Okay.
A: "Opinions can also differ on how to measure the extent to which income-producing activities should be viewed as taking place in South Carolina."
Q: Okay. And so in your second sentence, you seem to imply, strongly, that the Department is simply ignoring those outside activities; is that right?
A: Yes, but from a policy perspective answering that question, by simply ignoring the outside activities is unacceptable and that, I thought, is what we just read. I thought you just had me read why these outside activities should be ignored, because they have no direct causal effect according to the Department. They are inherently indirect activities. No intrinsic value. "All these specific activities taking place outside South Carolina lack any and all intrinsic value without the actual provision of television programming to South Carolina customers."
And what I am saying is, and I think

Page 170

accurately, that the statute says determine the extent to which income-producing activities should be viewed as taking place in South Carolina. You claim there are no income-producing activities that take place outside of South Carolina. There's only one income-producing activity and that takes place in South Carolina.
And what I say is, look, opinions can differ on how to measure the extent to which income-producing activities take place in South Carolina, but answering that question by simply ignoring the outside activities is unacceptable.
In other words, you might want to quibble about how we're going to take into account those income-producing activities of getting content and programming. But to say they have no value at all, to say they're not income-producing activity is where you and I disagree.
Q: Yes, we disagree. But assuming that the Department's view is correct, there would be no need to use -- to do anything other to calculate the numerator of the gross receipts factor than to add up the subscription receipts

Page 171

from South Carolina customers, just as DIRECTV did in its original returns from 2006 to '08; is that right?
A: Well, I don't know what -- I didn't look to see what they did in their original returns, but we have amended returns exactly in case people change their position.
But you're saying to me, "Assume the Department's right; don't you agree?" I'm assuming away the issue. So if you want me to assume the Department has gone to market-based sourcing, "Don't you agree we've done it right?" Well, I guess, under some definition of market-based sourcing you have done a good job of market-based sourcing. It's just not the South Carolina statute, that's all. If you were in another state, yeah, maybe you would've done a perfect market-based sourcing. It's just not South Carolina law.
Q: All right. Let's change a little bit. We're going to ask a few questions about your Direct testimony, specifically follow-ups from some that.
A: Uh-huh (affirmatively responds).
Q: When you were giving the -- talking about the

Page 172

three-factor formula that's related to tangible personal property on your chart there, you stated that the property and the payroll factor -- not the sales factor, but the property and payroll factor -- identified the income-producing activities; is that right?
A: That they're origin based, that they take into account the capital and the labor.
Q: But, again -- but the -- the Section 16 that deals -- that has a three-factor test that deals with tangible personal property doesn't even mention income-producing activities. We've already agreed to that, right?
A: That is correct.
Q: You said that Lockwood Greene gave the South Carolina rule. Do you remember saying that?
A: I don't. We can read it back. I'm not sure that's what I said, but I ...
Q: I'll ask a question and we can discuss it --
A: Sure.
Q: -- if we need to.
A: Sure.
Q: But isn't it true that Lockwood Greene, which I assume you're familiar with since you've answered questions about it, dealt only with an

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Page 173

engineering firm?
A: That was the fact pattern before it.
Q: And isn't it true that the court in Lockwood Greene, as written in the opinion, differentiated an engineering firm from a finance company and a media broadcasting company?
A: Well, here's what it says at the end of the opinion: That Lockwood also argues the statute has not been consistently interpreted by the Tax Commission. Lockwood refers to the Tax Commission guidelines concerning computation of the gross receipts of finance companies and media broadcasters. We are not persuaded these businesses are comparable to Lockwood. By contrast, the Tax Commission guidelines concerning law firms, accounting firms, entertainment and sports companies, hospital management companies, all focus on whether the services are performed in South Carolina. These situations are analogous and consistent with the situation of Lockwood."
I have not seen the guidelines. I have asked. Now I heard it conceded today that these long-standing guidelines are in the minds of

Page 174

the Department, that you can't read them anywhere.
It could well be that if I were to look at these guidelines, I would say, "You know what? They really are attempting to reach a place of performance or a place of activity approach." It's just maybe not obvious given where our learning was back in these earlier years.
So I don't know what the guidelines are. I don't know how to evaluate it. It became very easy for the court to say, "Don't bother us with guidelines because those are different companies." For all I know, those guidelines are perfectly consistent with the holding in Lockwood Greene. I can't evaluate it because I've now learned that these long-standing guidelines really don't exist, or at least they exist in the minds of the Department, but -- so I don't know what that means.
Q: Okay. So you read that the court found that Lockwood Greene was not comparable to finance companies and media broadcasters.
A: That's what it says. "We are not persuaded these businesses are comparable to Lockwood." It could well be the guidelines are

Page 175

inconsistent with the statute for all I know, that the guidelines are an improper application of the statute. It's just impossible to know how to evaluate this comment without having the guidelines in front of us.
Q: So there would be no reason for the Lockwood court to differentiate businesses in -- different service providers but in different service providing industries if its rule -- if its goal was to establish one rule for all service providers, would it?
A: I'm sorry. Could you repeat that?
Q: Yes, I apologize. Since the court differentiated between Lockwood, an engineering company, and media broadcasters and finance companies, it seems very logical that it was not trying to establish a single sourcing rule for all service providers; is that right?
A: It wasn't being asked to. For -- all the court was saying is, "Look, don't bother us with these guidelines for other companies. We don't want to look at these guidelines. Those companies aren't comparable." Maybe if it did look, it would find the guidelines were inconsistent with the statute. Maybe it would

Page 176

find that the guidelines were consistent with the approach it took in Lockwood, but it didn't have to go down that path.
THE COURT: So under that theory, Lockwood would not necessarily be binding upon this Court in this case because they made no pronouncement one way or the other.
THE WITNESS: Well, they -- what they did was, they rejected market-based sourcing, Your Honor. I think we can say that.
THE COURT: I understand that.
THE WITNESS: And if that's what the Department is interpreting --
THE COURT: I was really more asking beyond that rejection and what analysis do we take --
THE WITNESS: Yeah.
THE COURT: -- following that.
THE WITNESS: That rejection's an important part of Lockwood, of course, to reject market-based sourcing.
Now, they endorse what I think is consistent with the statute, that we're looking for income-producing activity. And in terms of what might the Department do with other taxpayers? Who knows. I don't know. I know

Page 177

there's some stipulation, but that's not binding on DIRECTV that didn't even exist then, so.

Q: Professor, I'd now like to direct you to -- back to the binder of exhibits and it's Respondent's Number Eighteen. It's your Hearing Officer report, MTC Hearing Officer report.

A: Yes. Now there's at least two of us that have read it.

Q: Can you take a look at this, what's been marked -- what did I say -- as Respondent's Number Eighteen and determine that it's a complete and accurate report -- or a copy of your report?

A: Yeah. I mean, to do it right would take quite a while. I'm willing to assume it is, unless I see something that seems odd.

MR. CONDON: Okay. I would like to move this into evidence.

THE COURT: Any objection?

MR. VALLEJO: No objection, Your Honor.

THE COURT: It's admitted.

(Respondent's Exhibit Number Eighteen was admitted into evidence.)

Page 178

Q: Just to put this back in context -- I mean, you got a lot in the report that's not really at issue here today, so.

A: That is correct.

Q: To kind of put it into context of what is at issue, you already said, but let's put it back into context, if you don't mind. What's really applicable -- or part of what might be applicable here is the discussion related to the decision or the intent to move to a market-based sourcing method for service providers, correct?

A: No, I don't know that that's relevant.

Q: No?

A: I mean, I don't know that the Legislature is debating this. So I don't know that that's relevant, but I'm happy to talk about the report.

Q: Okay. But that was -- but that was part of the issue of your -- in your report, correct, that was a major issue?

A: Well, a major issue was the MTC recommending that the states replace Section 17, you know, the counterpart of what we see here in 2295, with market-based sourcing.

Page 179

Q: Right.

A: That's a legislative decision.

Q: Right.

A: It's not for --

Q: Yeah, I didn't mean to --

A: Right, okay.

Q: -- imply that South Carolina was simultaneously trying to do the same thing or anything.

A: Yeah. Well, I think the tax department said it was doing the same thing, which is quite astounding that an executive branch agency could be doing market-based sourcing when the legislative branch says, "No, we're not market-based sourcing." I mean, that's a separation of powers issue. But be that as it may, let's go into whatever it is you'd like to talk about.

Q: Okay. And I'll find the pages if we need it, but a lot of this I think you might remember.

A: Luckily they're numbered.

Q: Yeah.

A: It's a great innovation.

Q: We're going to learn from you on that one.

A: Yeah, a great contribution.

Q: You say in here a couple -- a few references,

Page 180

I think, about that uniformity in apportionment laws has been pretty difficult to achieve over the years; is that right?

A: Uniformity in state taxation has been pretty difficult to achieve for all sorts of reasons.

Q: And that includes in the apportionment area of state taxation, correct?

A: We know we have UDITPA, evenly weighted three-factor; we have states double weighting the sales factor; we have states using only a sales factor. Whatever uniformity there might have been has broken down quite a bit.

Q: But in here, you actually said that even as -- even back as the late '50s when UDITPA was proposed, uniformity never quite existed, right?

A: Not exactly. Let's look at the page --

Q: Yeah.

A: -- and the statement.

Q: We can go to page 16.

A: Okay.

Q: And it's the second paragraph under Roman numeral four there --

A: Right.

Q: -- little four.

Page 181

A: And the emphasis here is that we always had specialized formulas for specialized industries and these were distinct from the three-factor formula.
So people argue that if you don't have the same apportionment formula, my goodness, you're sacrificing uniformity. All the states should either double weight or whatever; it all ought to be the same. And I guess what I'm saying is, well, that probably overstates the issue, because we've always had these specialized formulas that coexisted with the three-factor formula. That was the point of this paragraph.
Q: Okay. And you kind of refer to it, but later on you talked about MTC, it said, "labored mightily to develop industry specific formulas," so.
A: Correct.
Q: So I guess many people in the industry have thought, "Well, maybe we can't achieve complete uniformity and possibly doing some industry-specific rules that address those industries specifically might actually be a good thing." Is that what many people believe?
A: Yeah, I think that's correct.

Page 182

Q: So referring back to your report, when you say the lack of cost-to-performance -- based on cost-to-performance right here at the end of 12-6-2295, if the Department has different sourcing methods all while applying a gross receipts factor and looking at income-producing activities but have them different for different industries, isn't that one of the alternatives that could be used?
A: As long as it's consistent with the statute.
Q: Okay. It's probably easier if I just tell you the pages instead of asking you a question with the page. Let's flip to page 58, I believe, and the very top of page 58.
A: (Witness complies.)
Q: And let's look at the -- I'll give you a minute to look -- a second to look at it or a minute to look at it, whatever it takes. The first sentence on the top of 58 -- and I'd also like to refer you to a sentence on page 64. I think it's -- wait a minute. 85, I'm sorry, is the second reference.
A: (Reading).
Q: Okay. So let's look at the first sentence on 58.

Page 183

A: Yes.
Q: "The goal of harmonizing Act Article 416 and draft Article 417 with respect to the destination principle is laudable." There, what we're really referring to is what we've already kind of referred to as the UDITPA Section 16 and 17?
A: Yes.
Q: Okay. So one's the apportionment factor for tangible personal property and one's the apportionment formula for everything else; is that right?
A: Correct.
Q: Okay. And so here, you seem to be recognizing that it's a reasonable goal to have -- for the apportionment of those two different types of businesses to be, if not the same, at least very similar; is that fair?
A: It's a laudable goal.
Q: Okay.
A: Later, I point out the difficulties in trying to conform the two sections, but it's certainly --
MR. VALLEJO: Your Honor --
A: -- a laudable goal.

Page 184

MR. VALLEJO: Objection. I object to relevance. This has been going on for a long time and I'm very much struggling to find out why this is relevant.
THE COURT: You want to respond?
MR. CONDON: Yes, Your Honor. I mean, my next question might help clarify it, but in this case in specific --
THE COURT: Well, I'll tell you what. We'll go to the next question --
MR. CONDON: Okay.
THE COURT: -- but then I'll hear the objection again.
MR. CONDON: Okay.
MR. VALLEJO: Thank you.
Q: And so if harmonizing the apportionment for tangible personal property and everything else which includes services is a laudable goal, wouldn't South Carolina's current statute that has a single gross receipts factor for services -- well, really everything other than tangible personal property and manufacturing -- and the single sales factor for tangible personal property, wouldn't that be a laudable goal, as well?

Page 185

MR. VALLEJO: Objection, irrelevant.
THE COURT: You want to respond to that?
MR. CONDON: Your Honor, the General Assembly passed -- when it added this (indicating), 2295, and this references 2295 down here, at the same time it was also moving to a single sales factor for -- from a three-factor test to a single-factor test for tangible personal property. I think this goes to legislative intent, that it was trying to harmonize these two calculations.
THE COURT: I'm not so sure what the MTC report has to do with any of this. I mean, it's a report that hasn't even been adopted yet, has it?
MR. CONDON: Well, it shows that a tax -- that that view of the legislative intent is on target because we have an esteemed law professor here who's testifying on tax policy saying that it's a laudable goal.
THE COURT: Well, he's on Cross; there's wide latitude. I mean, I do think we're getting close to irrelevant, but I'll let you proceed.
MR. VALLEJO: I have a further objection, Your Honor, which this is clearly beyond the scope of Direct at this point and I've let this go on

Page 186

for a long time.
THE COURT: But in South Carolina, the Cross-Examination is not limited to Direct.
MR. VALLEJO: It's obviously your call.
THE COURT: Well, I think the Rules of Evidence kind of made that call when they said that it's beyond the scope of Direct, but go ahead.
MR. VALLEJO: Fair enough.
THE COURT: But I would like to move this along.
MR. CONDON: Yes. Almost finished, Your Honor.
Q: Professor Pomp, are you being compensated for your work here today?
A: Yes, but not on a contingency basis.
Q: Okay, yes. And I believe at the deposition you told me you were getting paid in the range of about $600 an hour; is that right?
A: Actually, I never even went back and looked after the deposition, but I was in a transitional period of my rates, so somewhere in there.
Q: And, of course, you get paid for the deposition and various preparation time, as well, right?
A: Of course.
Q: Earlier on Direct, didn't you make a comment that, quote, "We all make a living playing with

Page 187

the tax rules"?
A: Something of that effect; of course, that's what tax lawyers do.
MR. CONDON: No more questions, Your Honor.
THE COURT: Redirect?
MR. VALLEJO: It's up to the Court, if you'd like to take a break, or else we can call our next witness right now if you want to move along.
THE COURT: Well, I've got a couple of -- I said do you have any --
MR. VALLEJO: Oh, I don't have any Redirect for Professor Pomp.
THE COURT: I've got a few questions. When we're looking at determining income-producing activity, you testified that we look to the intrinsic value of the activity; am I correct on that?
THE WITNESS: No, I -- their correspondence said there was no intrinsic value to these out-of-state activities.
THE COURT: Well, then what do you believe we look to?
THE WITNESS: Well, I think you look to see -- I mean, I guess one position is, everything a corporation does is to make a profit or else

Page 188

the corporation is not going to be doing it. They're not charitable organizations. So all of its activities are income-producing. The MTC regulations say, well, that's too broad. Look at direct versus indirect. And there's some logic to this, because I think we don't want to bias the calculation in favor of states where your overhead is located. So they want you to look -- at least the regs and states that draw this direct/indirect, they want you to look at the activities that are not heating the factory, those kind of indirect costs, but really things that are more directly related to the generation of the ultimate profit.
And so that would be negotiation of content, the getting the signal to the centers where you up-link it, the design and launching and maintaining the satellite, the call centers, the installation; in my mind, those would be income-generating activities.
THE COURT: So it's a factual analysis.
THE WITNESS: Yes, it is, Your Honor.
THE COURT: And whose point --
THE WITNESS: And that why cases come out

Page 189

differently.
THE COURT: And whose point of view do you use?
THE WITNESS: I think you use the taxpayer's point of view and I'll tell you why. The consumer -- I think you alluded to this in your -- in one of your opening comments, that if you take the position all the consumer wants is the service or product here in South Carolina, now you've reduced the whole thing to one income-producing activity that takes place in South Carolina.
THE COURT: Well, would it not be important, though, to consider the consumer's analysis of the intrinsic value of that which is offered and their making their determination of purchasing the service?
THE WITNESS: I think they will buy something because it is valuable to them. Do they care how DIRECTV deals with the NFL? No. All they want to know is that they'll be able to watch that football game on Sunday. Do I care when I buy a car how the sensor is programmed? No, I just want to make sure I can pass the pollution control emission standard.
THE COURT: But along those lines, though, you would still -- following up on the car, in deciding

Page 190

whether to purchase the car, you're still going to look at the components of the car to determine its value into whether or not you make the purchase.
THE WITNESS: Yes, I may well take into account the sound system and everything else.
THE COURT: So you would also, in this instance, the customer would take in the intrinsic value of whether or not the DIRECTV offers local programming, whether or not they offer movies, whether or not the service is available in their area. I mean, all those would be aspects --
THE WITNESS: That's right. How reliable is the signal? Do they have blackouts? Is it a strong picture? All that kind of stuff. And do they have what I want to see?
But the fact that I'm not paying directly as was said in one of the documents for them to negotiate content, well, I'm not even thinking of that as a consumer and that's not the way consumers think.
THE COURT: Okay.
THE WITNESS: Do they have the movies that I want? And I'm not thinking: How do they get those

Page 191

movies? That's way above most consumer's pay grade, so.
THE COURT: And then following along that, then, in South Carolina, we don't necessarily consider the cost -- what was it, the cost of -- let me find it.
THE WITNESS: Cost of performance?
THE COURT: Cost of performance. In other words, we don't -- we would not necessarily consider the cost of the infrastructure of the product. We just consider analysis of what aspect of the company is income-producing.
THE WITNESS: Well, that would be for Your Honor to decide, whether the infrastructure is part of the income-generating activity.
THE COURT: It's a component that could be considered, but other components can be considered.
THE WITNESS: I would think it's all facts and circumstances, correct.
THE COURT: Well, that's what I wanted to go -- I want to understand is -- I wanted to ask you, if we can use methods other than cost-to-performance, what methods can we use?
THE WITNESS: Well, it's funny, you're going to hear

Page 192

Dr. Cody next.
THE COURT: Oh, okay. So I'm going to hear about all that?
THE WITNESS: You're going to hear about some of that. I don't know "all that," but he's certainly capable to talk about all that. But he has a methodology.
THE COURT: If he has one, I want to know from you what other methods can we use.
THE WITNESS: I like what Professor Cody did. I think he has -- he takes into account payroll. I don't want to speak for him. He's going to speak for himself in a minute. But he takes into account payroll. He takes into account the assets. And that's capital, that's labor. Those are your two major components of income generation.
So I like what he did. There may be other approaches, but he looked at this and he made a decision as to what is appropriate given the nature of what DIRECTV does. And that's really what you have to do is, is take a look, understand the business model, and then figure out: Okay, what are the real drivers in this business model and how do I figure out what the

Page 193

costs are associated with them? And it might be different if you were in a different industry, so.
THE COURT: All right. Any follow-up questions on what I have asked?
MR. VALLEJO: I don't have any further questions, Your Honor.
MR. CONDON: No, Your Honor.
THE COURT: You may step down.
THE WITNESS: Thank you.
(Witness excused.)
MR. VALLEJO: I would like, with Your Honor's permission, to reserve Professor Pomp for potential rebuttal.
THE COURT: That's definitely --
MR. VALLEJO: Thank you.
THE COURT: -- an option you have, so you don't have to reserve it.
We're going to take a short break. I'm going to try to make it short.
(Off the record 3:20 p.m. to 3:33 p.m.)
THE COURT: All right. Next witness.
MR. VALLEJO: Thank you, Your Honor. We'd like to call to the stand Dr. Brian Cody.
BRIAN CODY, Ph.D., having been duly sworn, testifies

Page 194

and examines as follows:
DR. CODY - DIRECT EXAMINATION BY MR. VALLEJO:
Q: I'll let you get settled in and get your water.
A: Thank you. That will get me started.
Q: Good. Good afternoon, Dr. Cody. How are you today?
A: I'm very well, thank you.
Q: Could you please state your full name for the record?
A: Yes, it's Brian Joseph Cody.
Q: And where are you currently employed?
A: I am a principal, a non-CPA partner at KPMG, LLP.
Q: And what is your current position in that employment?
A: I am a principal in the economic and valuation services practice within KPMG.
Q: And what is your business address?
A: My business address is 10 South Broadway, St. Louis, Missouri.
Q: How long have you worked for your current employer?
A: I joined KPMG in the fall of 2006.
Q: Dr. Cody, you should have in front of you here Petitioner's Exhibit marked Number Seven.

Page 195

A: Okay.
Q: If you can take a look at that for me.
MR. VALLEJO: A courtesy copy for the Court.
Q: Could you tell us, is this your CV?
A: Yes, it is.
Q: And did you prepare this document?
A: I did.
Q: It's an accurate reflection of your professional experience?
A: Yes, it is.
MR. VALLEJO: I'd like to introduce this exhibit into evidence.
MS. WOOTEN: No objection, Your Honor.
THE COURT: It's admitted.
(Petitioner's Exhibit Number Seven was admitted into evidence.)
Q: Dr. Cody, could you please describe your educational background for us?
A: Yes, I have two undergraduate degrees. I have a Bachelor's of arts in economics from the University of Missouri-Columbia, suma cum laude. I also have a Bachelor of arts in French from the University of Missouri-Columbia. After undergraduate, I went to graduate school, the study of economics in

Page 196

the Ph.D. program at the University of North Carolina. I received my Ph.D. in economics from the University of North Carolina in 1987.
Q: Could you describe for us your teaching experience, if any?
A: Yes, aside from the teaching experience I had while I was a graduate student, during my first employment after graduate school, while we were living in Philadelphia and I was an employee at the Federal Reserve Bank, I was also an instructor in finance at The Wharton School of the University of Pennsylvania where I taught international finance to both under -- upper class undergraduates and in the MBA program at The Wharton School.
Q: And could you describe your professional experience as it relates to the economic issues that you've been asked to opine on today?
A: Yes. I worked in economics at the Federal Reserve Bank in Philadelphia from 1987 through early 1991 in the monetary and macroeconomic department of -- within the research group. There, we gave a lot of briefings and did a lot of current analysis on economic conditions, what were some of the major drivers of economic

Page 197

development, both nationally and within the region. So there was a lot of that kind of very much applied economics there. Beginning in 1991, I left the Federal Reserve Bank, the research group, and I joined Coopers & Lybrand in their economic group where I was predominantly engaged in the analysis of intercompany transactions. It was during that time that I started working with companies on their -- essentially their multi-state issues; how their businesses were organized both domestically, much like what we described earlier today in terms of DIRECTV, where their value-creating activities, where they're located, how are they organized, how are they compensated. I worked with them both in a domestic context and as their business crossed international borders. So that began in 1991 when I was a manager with Coopers & Lybrand.

Q: Thank you. Could you describe for us any publications that you have authored that you believe are relevant to the economic analysis that you've been asked to opine on.

A: Yes, there are several -- I list all my

Page 198

publications in my CV. Aside from the -- more the academic publications which primarily came out of my research, I've written extensively on really the value of various business operations, how you locate and evaluate that value. One article, in particular, I would point to really is -- I think I mentioned in my deposition testimony is really fundamental to the approach that I took here and I think it was a proper approach. There's an article on functional analysis, which basically describes the process that you go through when you're trying to identify those reasonable valuable, really value-creating, income-producing activities of a company and how that then gets analyzed in these kinds of forums.

Q: And, Dr. Cody, have you ever testified before on economic issues similar to the ones that we're discussing today?

A: Yes, I have.

Q: About how many times?

A: I've testified about 15 times; similar kinds of economic issues that we have here, about a

Page 199

dozen times.

Q: And have you testified on behalf of governmental taxing agencies before?

A: Yes, I have.

Q: What about public speaking? Do you do any public speaking with respect to economic issues that are similar to the ones that we're discussing here today?

A: Yes, I've regular -- I regularly give public speeches on -- as part of panels or individual speakers at tax conferences, banking associations, National Association for Business Economics, discussing these kinds of issues in terms of value creation, identification of income-producing activities, and so forth.

Q: And are you generally familiar with apportionment issues at the state tax level?

A: Yes, I am.

Q: And why is that?

A: It's really part and parcel of the daily activities as we're talking with our clients, currently KPMG clients, about their state -- state issues, how their businesses are organized across the country. I interact quite a bit with our state and local tax practice and

Page 200

with the state and local tax practitioners that my clients -- and so it's just part of the basic understanding and how our work fits in with their overall considerations.

Q: And how many cases would you say you've worked on or testified in that involved apportionment issues in which you were testifying about economic issues in that context?

A: There, I would say, the economic issues -- roughly a dozen, as I've said -- in one way or another have affected these. There were a couple in particular where that was the key issue. But, really, in each of the state cases in which I've testified, really the identification of value, where it is, and the compensation of it is really a core issue.

Q: What about any awards or honors in your field?

A: Yes, I wish there were more out there, but there aren't too many that we -- that we get, but one that I'm quite proud of is, I've been named multiple times as a world expert in transfer pricing by the National Bureau.

THE COURT: In what pricing?

THE WITNESS: Intercompany pricing.

THE COURT: Intercompany, okay.

Page 201

THE WITNESS: I mean, transfer pricing, yes.
MR. VALLEJO: I'd like to move to admit Dr. Cody as an expert on economics and economic issues as applied in the context of state tax apportionment and transfer pricing.
THE COURT: Are you cogitating?
MS. WOOTEN: I am. No objection to that, Your Honor.
THE COURT: All right. He's qualified.
MR. VALLEJO: Thank you, Your Honor.
Q: Dr. Cody, did you prepare a written expert report in this case?
A: Yes, I did.
Q: I'd like to introduce what is labeled Petitioner's Exhibit Eight.
MR. VALLEJO: Courtesy copy for the Court.
Q: Would you please review what I've put in front of you labeled Exhibit Eight, please, and tell us whether this is the report you prepared in this case?
A: Yes, this is the report I prepared.
Q: Is it an accurate reflection of your expert opinion in this case?
A: It is, yes.
MR. VALLEJO: I'd like to move to admit this report

Page 202

into evidence.
THE COURT: Any objection?
MS. WOOTEN: No objection. I'm sorry, what number was that again, please?
MR. VALLEJO: Number Eight.
MS. WOOTEN: Eight, thank you.
THE COURT: Number Eight?
MR. VALLEJO: Yes, Petitioner's Exhibit Eight.
THE COURT: Petitioner's Eight is admitted.
(Petitioner's Exhibit Number Eight was admitted into evidence.)
MR. VALLEJO: Thank you, Your Honor.
THE WITNESS: If I may, just in reviewing my report yesterday one final time, I did notice one minor typo that I'd like to just call to the Court's attention.
MR. VALLEJO: Of course.
THE WITNESS: It's on page 18 of the -- of my report in table 1-B. The second row from the bottom where it says "payroll" and then we have in parentheses the percent sign and then it says "see table 2-A," that should be table 1-A. So it refers to the table on the previous page, sorry.
MR. VALLEJO: Thank you for the clarification.

Page 203

Q: Dr. Cody, what do you understand is the issue in this case?
A: My understanding of the issue in this case is the location of DIRECTV, Inc.'s income-producing activities and, in particular, that the Department has determined that those income-producing activities are solely located in the customer location; in their living room, in their place of business, where they turn on their TV set, where they turn on the set-top box.
And that raises the issue because, as I look at it as an economist, the simple fact that they turn on the set -- and as we've heard, they're -- in so doing, they're interested in the service that's coming through, the content and so forth.
When they turn on that set, they've taken those things into account. But the simple fact that they've turned that set on in their living room tells me absolutely nothing about the location of all of that infrastructure, all of the activities of DIRECTV that have gone into bringing that signal to the house.
That, to me, is the key issue that we have

Page 204

here, is the location of those services and the disconnect between the position that I can identify those as where I turn the set on versus where the actual location of all of that activity is actually being performed.
Q: And we'll talk in a few minutes about your definition of "income-producing activities," but for now, Dr. Cody, could you please tell us who retained you in this case?
A: Yes, I was retained by Morrison & Foerster.
Q: And what did you understand your assignment to be?
A: My assignment is a couple of parts. First part of my assignment is to identify from an economic perspective the income-producing activities of DIRECT (sic), Inc. Second, then, is to determine the location of those income-producing activities; again, the activities of DIRECT, Inc. TV (sic), and that that is really for the purpose, then, of sourcing gross subscribers receipts for the gross subscriber receipts that are attributable to South Carolina versus elsewhere.
Q: And what work did you undertake in fulfilling your assignment in this case and preparing your

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Page 205

expert report?
A: Undertook a wide range of activities. I started by reviewing public documents on DIRECTV, their 10-K analyst reports and so forth. I requested and received various documents pertinent to the case around the termination and facts of the case, requested financial data to understand some of the basic financial results of DIRECTV, where their assets are, how they're accounted for and so forth.
I also spoke with a number of folks at DIRECTV itself to understand their operations and really to get behind what we're seeing in terms of their financials and their operations, to really get a deep understanding how -- when I look at DIRECTV, what the components are and how all those components come together to bring that signal to the home.
Q: And based on that diligent preparatory work, could you give us your summary from an economic perspective of what you believe to be the key profit drivers of the DIRECTV enterprise? They're identified in your report and if you could, please, list them for us first, we can

Page 206

go through each one in turn after that.
A: Certainly. Based upon my analysis, it's my conclusion that there are four key value drivers to DIRECTV's business: Content, content acquisition, and development; that's one.
THE COURT: Wait a second. I want to set myself up to get this. All right. You said content?
THE WITNESS: Yes. Yes, Your Honor.
THE COURT: Go ahead.
THE WITNESS: So content. Second are the broadcast services, those activities actually entailed in bringing the content to the subscriber. Third, are the marketing and sales activities that are conducted by DIRECTV. And then finally customer service. Those are the four.
Q: Thank you. Now let's focus on content acquisition and development, I think you referred to. Could you please explain what it is and why you believe it's a key profit driver for the company?
A: Yes, content -- I think this was reinforced this morning by Mr. Goswitz. Content is what the subscriber ultimately receives from DIRECTV. They want to watch that football

Page 207

game. They want to be able to watch that movie. They want to be able to watch their local news when they want. So content is really the basis of the service offering that we have from DIRECTV.
Now, why is it so valuable? As we look at the range of content that DIRECTV brings to the customer, it really -- their offering really sets themselves apart. As we -- as I was doing my analysis, came across a number of specific proprietary, self-developed programming options that DIRECTV has created.
Certainly they have the traditional HBO, ESPN, other contracts like that that are very important and the negotiation of those contracts are critical. But one of the things that really sets DIRECTV's content apart are all the created, the -- not the acquired, but self-created content that DIRECTV brings.
And as I was doing my research and I looked at DIRECTV's ability to charge premium prices, it really kept bringing me back to that premium content that was there.
And I think in terms of importance, you don't have to take kind of my word for it, because

Page 208

one of the things that came out was, earlier this year, AT&T announced plans to acquire DIRECTV for tens of billions of dollars. Well, that's a large acquisition. There's got to be some real value here.
One of the really I just thought astonishing things and it pointed out the importance of content was that AT&T in its announcement and in its deal structure said, if we don't -- if we're not able to retain the NFL Ticket contract, that exclusive relationship that DIRECTV has with the NFL, the deal is off and they could just simply walk away.
So that, to me, said more -- just said volumes about the importance of content, a market value of the content is to DIRECTV.
Q: And can you talk about a little bit in terms of competition in the market in which DIRECTV competes, how is that related to content?
A: It's a very, very highly competitive industry. Their -- DIRECTV's competitors are legion, all right? Most directly on a satellite basis, we have DISH. But we also, as mentioned, there's U-verse, Verizon, Comcast. You have all your local cable providers. You have over-the-air

Page 209

signals. We have the Internet being able to stream, all right. So competition is incredibly important and it's fierce. And so what we're dealing with here and for DIRECTV to succeed and to continue to generate the kind of profits that would induce a company like AT&T to buy them, they've had to set themselves apart. So how you stand out from what could otherwise be a very commodity type business; a signal in the house. Well, one of the ways you do that is through the content. So the content helps to distinguish AT&T (sic) in this highly competitive industry and allows them in many respects to charge premium prices.

Q: I think you said AT&T.

A: I'm sorry.

Q: You meant DIRECTV?

A: DIRECTV, thank you.

Q: That's content acquisition and development. The second one you mentioned was broadcast operations. Turning to that, could you please explain to us what they are and why you believe that they constitute a key profit driver?

A: Sure. If DIRECTV has great content, but they can't get it to -- from the location of the

Page 210

creation of the content, be that HBO, the local station, their own studios, if they can't get that reliably, high quality to the consumer, the whole deal kind of falls apart, all right? Customers will go away, all right? So the ability to have and to be able to provide that continuous signal so that any time the consumer wants, they can go to their TV and turn it on and their television is ready for them and they have that full selection of contest, that's what broadcast services enables them to do. So my research and also we heard testimony that the system, the whole network of operations that DIRECTV has organized from the local collection facilities, the feeding the signals to the regional up-link facilities, broadcast centers, the up-link centers, and very, very importantly, what they've been able to get in terms of the satellite orbital slots enables them to deliver that high quality signal. And when I mean -- when I say deliver, I really mean the signal across the entire span of the operations; aggregation from all different sources and the entire span.

Page 211

One of the other things that came up in the AT&T acquisition, the analysis I was doing around that, and what it says about -- even about broadcast operations is that AT&T -- Ma Bell got all kinds of copper out there, all right? Heavy infrastructure to maintain. Been able to get DIRECTV's operations. And now being able through satellites to beam a signal anywhere without laying cable is incredibly valuable activity for them to be able to perform. That's a -- that, again, to me, really points out the extremely important value that we should put upon the ability to conduct broadcast operations and why it really is a significant income-producing activity for DIRECTV.

Q: Moving on to marketing and selling activities, I think you referred to them, could you please explain what they are and why you believe they constitute a key profit driver, as well?

A: We often think about marketing, I think, as just kind of advertising and certainly DIRECTV has fun and engaging advertising. You've heard about the production that goes into it, the Rob

Page 212

Lowe commercials, and why that's -- gets people's attention and gets them interested in DIRECTV. But I think as we think about marketing, it really is broader than that. And marketing is a strategy, if you will. It's how do with develop products that our customers will be interested in buying that will find valuable? All right. So it really goes back to product development and I think this goes back to the NFL Sunday Ticket. It goes back to saying, "Oh, well, we've got an idea and everyone wants to see the exciting points in the football game, so we're going to develop Red Zone and we can charge a premium price for that." That's marketing. Figuring out how do we -- how do we put ourselves above this competitive fray of all the other producers, of all the other providers of broadcast services? How do we distinguish ourselves? Marketing is at key part of that. And then how do we communicate that to our customers? That's where the advertising comes in. And so it's an incredibly important part of the income-producing activities of DIRECTV.

Page 213

Q: And how does that impact the amount of money that customers are willing to pay for DIRECTV services?
A: All right. I think it has a -- it has a direct impact on the amount of money that consumers are willing to pay. Consumers are offered an array of packages that they can -- that they can purchase, all right?
If I'm interested in movies, I have movie packages, and I'll pay for that. I can pay a premium price for that; I get greater access.
If I'm a football fan, I've got an array of activities there that I can then pay for, I pay a premium for it, all right, but it's a product that meets my needs.
If I just want basic service, fine, they offer that, as well. That's fine. But they recognize that some customers just want that.
So, that's fine, we'll price it that way. So the marketing has a direct impact.
Another point that came out as we were doing the -- as I was doing my analysis is that, we really think about two kinds of subscribers.
There are potential subscribers and there are existing subscribers.

Page 214

And so potential subscribers are those that are not currently DIRECTV customers but that DIRECTV would like to get to join, all right?
Call that "subscriber acquisition."
Well, subscriber acquisition is quite expensive. Something like on the order of 750 to $900, some numbers I've read in terms of what it would cost DIRECTV to acquire a new subscriber. All right. That's quite an investment, all right?
But if you can -- if you have a subscriber and you can keep them, all right, keep them happy -- I'll talk about customer service later -- but if I can keep them and induce them to come onto one of my premium packages, now I've really got something. Because I don't -- I didn't lose one. I didn't have to gain a new subscriber, but I can get additional revenue from my current subscribers. That's where these marketing activities really become important because they -- they do attract new customers, certainly, but they enhance the value. They get -- produce additional income from existing customers, as well.
Q: And I think the final one you mentioned was

Page 215

customer service. Could you explain how it works and why you think that is also a key profit driver for the company?
A: Well, I think -- I certainly have had the experience where I'm -- something goes wrong, all right? One of the kids messes with the remote, something happens to my set-top box, I can't get my service to work, and I call up the tech service and I want them to help me, help fix it, right?
And so if there's someone on the other end of that line that can solve my problem quickly, that makes me happy. If they can't fix it but they can get service out quickly to me to resolve my problem, that makes me happy.
So it's a very, very important part of customer retention. I can't talk to any of my friends about one of them having explained some type of situation they've had either with their cable provider or their phone company or something like that where if something has gone wrong and the service is terrible and they've cut the line, right, and they've moved on.
So customer service is an incredibly important part of retaining and enhancing the

Page 216

satisfaction the customers have with DIRECTV.
As we've said, one, keeping the customer is much more efficient income-producing than having to lose them and having to gain them back; that's one. The second thing is, happy customers will -- and I've certainly done this -- say, "Well, if I'm happy, gosh, you know, they've done a good job for me, I hadn't really thought about it before, but, yeah, I'd like to have more access to those new games, right, tennis, golf, all right? I hadn't really thought about it, but U.S. Open is coming up, maybe I'll sign up for it, right?"
And so I call up customer service and now I talk to a knowledgeable person who can tell me about pricing and about my options. And so that is another important part of the customer service function activity that's performed by DIRECTV, Inc. And so it helps to retain existing customers and then also helps to generate additional income from existing customers. So it's an important part.
Q: Thank you. We've been discussing the entire operations of the DIRECTV business. I'd like to focus now on just the specific taxpayer in

Page 217

this case, namely DIRECTV, Inc. Could you give us a relatively brief summary of its functions in the context of the larger business?

A: Certainly. DIRECTV, Inc. -- and some of this we heard this morning from Mr. Goswitz -- on the content side, DIRECTV, Inc. is entirely responsible for content acquisition and development, both from third parties, the HBOs, ESPNs and so forth, as well as for producing their own content at the various broadcast centers. So content, that's there.

They engage in the contracts with the content providers. And, as I've said, responsible for development of the content.

With respect to broadcast services, as we've said, DIRECTV, Inc. owns the regional up-link centers. They also own the local collection facilities, predominantly. There are a few local collection facilities which I believe are owned by Operations. And they own all the set-top boxes.

So a number of the key assets in the delivery of the signal to the households -- South Carolina, as well as elsewhere -- those assets are -- and the maintenance of them and

Page 218

development of them are responsibility of DIRECTV, Inc.

Marketing -- described what it is -- all of those marketing activities take place within DIRECTV, Inc. They have responsibility for that.

Coming out of that, then, on the customer service side, DIRECTV, Inc. owns the customer service centers that are operated across the country, the six centers that we spoke about before. DIRECTV, Inc. is also responsible for the installation services. So getting the local customers up and running on DIRECTV. I believe before 2008, all of those installers were independent contractors and since 2008, they've been bringing those home service technicians more into the DIRECTV, Inc. family as opposed to using third parties, but I think they still use third parties for some of that, but they pay them. They're responsible for that function.

Q: What about the assets of DIRECTV, Inc.?

A: I've mentioned a few of the physical assets, the up-link centers, the local collection facilities, the call centers. Importantly, if

Page 219

I go back through each of their -- the four value drivers, four income-producing activities, on the content, certainly we have all of the contracts that DIRECTV, Inc. has with the content providers. Those are very important intangible assets that DIRECTV has. Likewise, DIRECTV has and owns all of the trademarks, the trade names, service marks and so forth associated with the business. For instance, NFL Sunday Ticket is a trademark name, highly valuable. They've taken the steps to protect that name, legally protect it; that's a DIRECTV asset there, as well.

Q: What about the risks that DIRECTV takes?

A: They're substantial. DIRECTV performs all of these functions that I've described, as I said, in anticipation of -- and in order to deliver that signal in anticipation of customers signing up and paying.

So all the way from content development, they're expending funds on developing new content, making commitments on contracts to the NFL, right, and so forth in anticipation that they'll be able to then recoup that through gross subscriber receipts.

Page 220

So those income-generating activities are -- certainly have a cost associated with them and that's a risk that they bear, but that's like any business. They have a cost and then they do an anticipation of future profit.

On the -- if we look at it from the subscriber side, all of the subscriber contracts are with DIRECTV. So they have the responsibility, then, to deliver that signal to them, provide the level of service, and if they don't, as I've said, and they lose the customer, they lose that contract, and now they have to incur the cost and bear the risk, loss of revenue associated with that loss of that subscriber; that's on them.

As well as, then, any kind of degradation of trademark value, infringement, and things like that that we might find.

And, in fact, I think if you look on the bottom of the DIRECTV website, it says, "We are DIRECTV" one "T", all right, no space. So it's clear that people are trying to infringe and trying to nip away at the value there that some -- so that's a risk to them. They're taking steps to mitigate it, so substantial

Page 221

risk that they bear.
Q: Dr. Cody, you mentioned the term "income-producing activities" earlier. From an economic perspective, how would you define that term?
A: In the context of this case, I would define that term as the activities that DIRECTV engages in in order to convert potential customers into subscribers and to retain and drive additional income from existing subscribers.
Q: And what's your understanding of the Department's position in this case?
A: It's my understanding that the Department's position is that the income-producing activity is the turning on of the set by the customer and the paying of the bill, full stop. There's one income-producing activity, it's at that -- it's what the activity of the customer is.
Q: You heard Professor Pomp earlier talk about the Department using a market-based approach; is that what you mean?
A: I'm not conversant and I'm not an expert in this -- in the full application of market-based approach. Listening to the testimony and from

Page 222

just readings that I've done, if we're saying that the focus is on the customer and where they are and looking to that as the only activity to determine where the income is produced, that sounds like a market-based result to me.
Q: And what's your view of the Department's position from an economic perspective?
A: As I look at the Department's view, to me, it's wholly unsupportable from an economic position and it's unreasonable in its conclusion.
Q: Why is that?
A: There are several factors. First, the location of the subscribers is not an income-generating activity. The subscribers are where they are, but they tell me nothing about the infrastructure of DIRECTV.
They're not even a good proxy for the location of DIRECTV's income-producing activities.
Another factor: The gross subscriber receipts, which what we're looking at here as identifying -- identified what the result of that activity -- they're quite simply the result of DIRECTV's income-producing activities. They're not the income-producing

Page 223

activity itself. They're the result of it, the result of the customer paying.
And, here, I think there's a fundamental misunderstanding, quite frankly, of how businesses work.
We heard Mr. Goswitz this morning describe all of the activities that DIRECTV performs in order to get that signal to the customer's home. All right? All the way from, as we said, content acquisition, broadcast services, product development, customer service, to get it to its home.
If I just look at customer receipts, it tells me nothing about, one, the location of those, but importantly, it also ignores the fact that I have to expend money to perform those activities. And I do that in anticipation of revenue later. That's what a business does. It incurs costs in anticipation of generating income, all right?
Now, we do it in anticipation of generating profits. Great, I might have a profit and that would mean that I've run a good business and I've been lucky and been fortunate and a good industry and performed well in that industry.

Page 224

But I may not. I may generate a loss, all right? But the outcome tells me nothing about how I should characterize my activities.
In all cases, I am performing an activity: Content development, broadcast services, and so forth. I've created this network; speaking as DIRECTV here -- in anticipation -- incurred those costs in anticipation of income later.
And so saying that the income-generating activity is gross receipts simply misses the point entirely.
And, in fact, what it does -- and I think this goes back to a point that Professor Pomp made, where we've got kind of an antithesis between income-producing activities from a -- and I'm using it from an economic perspective -- and looking at it from the customer's point of view.
If I'm the customer -- and I like the example of -- I go into -- I realize it's a product, not a service, but I think the economics follow. I walk into a butcher shop and I want to buy some sausage, all right? And I know this butcher shop. They've got a reputation for good sausage. I walk in, looks good, looks

Page 225

fresh, I buy it, all right?
Now, I'm confident that that butcher has taken measures to source the pork appropriately, process it appropriately. I think they've done a great job with all of that, all right, and I bought it and that's value to me. Okay?
But then as an economist, if I look at that transaction and say, "Well, my purchasing now is the value generating activity," I'm looking at it solely from the customer's point of view, all right, which is not what we're intended to do here. The customer is not the issue. DIRECTV, the supplier, the vendor is the issue -- the entity at issue here.
The fact that the customer, that I go in and buy the sausage, tells me nothing about the value of each of those steps, nor does it -- it tells me absolutely nothing about where the butcher performed any of those activities. It simply says that I bought it here, all right?
And, in fact, I don't want to know how he made his sausage, all right? It's of no concern to me. In fact, I -- probably kind of gruesome in some cases. I don't want to know.
Mr. Goswitz said he wishes that customers cared

Page 226

more about where the satellites were and everything, but they don't. They care about their -- about their service and paying for it there.
But the fact that they do that, and if we focus just on them, we miss the fundamental point which I think is really at the heart of the -- the Department's misunderstanding and miss -- error in this case; their error in this case in terms of their position. And that is, we need to look at it from the company's point of view, from the taxpayer's point of view, what are the income-producing activities that it performs.
One last thing here, if we look at it from -- purely from a cost standpoint, which -- and going through the testimony and reading depositions and reading the Department's position, they say, well, if it incurs a cost, it can't be an income-producing activity. Quite frankly, I don't understand what that means, all right? And the reason I don't understand what it means is that it leads me to a ridiculous conclusion, because in the end, everything is a cost-producing activity.
Even when the customer pays me their -- hands

Page 227

me their check as a DIRECTV subscriber, I know I incur a cost, because I have to process that check or I have to process their electronic funds transfer. I've had to send them a bill. Now I have to credit their account and I'm maintaining their account. So even after I've delivered the signal, I receive their bill and now I have another cost.
So if I take that logic, that cost -- if an activity involves a cost, that it's not an income-generating activity, then from the company's point of view, there are no income-generating activities, because everything incurs a cost onto me. So that can't be the right -- that can't be the right logic.
And, again, I think the way to square it is that the Department has erred by essentially taking the position -- taking the point of view from the customer side and then saying, "That's how we should view DIRECTV," as opposed to saying, "No, I need to look at it from the taxpayer's point of view. I have their income-generating activities. I need to locate where their value is," and then allocate that

Page 228

profit, the income, across -- according to the rules, across all of those activities.
Q: And what in your view, Dr. Cody, would be an economically reasonable approach to determining DIRECTV's income-producing activities then?
A: I think quite simply, you need to look at each of those activities I described and get behind what is really creating the value that consumers ultimately pay for.
So it goes back to that basic economic functional analysis where I look at the important functions, risks and assets that are employed in the business.
And, in fact, a lot has been made -- a lot of discussion has been made around Lockwood Greene case. And I did read that case from an economic point of view and I think what the court did in that was exactly this: When they looked at what the customers of the engineering firm were actually paying for, they said, "Well, it's the -- and the revenue generating, the income-generating activity really is the activities of the engineers here," all right? They look to those underlying functions, the activities there, and said those are the

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Page 229

income-producing activities -- my term; I think they used "place of activity" -- and said that's the right way to approach it. So from a methodology standpoint, it's how I would do it, and I think it's consistent with what the court did in Lockwood Greene.

Q: And how did you go about, more specifically, determining the income-producing activities and then the proportion inside the state and outside the state in this case?

A: All right. There are a number of measures that can be used to identify and then locate the income-producing activities. A couple of very common factors or proxies are payroll and assets.

Professor Pomp referred to labor and capital. It's the same thing, fundamental economics. There are some other measures that could potentially be used, but payroll and assets are two very common measures that are used. So I developed methodologies using those measures.

Q: And from an economic perspective, how did you then determine the location of the income-producing activities?

A: Okay. I did two -- two analyses. One analysis

Page 230

looked just at the location of payroll. So the payroll that's in South Carolina as a proxy for the income-generating activities that takes place in South Carolina versus payroll everywhere.

As I looked at it, I thought that was a reasonable approach as we know that through each of those value-generating or income-producing activities I described, there's a very large labor content, negotiating contracts, building and maintaining broadcast network, marketing, and providing customer service. So I think labor is -- as proxied by payroll is a good measure there.

I took some comfort in that -- going back to Lockwood Greene, this was also the approach that Lockwood -- that was used in Lockwood Greene where they looked at payroll as a reasonable proxy.

In the end, I also then used this method, the payroll, as really a sanity check on the -- on what I ultimately determined was a more appropriate, more reasonable way to determine this.

Q: And of the two approaches, just to clarify,

Page 231

which one did you think is the more economically reasonable one?

A: Right. The more economically reasonable one is one that also, then, takes into account assets. Payroll alone for a company like DIRECTV, I think, misses the asset intensity. All right. We've got broadcast centers. We've got fiber optic networks. We've got large call centers. And so -- we've got set-top boxes, local collection facilities. So assets are clearly an important part, as I've said, of the whole operation.

So I felt it was appropriate to take assets into account when I was determining the location of those income-producing activities. So I developed an analysis that builds on both assets and payroll, so I take those into account.

Q: Thank you. You may have heard a question earlier regarding the potential for a taxpayer to set up payroll and assets outside of the state to reduce the number of gross receipts that may be sourced to the state. Could you please explain that in the context of your economic approach in this case?

Page 232

A: Right. It really is a fundamental question as part of the analysis that when I did my economic analysis, the functional analysis, in looking where from the description and how the operations were put together, so that, you know, there really is no distortion or shifting of the assets and the payroll across the jurisdictions.

Listening to Mr. Goswitz, their operations were set up by the business folks, not for tax purposes, but by the business folks. You have an office in New York that's set up to negotiate with content providers there. New York is a major publishing house; great. We've got production facilities in L.A. We've got regional up-link centers that are spread across the country, and so forth.

So, I think, in this case there's no question that the payroll and the assets, as I look at them, that they're very reasonable proxies and very fair proxies for the location of the activities.

And, I think, in my experience, you're just not going to have a business that is moving payroll -- moving the location of their

Page 233

operations around for purposes other than try to maximize the result from all of those income-producing activities.

Q: And, Dr. Cody, you've mentioned a couple of times that payroll and assets you used as a proxy for the location of income-producing activities. Could you please explain to us why you use payroll on the one hand as a proxy and then assets on the other hand as a proxy?

A: Right. So payroll for a proxy for the contribution of all the DIRECTV employees to these value-creating activities and where they're located. As I've said, for each of the main value drivers, personnel activities are a major component of that contract negotiations, providing customer service, maintaining the network, all those kinds of things. So I needed to know where those employees were and the -- and the value that they're bringing. So rather than -- one of the -- one of the things I did consider was, well, I could just look at head count; that'd be another way to go, right? That's -- those are employees. But if I just did head count, then an office clerk would count equally to the content

Page 234

development leader for NFL Ticket. Well, that, to me, didn't seem quite right in terms of value, all right?

And so by taking payroll into account, I take into account the company's view of the value of the different employees. Obviously, I would expect the content development folks to get paid more than a -- say, a billing clerk would. So that's -- I think that's why I chose payroll, for instance, rather than, say, head count.

For assets, looked at the net book value of the assets. Assets are important here because we've got a whole range of physical assets that go into DIRECTV's operations, as I've said, from the broadcast side, as well.

Also, and I think very importantly here, just like payroll, where we have payroll in the state of South Carolina, looking at the assets, I also get a measure of the activity from that side in the state of South Carolina, as well, because location -- excuse me, local collection facilities are an important part of that whole broadcast system. They collect the signals locally.

Page 235

Likewise, for the final delivery of the signal, which the Department has focused all of its attention on, there is the set-top box and that's an assets of DIRECTV, Inc. So I do capture that important activity, as well. So that's why I've looked at both of those.

If I may just add one thing. I think in contrast to Lockwood Greene which, you know, just looked at payroll, I think, perhaps, we need to take it a little bit into context. Because you could say, well, why -- why did you bring in assets? They didn't do assets, right? And if I think back, certainly as I was working in the mid '80s, we didn't have a lot of computers, all right? The economics -- we do a lot of computer work now, but we didn't have a lot of computers then. I think engineers were much the same, a lot of manual processes, drawings, all right; whereas now we have a lot of computer-aided design software, systems to test materials and so forth.

So, while I think payroll was entirely appropriate at the time that Lockwood was considering their operations, today they might very well -- and I would think probably

Page 236

appropriately so -- include assets because of those software and computer systems and so forth that I think are very important to engineering services.

So I think, again, my approach matches very well with some of the other authorities that are out there.

Q: Thank you, Dr. Cody. And now that we've described your reasons for choosing payroll and assets, could you please tell us how you determined the scope of payroll and assets in your analysis?

A: Sure. I'm looking at solely DIRECTV, Inc., the taxpayer in this case; that might seem obvious, but it wasn't obvious to me when I first started because when I -- when I looked at it and I thought, well, you know, we've got -- we've got all these other things. We've got satellites. We've got broadcast centers. Well, the satellites are owned by DIRECTV Enterprises. The broadcast centers and some other assets are owned by DIRECTV Operations. Shouldn't I include them in the calculation, as well, because clearly they're part of that whole scope of delivery of services?

Page 237

But then as I got into it, I looked at it and said, well, no, DIRECTV, Inc. is paying an arm's length fee to Enterprises and to Operations for use of those assets and their contributions. So if I included them, I would essentially be giving some, if you will, contribution to DIRECTV, Inc. for something that's already paid for on an arm's length basis. So it's appropriate not to include it.

Q: Now, what -- sorry to interrupt, but what would have happened to your analysis if you had included the aggregate activities?

A: Yes. Note that the assets that are owned by DIRECTV Operations, like I said, predominantly the broadcast centers and some of the other major assets, none of those are in South Carolina. Certainly none of the assets, satellites, of DIRECTV Enterprises are in South Carolina.

So if I had used or included their assets in my calculation, I would have greatly diluted the measure of the income-producing activities attributable to assets in South Carolina. I would have added significantly to my denominator and I would have added nothing to

Page 238

my numerator.

So by leaving them out I think both is economically sound and also from an income location and sourcing of gross receipts' perspective, it's conservative from a South Carolina perspective.

Q: Dr. Cody, what did you do with intangible assets which you've described are very significant for DIRECTV?

A: Yes, intangibles -- intangible assets are very significant, as we talked about trademarks and trade names, the content contracts, customer lists, and so forth.

Normally I would want to include those because they are an important asset and they are owned by DIRECTV, Inc. However, exact values, highly reliable values for those were simply not available.

And so rather than make an estimate that I wasn't completely confident in, I simply excluded the intangible assets from my analysis.

Now, what's the import of that or what's the implication of that? Well, remember that the -- those intangible assets are primarily --

Page 239

or they're really all generated by activities that are conducted outside of the state of South Carolina.

For instance, we know that, as Mr. Goswitz testified, all the content negotiation and development takes place in the broadcast centers in California, some in New York; it's not in South Carolina.

So if I'd included those intangible assets, I wouldn't -- I would add nothing to my numerator in my fraction as I'm trying to locate the percentage of income -- or percentage of gross receipts in South Carolina, and I would have increased the denominator.

So, again, I would have diluted the amount of income-producing activity associated with assets that goes to South Carolina. By leaving them out, again -- while I think it's reasonable, it certainly is conservative from a South Carolina perspective.

Q: If you could, please turn to page 17 and 18 of your report.

A: (Witness complies.)

Q: And using the charts on those two pages as a reference, could you please explain to us in

Page 240

detail how you determined the amount of payroll and, as you've now told us, tangible assets within and outside South Carolina?

A: Certainly. It really is a straight-forward calculation and let me walk you through each of the pieces.

So I have requested from DIRECTV the financial statements for DIRECTV, Inc. so that I could identify the payroll for South Carolina versus total DIRECTV, Inc. payroll and I did the same for assets, which I'll talk about in a minute.

So what I have in table one -- and you'll see on the columns it's 2006 through 2011, so a separate calculation for each of the years that are at issue, as well as I do a weighted average of those.

So the first row in the table is South Carolina payroll. So that's the payroll actually reported by DIRECTV, Inc.'s employees that are resident in South Carolina, very straight forward. It's total comp and -- total comp.

All right?

THE COURT: Does that include third party pays?

THE WITNESS: No, sir. No, Your Honor.

Q: Can you explain why not to Your Honor's

Page 241

question?
A: Yes. Your Honor, I excluded the third party payments -- so, for instance, payments to installers in South Carolina -- for exactly the same reason that I excluded the assets of Operations and Enterprises.
DIRECTV, Inc. has paid an arm's length price to those -- to those third parties, to the contract installer, and so they already have reflected that return to that activity in that price that they've paid.
So in terms of identifying what DIRECTV, Inc.'s own income-producing activity is, I don't think it's appropriate to include those third-party contractors. They're reporting their own income-producing activity there.
Q: Thank you, Dr. Cody.
A: Certainly.
Q: You were going through your charts.
A: Yeah. So the second row, then, in the chart is total payroll for DIRECTV, Inc. on the exact same basis here.
So if we just look at those two, take 2006 as an example, all of the figures in these tables are in thousands of dollars. So in 2006,

Page 242

DIRECTV, Inc. had roughly 70,000, 69.6 thousand dollars of payroll in South Carolina.
Across DIRECTV, Inc.'s entire operations, they had payroll of approximately $80.6 million.
Just doing the calculation, then, that meant that approximately .09 percent of DIRECTV, Inc.'s payroll was in South Carolina in 2006.
I repeated that same calculation for each of the years. Naturally, with changes in businesses, you can see that the percent of payroll in South Carolina varies somewhat from a low of about .03 percent to .1 percent in 2011.
But on average, weighted average, just adding up all of the payroll across the years, find that South Carolina payroll accounted for .07 percent of total DIRECTV, Inc. payroll on average across the years at issue in this matter.
So let's just put payroll off on the side for a second. And as I said, I could have just stopped here and said I think that's a fair -- that .07 percent, then, of DIRECTV's gross receipts should be sourced to South Carolina because .07 percent of payroll, .07 percent of

Page 243

its income-producing activities would be sourced there. But I also then went on and calculated the percent for assets and then would bring the two together.
So if we can turn to page 18, then, on table 1-B, do a similar calculation that I just described for payroll but this time for assets. And here, assets are all of -- as we said, all of the tangible assets. So this building, equipment, so it's the broadcast centers. It's equipment, so it's the local collection facilities. It's the set-top boxes, so I am accounting for local contributions there. It's inventory. I think we heard Mr. Goswitz say that when someone calls up customer service and they need to dispatch an installer, they go and pick up the set-top box; well, that's inventory that's held in this state, all right? So there's -- all those assets are included in here at net book value.
So when I look at South Carolina assets, then, the first row in table 1-B in 2006, and roughly $20.4 million of assets in South Carolina in 2006.
Your Honor, for your benefit, the vast majority

Page 244

of those assets are the set-top boxes in South Carolina, just so you can put things in perspective here. And that holds for South Carolina.
And then for total U.S. assets or total assets of DIRECTV, Inc., as we look in 2006, had roughly 1.26, $1.3 billion of assets across the entire DIRECTV, Inc. company.
So then that means for 2006, 1.61 percent of DIRECTV, Inc.'s assets were in South Carolina.
I would then say on a pure asset basis that 1.16 percent of gross receipts associated with the production income-producing activities associated with the assets.
But we don't want to stop there. We want to put the two together. So as is typical in these kinds of formulations, I take a simple average of the two percentages and that's what I do in the bottom panel of the table 1-B.
So carrying forward the figures from the previous page, the payroll percent for 2006 was .09 percent. If I average the asset percent, 1.61, and the payroll percent, .09, I get a combined or average payroll of .85 percent there in 2006.

Page 245

That varies -- did that on each individual year basis across and that at that average percent certainly varies on a year by year basis, although within a fairly tight range from about .81 percent to .87 percent. But when I look at the period overall as an average, my combined sourcing or locating -- location percentages is 0.85 percent.

If we go back to the -- what my assignment was and say I'm going to identify the income-producing activities of DIRECTV, identify those as those four categories, said now I need to measure the contribution and the location of those assets -- of those -- of those income-producing activities, that's where this .85 percent comes in.

And it says that .85 percent of DIRECTV, Inc.'s gross receipts are attributable to income-producing activities in South Carolina as I use payroll and assets as my proxies, my justifiable economic proxies for locating those activities.

MR. VALLEJO: Thank you, Dr. Cody. I have no further questions at this time, Your Honor.

THE COURT: Ms. Wooten?

Page 246

MS. WOOTEN: Thank you.

THE COURT: Wait a second.

MR. VALLEJO: Your Honor, one quick housekeeping matter. My co-counsel tells me that he's not sure I asked for the expert report to be introduced into evidence. I think I did, but I just want to make sure that we've done that.

THE COURT: Well, any objection to it being in evidence?

MS. WOOTEN: No, Your Honor.

THE COURT: It's admitted.

MS. WOOTEN: I think it was previously admitted as Number Eight.

THE COURT: If it wasn't admitted, it is now.

THE COURT REPORTER: It was admitted.

MR. VALLEJO: It was?

THE COURT REPORTER: Uh-huh (affirmatively responds).

THE COURT: There you go.

MR. VALLEJO: Okay. Thank you very much.

DR. CODY - CROSS-EXAMINATION BY MS. WOOTEN:

Q: Good afternoon. Just have a few questions for you, Mr. -- or Dr. Cody, I apologize. You testified earlier and I believe it's included in your report that you defined DIRECTV's income-producing activities as, quote, "Those

Page 247

activities which convert potential customers into subscribers and retain existing subscribers." Is that correct?

A: Yes.

Q: Okay. Is this definition included in any of the relevant South Carolina statutes?

A: No, it's an economic interpretation as I look at the specifics of DIRECTV, Inc.'s business and answer what I believe is the economic question, which is the determination of what those activities actually are. So it's an economic interpretation based upon my analysis.

Q: Okay. And you state "potential customers" in your definition. You would agree that DIRECTV has incurred costs up to this point but it has not generated any income from potential customers; is that correct?

A: Yes, just like any business, that they will engage in activities in anticipation of a particular sale; that's just normal business operations, yes.

Q: Okay. And in your report, you further describe income-producing activities as "content development and contract negotiations." You list some others, technology, research and

Page 248

development, marketing customer service. Can a DIRECTV customer purchase any of those activities independently of programming?

A: I don't believe that -- you'd have to -- well, you'd have to ask Mr. Goswitz whether or not they're able to purchase any of those separately. I'm not aware of any contracts.

Q: You also state in your report that "From an economic standpoint, functional analysis is the appropriate standard for identifying where a business's income is generated." Is that a standard economics term? Where do you get the term or the phrase "functional analysis"?

A: "Functional analysis" is really a term of art and it's meant to describe the process that we go through. All of the economic analysis, the background industry research that we do to put the company's operations in context, the financial analysis. And so it's really meant to encompass the entire process that one would go through to determine then what the value-creating, the income-producing activities are.

Q: But this "functional analysis" is not included in any of the relevant South Carolina statutes

Page 249

regarding income-producing activities; is that correct?
A: Well, I don't want to speak from a legal standpoint. I can't comment from that. I haven't -- I don't know the statutes. But as I read the -- what we had up before as "sourcing gross receipts to the extent that income-producing activities are performed within the state," as I read that, as an economist it says go out and determine where those income-producing activities are located, how they're performed, where they're performed, what's taken into account in their performance. And, to me, that's an economic -- as an economist, that is an economic exercise that's presented in those words.
(Off the Record)
Q: In your report, you also state that this method, the functional analysis approach, makes sense from a tax policy standpoint. Are you an expert on tax policy?
A: No, I'm not an expert on tax policy, but the reason I said that was that, broadly speaking, you want to -- just like any activity, you want to match cost and benefit, all right?

Page 250

And so if we're going tax income, it makes sense to tax income where the profit or the income that's being generated has been generated. So there's a matching. And so it's really a more matching of tax and income that, to me, is the -- is the issue, the question here, and that's -- that's what is the economic principle.
Q: In your testimony, you talk -- and in your report, you talk about the four value drivers of DIRECTV's business: Content, marketing and subscriber acquisition, broadcast operations, and customer service. You refer to them in your report as "value drivers" not "profit drivers;" is that correct?
A: Yes, because the idea is that they are performed in anticipation of generating income and profit. Whether or not they do is the outcome of the activities, but it has nothing to do with recharacterization of them as something else.
I always -- and we heard Mr. Goswitz talk about it and it takes money to make money. So I'm going to engage in activities in the expectation, the hope that I will generate a

Page 251

profit.
It doesn't guarantee it. That's why there are markets. So I might lose money, might make a loss. I might make profit and my shareholders are happy. So it would be inappropriate to call them "profit drivers" because they're not guaranteeing profit, but they're income-producing in the sense that they enable me to conduct my business in anticipation of that.
Q: But if it's in anticipation of generating income, you haven't generated that income yet, correct?
A: Well, certainly at that point that I hire a new technician or that I am working on developing a satellite that takes years to produce, certainly I'm incurring costs along the way. And I'm doing that because I'm going to launch the satellite and at that point, I would be able to hopefully generate a receipt and receive some actual gross receipt from my customer.
But I'm paying that technician for their expertise, for their value, for the income-producing that they're going to enable

Page 252

me to be in the position to do at the time.
So I think you're mixing the idea that if I have a cost today, that defines my activity, all right? If I have a cost today but no yet -- no income yet, it can't be an income-producing activity.
I think that's just -- I think that's just a complete misunderstanding of -- quite frankly, of business, because I always incur costs today in anticipation of future income. That doesn't change the characterization of my activity today from income-producing. It could produce a profit. It might produce a loss. I'll find that out once I go to market.
Also, I think is important here is that whether or not that customer turns on their TV, all the activities that we've talked about here are continually being provided, continually being performed by DIRECTV, all right?
I've got to constantly have that signal there. It's always being done, all right, whether or not they turn it on, whether they watch it 24 hours a day. So this timing difference that you're talking about and saying that it drives the characterization I think is really

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Page 253

misplaced.
Q: You're saying they're continuing to provide these services, but aren't the customers continuing to pay every month for their monthly subscription?
A: Perhaps. Perhaps they might cancel it. But the activity is -- they're providing the service and they're paying the subscription. I guess I don't quite understand the distinction you're trying to make there. Whether or not I have enough subscribers to cover my costs is a separate question, all right? I may -- I may be providing a service and now I don't have enough subscribers, so I actually make a loss.
Q: But, again, you're describing costs, not income.
A: No, I'm talking about both. I'm talking about both. Because I have -- if you're talking about net income, profit, all right, that's a result of the revenues that I receive and all the costs that I incur. But what puts me in the position to get that -- to get that top line revenue? It's all these -- and that's my income, all right?

Page 254

That's my revenue. That's my receipts. That's what we're talking about here. It's all these activities that I'm performing, all right? Whether or not that produces sufficient revenue, income, receipts, that I make a profit is really a separate question. It's separate from that I'm performing these activities in anticipation of that.
Q: Going back to your value drivers analysis, is "value drivers" included in any of the South Carolina statutes?
A: I think inherently -- again, from an economic perspective, when I read "income-producing activities," I interpret that as creating value, creating income, producing income. So, again, I haven't studied the statutes to know whether those exact words are, but the -- to me, as an economist, the economic concepts are quite clear in there.
Q: As an economist, do you define "value" the same as "income"?
A: Well, value can have a number of different meanings and depending on the context in which the term is used.
Q: And in your report, you state that cable

Page 255

companies are a competitor to DIRECTV; is that correct?
A: Cable companies certainly are one of the competitors to DIRECTV, yes.
Q: And you also state telephone companies are a competitor to DIRECTV?
A: Well, certain telephone companies, like AT&T has U-verse. Their U-verse service is a competitor to DIRECTV.
Q: Okay. And, you know, to -- and you state, quote, "Competitors offer substantially similar services to those that DIRECTV offers;" is that correct?
A: They're substantially similar in that they are broadcast services, but I think it's -- we don't stop there. And I think that was an important part of my description of how DIRECTV then sets itself apart as a premium service and all the activities that it performs in order to set itself apart. If you just stop at the signal coming through on your television set and say, "Well, that's the commodity," again, I think you miss the business that DIRECTV is in in saying that, "Well, we want to and we actually do

Page 256

distinguish ourselves from those other -- the other competitors."
Q: And in your report, you talk briefly about the two sourcing methodologies, table 1-A and 1-B and used for your economically appropriate standard -- excuse me, primary sourcing methodology, you used a property and payroll factor, correct?
A: Yes, that's correct.
Q: I think you might have used the term "assets," but is "property" a fair statement for "assets"?
A: Economically to me --
Q: Okay.
A: -- they're the -- I'd say they're the same.
Q: Isn't that really getting into a cost-to-performance analysis if you're looking solely at property and payroll factors?
A: Much like what I said before on the market approach, quite frankly I don't understand the cost-to-performance and the methodology there as it's used. Is payroll a cost? Yes, payroll is a cost; no question about that. But it's a proxy for the contribution that labor makes to DIRECTV's income-producing activities.

Page 257

The assets on the books, they're not a flow. They're not a cost, all right? They're an asset. And so, no, I don't think that -- economically they're proxies for economic measures, as I said, for labor on the effort and assets on the resources that DIRECTV brings to bear in its economic activities, income-producing activities.

Q: For the payroll, you mentioned that third-party installers were not -- their payroll was not included in your analysis; is that correct?

A: That's correct.

Q: For South Carolina.

A: For -- for either. The payroll was not included for either South Carolina or for -- nor for the total DIRECTV, Inc. payroll. So there's a one for one correspondence there.

Q: Do you know if these third-party installers are South Carolina residents?

A: I do not.

MS. WOOTEN: Your Honor, if I may have a moment, please? Thank you.

(Off the Record)

MS. WOOTEN: Thank you, Your Honor. Just a few more follow-up questions.

Page 258

Q: You said earlier in your testimony that you could -- in calculating the gross receipts that you could have stopped after calculating the payroll ratio of .07 percent; is that correct?

A: If you -- if I felt that -- and I do believe that payroll is a reasonable proxy for -- for the contribution of the labor and the income-producing activities.

So much like in Lockwood Greene which just looked at a payroll approach, I could have just stopped there. And, in fact, in my analysis, I really consider that payroll calculation as a sanity check on my preferred approach, which is -- uses both labor or payroll and assets.

Q: So your calculations are subjective, right? I mean, you went a step further than the payroll factor.

A: Well, as I -- as I think I said, I really considered what I thought was the economically sound approach for determining the location of DIRECTV'S -- DIRECTV, Inc.'s income-producing activities.

There are many approaches that could be taken and I felt that there were two reasonable approaches, using payroll and assets as proxies

Page 259

for the economic activity. One used both. That's my preferred method for the reasons I explained, because DIRECTV is both very asset and labor intensive. But I also think that payroll, just a labor factor, is also reasonable.

And so it is in my mind a confirmatory method. It's consistent with methods that have been used in the past. I think it has some merit in this case, but I think there's a better measure which is the one that I used, ultimately relied upon which is payroll and assets.

Q: So you -- you know, you stated that there were several reasonable approaches. You would agree that having only one method of measuring a taxpayer's gross receipts can't be used for every taxpayer.

A: I couldn't agree more. The method -- the method should follow from the facts and circumstances of the case. As we look at the -- because it goes back to, as we said, the income-producing activities. And so we need to develop the method that comes out of the -- and as an economist, out of the analysis, the economic analysis that I do.

Page 260

Businesses certainly are different. And it could be a different measure would be better for a different taxpayer. But they're all based upon the same fundamental approach, which is let's look at the income-producing activities, let's look at the functions, the risks, the assets and resources that are involved with those activities and that will lead us then to what the proper measure is.

Q: And just going back, I know a couple of times you have mentioned that your view is that the Department was focusing on the customer in determining the income-producing activity; is that correct?

A: I thought -- yes, I -- yes, absolutely. As I read the different materials that have been provided and listened to -- and go through the deposition, it's clear to me that that's the -- as I look at it from an economic perspective, they're clearly focused upon the customer.

Q: But isn't the Department's view of the income-producing activity as set forth in the Department's Determination that it's the delivery of the signal, of DIRECTV's signal into the homes of South Carolina customers

Page 261

that's the income-producing activity?
A: As I've read it, it has -- that certainly is sometimes described that way. It's often -- I think in the deposition testimony of the -- Mr. Harrison talks about the actual turning on of the set, viewing of the signal, paying of the invoice.
So it gets described many ways depending on the documents that we're particularly looking at. But one of the constant theme that comes through is that it's the customer, where the customer is, that tells me where the income-producing activity is.
That's why no matter how you look at it, I believe, what -- the issue as it's been developed in this case, it comes down a question of: Is the customer location -- however you describe it -- the income-producing -- the location of the income-producing activity?
Q: Again, going back to the third-party installers, the technicians that you're not including in the payroll factor, I mean, is it your view that there's no value in those individuals and those individuals installing

Page 262

the set-top boxes into the homes of the South Carolina customers?
A: No, not at all. But, rather, the -- there is value there, certainly. DIRECTV, Inc. has paid those installers for the value that they're bringing, for the service that they're providing to DIRECTV, Inc. and DIRECTV, Inc.'s subscribers.
So the payment that DIRECTV, Inc. gives to those third-party contractors represents that value and represents the income of those contractors.
So to include it in DIRECTV's payroll would essentially be double accounting. They've already paid for that activity, whether it's in South Carolina or really across the entire country, because that's -- I would have to do it on an equal basis there.
So, economically, it doesn't make sense, because they've already paid for that value and it being reported by the contractors themselves.
MS. WOOTEN: Sorry, one more -- one more moment.
(Off the Record)
MS. WOOTEN: Nothing further from the Department,

Page 263

Your Honor.
THE COURT: Redirect?
MR. VALLEJO: I only have a couple questions, Your Honor.
DR. CODY - REDIRECT EXAMINATION BY MR. VALLEJO:
Q: Dr. Cody, when DIRECTV -- you just heard the Department say that their position is that the income-producing activity is the delivery of the signal. When DIRECTV delivers the signal, is it incurring a cost?
A: Yes.
Q: Okay. You've also heard the Department saying -- and you've said it yourself based on your reading of the materials -- that the Department's position is that an activity that generates a cost cannot be an income-producing activity. On that basis, can the delivery of the signal be an income-producing activity?
A: No, no, and that goes to the entire point that I was making, that if you follow that logic, in the end nothing is an income-producing activity.
MR. VALLEJO: Thank you. I have no further questions.
THE COURT: Recross on those questions?

Page 264

MS. WOOTEN: No, Your Honor.
THE COURT: I've got a few for you.
THE WITNESS: Sure.
THE COURT: Some of them I'm just trying to figure things out here. You said that -- and you started with the principles of logic. So, you should know that when you say that to a judge, you're going to start getting questions.
THE WITNESS: I understand the peril, Your Honor. Thank you.
THE COURT: You said you focused just on the taxpayer, but to focus just on the taxpayer leaves out a very important aspect, or at least from -- and I'm asking you, so you correct me if I'm wrong on all this -- but it leaves out an important aspect you, yourself, were talking about and that is, you were emphasizing the value drivers, the importance of the content, the fact that the customer service and all that.
So what I'm -- that brings me to the question of, if you focus just on the taxpayers, do you not miss an analysis of what is important to the customer in determining what is actually produces the income in South Carolina?

Page 265

THE WITNESS: No, I think -- that's a very excellent question, Your Honor, and let me clarify what I meant there.
Is that certainly the transaction that we have -- I pay DIRECTV for my subscription. I feel it's worth it -- worthwhile for me to pay a hundred dollars a month for my -- for my subscription. And they've priced the service for that; great. So for that hundred dollars a month, they deliver a signal to me.
In making that decision, if I'm -- if we take it from the customer -- from the subscriber's point of view for a minute, I say, okay, well, why am I willing to pay it, all right? Well, they've got the content that I like and I have access to that. The signal is clear and it's reliable, all right? They come out with innovative things, things I hadn't thought about, you know. I'm a sports fan or I'm a movie fan, so I'm -- and I want to be able to tap into those, all right, and things go wrong. Things -- customer service is always important, so I'm willing to pay that hundred dollars a month for that; and that's the customer side. From DIRECTV's side -- and so I pay, all right?

Page 266

And that's my part of the transaction. I've made all these things. I've looked at what DIRECTV is doing and I've made an evaluation it's worth it to me and I pay, okay?
DIRECTV, through all those activities, as well, as I said, has tried to induce me to make that payment, all right, through all these activities. And my willingness to pay shows that, yeah, the content is important; great. The continuity and quality of the signal is important. I count on that, all those things that I've just said, all right? So that's the deal.
What I was -- what I meant to say then, and what I meant to get across is that, at that point it simply says: What's valuable? Content, broadcast services, so forth. But if I don't look then at the operations of the taxpayer, the simple fact that I pay doesn't tell me anything about the location of the activities that have then produced that payment, that produced that income.
THE COURT: Can I stop you there? Because --
THE WITNESS: Certainly.
THE COURT: -- if you look solely at what the taxpayer did from a payroll and a asset analysis, you also don't take into consideration what is important from the customer's standpoint in determining what actually produced the income, do you?
THE WITNESS: I think you do in a very important way, Your Honor.
THE COURT: All right.
THE WITNESS: Because it goes back to the decisions about how I run my business. So, for instance, DIRECTV, let's say they weren't doing any of their own broadcast -- any of their own content development, all right? They were just simply repackaging everybody's service, all right? And then they said, "Oh, well, you know what? I think our -- our customers would find this -- an NFL Sunday Ticket kind of an attractive package to subscribe to, but it's going to take us time to develop that."
So now we're going to need to incur additional costs, additional technicians, additional marketing folks, additional lawyers to negotiate contracts and so forth.
And so the value that -- they think the value that the customer is going to place on that,

Page 267

Page 268

now they -- now they're having to hire in additional people. So payroll will go up in -- where those folks are located.
THE COURT: All right. NFL Ticket requires additional assets and additional payroll.
THE WITNESS: Yes.
THE COURT: But I've heard no testimony telling me how many South Carolina citizens actually use NFL Ticket, so I don't know how that value is apportioned to South Carolina at all, do I?
THE WITNESS: I would say not specifically, no, because you haven't looked at the individual subscriber to know exactly what they're paying. However, I would say that by looking at the -- it goes back to the idea that the payroll and the assets are really proxies, that they're reasonable measures.
THE COURT: Oh, but all I'm doing is testing your proxies --
THE WITNESS: Yes, of course.
THE COURT: -- is what I'm asking you here is --
THE WITNESS: Right.
THE COURT: -- if -- for all I know, there may be only ten South -- I know this may be absurd, but there may be only ten South Carolina

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Page 269

citizens that have the NFL Ticket, whereas opposed -- or NFL, whatever it's called, programming --

THE WITNESS: Right.

THE COURT: -- but; whereas it could be, you know, tens of thousands in another state. So if I'm just doing an across-the-board payroll and asset, I'm missing an analysis of the value of various aspects -- and that's just one of them --

THE WITNESS: Uh-huh (affirmatively responds).

THE COURT: -- of your service, aren't I?

THE WITNESS: Well, I think we're making -- potentially. But I don't think that it's -- it would be significant and here's why. Is that, that would only have an impact if I really felt that -- and I -- and if I knew that the -- the composition of the packages, right, that folks are buying in South Carolina really differ in a significant way from the other markets in which DIRECTV operates.

If not, then the average, if you will, subscriber is the same, right? And I think that is an underlying assumption. But I think you also have that same type of assumption

Page 270

whenever we're applying -- as Professor Pomp was saying in these other situations where we're applying various kinds of factor analyses. So there are certain assumptions we're making that are part of it.

Quite frankly, the assumption that the average demographics in the major markets in South Carolina, which -- in the markets of South Carolina -- I live in Missouri. I feel comfortable with the assumption that that the markets are similar in terms of probably what the interests of folks.

And so I think it's -- unless you've got a real reason to believe that's not true, I don't think that that would give you a systematic bias to say that income is either being arbitrarily -- under this method has been missed in South Carolina or -- meaning under reported or over reported.

THE COURT: Well, then let me ask you about another area. You were talking about customer service and you said it's incredibly important and one of the examples you gave was getting service out quickly.

THE WITNESS: Uh-huh (affirmative response).

Page 271

THE COURT: Which that would occur in South Carolina, I would assume, from your analysis or the way you presented it. If that is a very important aspect of DIRECTV, should that not be given a higher consideration into whether or not that's an important part of the income-producing activity and it is something that occurs within South Carolina?

THE WITNESS: Right.

THE COURT: Simply -- because all you did is simply -- actually, I know you even excluded payroll from that aspect of the income-producing in South Carolina. So I feel like there's a hole there.

THE WITNESS: Okay. Well, I -- again, I go back to the idea of what I'm picking up in my assets and payroll. So one of the things that certainly enables that quick service is the maintenance of inventory, say of set-top boxes and controllers and dishes, and the assets that I use do pick up that inventory and that's in the state, right, and that contributes to the ability to provide service --

THE COURT: It picks up the inventory of the set boxes.

Page 272

THE WITNESS: Well, set-top boxes --

THE COURT: Yeah.

THE WITNESS: -- satellites, coaxial cables that are used to connect it, those are important components to the customer service, whether it's installation or if there's a problem and you need to swap out the boxes. So I think I am picking up in the assets part of it.

THE COURT: Well, I agree you're picking it up. My question to you is, is your picking it up distinguishing whether or not it has a higher valuation in producing income in South Carolina?

THE WITNESS: Right.

THE COURT: Let's say -- and I could back up to moving for a minute or maybe even keeping in line with it and the value of local programming, that would occur in South Carolina, if customer service, the repair of their set boxes and everything else that would occur here, and local programming would contribute to 80 percent of the decision that a South Carolina citizen may make into whether or not to go with DIRECTV, then that 80 percent would be 80 percent of the income-producing

Page 273

activity in South Carolina, would it not?
THE WITNESS: Well, I -- potentially. But I would say that I am picking up that activity through DIRECTV's, Inc.'s local collection facilities, which are integral to the delivery of that local -- of those local signals, as well as through the set-top boxes.
THE COURT: So you didn't do a specific analysis then on the value of the installation of the dishes, the value of installation of the set-top boxes, the value of someone coming out to your home. You just used the proxies for the payroll and assets to attribute to those values.
THE WITNESS: That's right, Your Honor. And that's why -- when I said that there are a number of approaches that could be used, certainly making an individual valuation of the different asset classes and activities is something that could be done; entails, you know, considerable effort. And I think it's for that -- and some uncertainty, all right? Because we need to associate returns with each, right? So --
THE COURT: I don't know if I -- I don't want to interrupt you.

Page 274

THE WITNESS: No, go ahead.
THE COURT: Stay on your path, but I don't think I've ever had a tax case that didn't involve some uncertainties.
THE WITNESS: Yes, there you go. Very good.
THE COURT: We can all agree on that.
THE WITNESS: Indeed. Indeed. And so I think -- I think the important thing to keep in mind is that these are proxies, right? And so how close can we get to what we think is a reasonable basis?
And that's where I keep coming back to the idea of, well, if I go to assets, underlying economics of what I'm doing is, by taking all the assets and just adding them up, I'm essentially assigning the same return to all the assets, all right?
So, fine, at the margin, you know, assets might have different returns, but I'm saying on average, I'm assigning that return to all the assets.
It's -- it really is a simplifying assumption, but it's -- it's one that's often used in economics, very reasonable when we're talking about these kinds of activities, particularly

Page 275

when we've got a very complex network that's operating simultaneously here, where to be able to isolate, you know, the contribution that the El Segundo up-link center provides to DIRECTV's customers in South Carolina versus New Mexico when it's sending signals everywhere, all right?
To do that kind of detailed analysis just is really not practical and that's why I come back to this approach which is, on average, I'm giving the same return because I've got this complicated network and I need to find some reasonable approach, something that I can actually implement.
And I think that that's really what's underlying -- you go back to the three-factor -- three-factor formula. I have some sympathy for that -- for that Nobel Prize professor who made the comment about the three-factor formula. I also, quite frankly, don't think he ever did a report where he actually then maybe put a value on activities and actually made those calculations within a -- within some reasonable time frame -- speculating, all right -- that he would make

Page 276

some simplifying assumptions based on sound reasoning, but nonetheless something that's getting you a reasonable answer that you can have confidence in, that's not systematically distorting the answer, and I think that's what -- kind of at the heart of my analysis.
I've tried to take that approach that it's not biasing it one way -- one way or the other.
THE COURT: All right. Follow-up questions on what I have asked?
MR. VALLEJO: I don't have any further questions. Thank you, Your Honor.
MR. CONDON: No, yours.
MS. WOOTEN: Nothing from the Department, Your Honor.
THE COURT: You may step down.
THE WITNESS: Thank you, Your Honor.
(Witness excused.)
THE COURT: We're going to take a break for the day or ...
MR. ROBERTS: If Your Honor is --
THE COURT: That's what I would prefer.
MR. VALLEJO: That was our last witness, Your Honor, so it's up to the Court and
THE COURT: Well, you mentioned something about

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Page 277

reading.
MR. ROBERTS: I think in the morning we have some -- yeah.
MS. GEER: Yeah, let's just do those in the morning.
THE COURT: Read it in the morning, in the afternoon, whenever, just we'll do it tomorrow.
MR. ROBERTS: That works.
THE COURT: And we'll be back here at 9:00 o'clock.
(Whereupon, the hearing adjourned at 5:15 p.m.)
THE COURT: All right. Where were we? Had y'all rested yet?
MR. ROBERTS: No, Your Honor, we have not rested.
MS. GEER: Your Honor, one small procedure issue before we get started. We -- I've handed to Ms. Fair earlier the amended joint designation.
THE COURT: Uh-huh (affirmatively responds).
MS. GEER: And so that is now filed. We do not believe that it needs to be read. We just want it in the record. And so we would like to offer as our next exhibit a marked copy that is consistent with the joint designations --
THE COURT: All right.
MS. GEER: -- into evidence.
THE COURT: Any objections?
MR. CONDON: No objection, Your Honor, but we would

Page 278

like in our case to read the portions that are marked in into the record.
THE COURT: Well, then if that occurs, I assume you have the choice of whether you want your portions read, too, so.
MS. GEER: Okay. Your Honor, thank you.
MR. CONDON: Yes.
(Off the Record)
(Joint Exhibit One was marked and admitted into evidence.)
MS. GEER: Thank you, Your Honor.
MR. ROBERTS: Your Honor, we rest our case.
THE COURT: All right.
MR. CONDON: Your Honor, the Department would like to make a motion for directed verdict at this point.
THE COURT: Well, then that's denied because we don't hear directed verdicts. You want to make a shot at involuntary nonsuit, I'll hear it.
MR. CONDON: Make a shot at what?
THE COURT: Involuntary nonsuit I'll hear it.
MR. CONDON: No. All right. Thank you, Your Honor.
THE COURT: I don't know if you caught my humor. In this Court, we don't hear directed verdicts.
MR. CONDON: Right.

Page 279

THE COURT: But we do hear Motions for Involuntary Nonsuit. So if you want to make a Motion for Involuntary Nonsuit, I'll hear it; that's what I was getting at. It's somewhat the same thing, but a little different standard.
MR. CONDON: No, Your Honor. No thank you.
THE COURT: Okay.
MR. CONDON: We won't do that.
THE COURT: Well, then call your first witness.
MS. WOOTEN: Thank you, Your Honor. At this time we call Robert King to the witness stand.
ROBERT KING, having been duly sworn, testifies and examines as follows:
MR. KING - DIRECT EXAMINATION BY MS. WOOTEN:
Q: Good morning, Mr. King. Could you please state your full name for the record?
A: Robert Norman King, Jr.
Q: And where are you currently employed?
A: The South Carolina Department of Revenue.
Q: In what area of the Department do you work?
A: Foreign audit.
Q: Could you had please explain to the Court foreign audit?
A: It handles multi-state corporations.
Q: Let's discuss the audit process in general.

Page 280

Let's say you go to a corporation and issue them an audit report and that taxpayer disagrees with your audit. What can the taxpayer do at that point?
A: They have 90 days to appeal that and usually goes through my supervisor, and if they can't resolve that, it goes to appeal.
Q: And when you say "appeal," what do you mean when it goes to appeal?
A: Appeal the findings of the audit itself.
Q: What section of the Department handles the audit appeal?
A: That would be litigation.
Q: Okay. And what does the litigation section issue in response to an appeal?
A: A Department Determination.
Q: Are you familiar with the taxpayer in this matter?
A: Yes.
Q: And what is the nature of your involvement with the taxpayer?
A: I performed a field audit on the 2006 through 2008 tax returns for DIRECTV, Inc.
Q: Where did you conduct this field audit?
A: Los Angeles, California, El Segundo is

Page 281

technically where it was.
Q: And that is the --
A: Headquarters or corporate accounting headquarters for DIRECTV.
Q: And were you the only auditor present at this field audit?
A: No.
Q: Who was present with you?
A: Don Dennis and Don Hennif (phonetic).
Q: And what is their role with the Department?
A: Don Hennif is now retired. Don Dennis has the same position as I do.
Q: And what was your role during the audit?
A: I helped compile the information and research and so forth during the audit.
Q: And what was the basis of that particular audit?
A: We were looking at intercompany expenses and other affiliates that were not following with the South Carolina Department of Revenue for nexus issues.
Q: And after consideration of the nexus issue, what did you determine?
A: That we had no nexus on the other entities.
Q: All right. If you will, please --

Page 282

MS. WOOTEN: May I approach, Your Honor?
THE COURT: Yeah.
Q: If you will grab the Respondent's exhibit notebook up here at the top.
A: (Indicating.)
Q: Uh-huh (affirmative response). Okay. Just use that to refer. If you will refer to Exhibit One, Respondent's Exhibit One.
A: (Witness complies.)
Q: And do you recognize this document?
A: Yes.
Q: What is it?
A: That is the 2006 corporate return for DIRECTV, Inc., and Subsidiaries.
Q: And have you had an opportunity to review this return?
A: Yes.
Q: Okay. If you will refer to page four, I believe, of that exhibit, the section designated as Scheduled H-2.
A: (Witness complies.)
Q: Do you have that?
A: Yes.
Q: Okay. And in that section, what does line four refer to?

Page 283

A: Line four in the Schedule G?
Q: I believe it's been cut off, but if you will look down one, two, three, four -- it looks like the fourth line, starts with "ratio."
A: Okay.
Q: What does this line refer to?
A: That is the apportionment ratio that represents their percentage in South Carolina.
Q: And how is that ratio calculated?
A: It's determined by South Carolina receipts over everywhere receipts.
Q: And what is your understanding of what has been included in the South Carolina gross receipts on this return?
A: Subscription revenues, set-top revenues.
Q: Okay. If you'll please refer to Exhibit Number Two.
A: (Witness complies.)
Q: Excuse me, Exhibit Number Three. Again, if you'll -- excuse me. I apologize, Exhibit Four.
A: (Witness complies.)
Q: Do you recognize --
THE COURT: So we started with Two, now at Three, and we're at Four?

Page 284

MS. WOOTEN: We've got so many --
THE COURT: Any more --
MS. WOOTEN: We have quite a few returns in front of us, Your Honor.
Q: Do you recognize this document?
A: Yes.
Q: And what is this document?
A: That is the 2007, 12/31/2007 tax return for DIRECTV, Inc.
Q: And you will refer to the same H-2 schedule, it's a couple pages back, there's a number six at the bottom of that page.
A: (Witness complies.) Okay.
Q: What is the ratio reported on this return?
A: 2.0016 percent.
Q: And is it your understanding -- is the method DIRECTV used to calculate this ratio consistent with the ratio calculated for 2006?
A: Correct.
Q: All right. And if you will please refer to Exhibit Six.
A: (Witness complies.)
Q: And, again, if you will flip to a couple pages back. It's number seven designated on the bottom of the page.

Page 285

A: (Witness complies.) Okay.
Q: What is the ratio reported on this return?
A: 2.0543 percent.
Q: And is this method DIRECTV used to calculate the ratio consistent with the ratios calculated for 2006 and 2007?
A: Yes.
Q: Okay. After conducting the field audit and reviewing the information of the taxpayer, what did you do next?
A: For the original returns, we had no issue with the way they filed the returns.
Q: Did you accept the original returns as filed?
A: We would have accepted those as filed.
Q: And when were you next contacted or had any involvement with the DIRECTV audit?
A: 2010.
Q: And what was the nature of that contact or assignment?
A: They had sent amended returns in for those tax years and I was asked to review those.
Q: And what is your understanding of the basis or purpose of these amended returns for tax years 2006 to 2008?
A: That they didn't feel their original filing of

Page 286

and sourcing their receipts to South Carolina was correct and that they didn't think the subscription revenues should be sourced to South Carolina in the manner that they were.
Q: Did DIRECTV include with these amended returns to the Department any statement to support the amended returns?
A: The last page of the return had a statement on there that they wanted to change.
Q: If you will --
THE COURT: Hold on a second.
Q: -- refer to Exhibit Three.
THE COURT: Wait a second. Can you speak up a little bit louder?
THE WITNESS: I'll try to. I'm sorry, I have a low voice. I apologize.
Q: If you will -- I'm sorry. If you'll please refer to Respondent's Exhibit Three and the last page.
A: (Witness complies.)
Q: Is this the statement you were referring to?
A: (Reading.) Yes.
Q: Could you please read that statement?
A: "The return is being amended to apportion sales receipts to the state under SC Code 12-6-2295,

Page 287

which sources sales of services under a prorated cost-to-performance method. The originally filed return incorrectly apportioned satellite subscription receipts to South Carolina using market-based sourcing rather than cost-to-performance sourcing that is prescribed by statute."
Q: Thank you. And just to clarify, let's go back to Exhibit Two.
A: (Witness complies.)
Q: Do you recall -- or have you seen this document?
A: Yes.
Q: What is this document?
A: That is the 12/31/2006 amended return for DIRECTV, Inc., and Subsidiaries.
Q: And do you know the purpose of this amendment?
A: That was to change the apportionment ratio in South Carolina.
Q: If you will flip to page three of that document.
A: (Witness complies.)
Q: Is there any ratio reported on this tax return?
A: No.
Q: Did DIRECTV file two amended returns for 2006?

Page 288

A: I don't recall that they did.
Q: Okay. All right. If you will flip to Exhibit Three.
A: (Witness complies.)
Q: And do you know what this -- or what is this document?
A: That is the 12/31/2006 amended return for DIRECTV and Subsidiaries.
Q: And have you had an opportunity to review this return?
A: Yes.
Q: Okay. If you will flip to page four of the exhibit.
A: (Witness complies.)
Q: What is the ratio reported on this return?
A: On page four or five?
Q: It's number four in the document, but I believe it's number five on the actual page number.
A: Okay. And your question?
Q: What is the ratio reported on this page?
A: .0246 percent.
Q: And what is your understanding of how DIRECTV calculated this ratio for the 2006 amended return?
A: In the South Carolina ratio, they included

Page 289

set-top box rentals and that was it.
Q: Did they include the South Carolina subscription revenue?
A: I do not think so.
Q: Okay. If you'll now flip to Exhibit Five.
A: (Witness complies.)
Q: Do you recognize this document?
A: Yes.
Q: And have you had an opportunity to review it?
A: Yes.
Q: Okay. If you will flip several pages back to the Schedule H-2 section. It's page six at the bottom.
A: (Witness complies.)
Q: What is the ratio reported on this document?
A: .0810 percent.
Q: And is this method DIRECTV used to calculate the ratio consistent with the ratios calculated for the amended 2006 return?
A: Yes.
Q: Flip to Exhibit Seven, please.
A: (Witness complies.)
Q: And, again, turn -- or do you recognize this document?
A: Yes.

Page 290

Q: What is this document?
A: That is the 12/31/2008 amended return for DIRECTV, Inc.
Q: And if you will flip back to the third page. It's marked number seven at the bottom.
A: (Witness complies.)
Q: What is the ratio reported on this document?
A: .1137 percent.
Q: Is the method DIRECTV used to calculate this ratio consistent with the ratios calculated for the amended 2006 and 2007 returns?
A: Yes.
Q: And, again, what is your understanding the result of DIRECTV amending these returns to source South Carolina subscription revenue outside of South Carolina?
A: It significantly reduced the apportionment ratio and therefore reduced the tax liability for the taxpayer.
Q: Okay. All right. If you will now look at Exhibit Number Eleven.
A: (Witness complies.)
Q: Do you recognize this document?
A: Yes.
Q: What is this document?

Page 291

A: That is the revenue -- the audit report that's sent to the taxpayer.
Q: Did you draft or complete?
A: No.
Q: You did not? If you will flip to the second page of this exhibit.
A: (Witness complies.)
Q: What is this document?
A: That is the billing page for the audit report.
Q: Did you draft this document?
A: Yes.
Q: And what does this document describe?
A: That describes what we have billed the taxpayer for.
Q: Are there any other pages that you would have completed or drafted in conjunction with this billing document?
A: Yes.
Q: And what are those?
A: The recomp sheet for income and the license fee sheet for the license fee.
Q: And are those included with this exhibit?
A: Yes.
Q: And what are the purpose -- what is the purpose of the recomp sheets?

Page 292

A: It's to show in detail the returns and what is due per year.
Q: Okay. Are the gross receipt ratios for years 2006 through 2008 included on this report?
A: Yes.
Q: Okay. And does it reflect the gross receipt ratio reported by DIRECTV on its original returns for tax years 2006 through 2008?
A: Yes.
Q: And what are the findings of your audit report?
A: That we felt like the original returns as filed were the correct ratio for South Carolina.
Q: And what is the basis for that finding?
A: We felt like the subscription revenue was the income-producing property or activity in South Carolina and therefore they should be sourced -- the customers that received those subscriptions should be sourced to South Carolina.
Q: And did you consider the satellites or other infrastructure outside of South Carolina in determining the income-producing activity for South Carolina?
A: I did not.
Q: Why didn't you consider those activities?

Page 293

A: I hadn't -- I've done that in the past and that was -- the way they were originally filed was consistent with communications type businesses in South Carolina and how they file their returns.
Q: Okay. Is tax year 2009 included in this audit report?
A: It is.
Q: Why is it included in the 2006 through 2008 audit report?
A: It was -- at the time of the write-up, the 2009 return had been filed and -- with a zero ratio, but we used the same ratio, estimated the ratio from the 2008 return but we included 2009.
Q: What happens after your audit report is completed?
A: It is sent to my supervisor for review and then they send the audit to the taxpayer.
Q: Okay. After you submitted this audit report to your supervisor, when was your next involvement or contact regarding this taxpayer's audit?
A: During the appeals process, I was asked to do the 2009, 2010, 2011 to get the audit up to date through that date that the appeal section was handling the audit.

Page 294

Q: Did you conduct another field audit for the 2009 --
A: I did not.
Q: -- through 2011 period?
A: I did not.
Q: Okay. Why did you not conduct another field audit?
A: I was asked to just (sic) at the ratios in line with -- for the -- the appeals.
Q: If you will please refer to Exhibit Number Eight.
A: (Witness complies.)
Q: Do you recognize this document?
A: Yes.
Q: What is it?
A: That is 12/31/2009 South Carolina tax return for DIRECTV, Inc.
Q: And if you will flip a couple pages in to the page that's marked seven at the bottom.
A: (Witness complies.)
Q: What is the ratio that is reported on this return?
A: .1437 percent.
Q: All right. And if you will now refer to Exhibit Nine.

Page 295

A: (Witness complies.)
Q: Do you recognize this document?
A: Yes.
Q: What is it?
A: That is 12/31/2010 South Carolina tax return for DIRECTV, Inc.
Q: If you will please flip a few pages in, as well, to the page marked number seven.
A: (Witness complies.)
Q: And what is the ratio reported on the return?
A: .1570 percent.
Q: And now if you will refer to Exhibit --
THE COURT: .15 what?
THE WITNESS: 1570 percent.
THE COURT: Okay.
Q: If you will please refer to Exhibit Ten.
A: (Witness complies.)
Q: Do you recognize this document?
A: Yes.
Q: What is it?
A: It is the 12/31/2011 South Carolina return for DIRECTV, Inc.
Q: And, again, if you will flip a few pages in to the page marked seven.
A: (Witness complies.)

Page 296

Q: And what is the ratio reported on this return?
A: .2962 percent.
Q: Are DIRECTV's original returns for tax years 2009 through 2011 consistent with the method of filing for the amended returns for 2006 through 2008?
A: Correct.
Q: How are they consistent?
A: They sourced the set-top box rental as the only receipts in South Carolina.
Q: All right. And if you will now refer to Exhibit Number Eleven.
A: (Witness complies.)
Q: There are several documents in this exhibit. Collectively, could you tell the Court what is this exhibit?
A: That is the audit package for 2009, 2010, 2011 that was sent to the taxpayer.
Q: Okay. And in this exhibit, there are billing schedules and recomp schedules. Did you draft or complete those schedules?
A: Yes.
Q: And what do those documents describe?
A: That shows the taxable income that this taxpayer had in the State of South Carolina.

Page 297

Q: And what are the findings contained in your audit report?
A: Those -- using the receipts for subscription and set-top box in South Carolina. So we -- the ratio was changed from what was -- they filed to including those in South Carolina, which were consistent with 2006 through 2008 original returns filed.
Q: And, again, what is the basis for your audit findings in the second audit report?
A: We felt like in the -- same as 2006 to -- through 2008, we felt like the income-producing activity in South Carolina should include subscription revenue.
Q: Okay. And if you will refer to the third page of Exhibit Eleven.
A: (Witness complies.)
Q: There is a section entitled "explanation of adjustments." What was the explanation given in your report?
A: That was the third page you said, I'm sorry? Did you say third page?
Q: Yes, third page.
A: Okay. I'm sorry. I included the statute that includes corporate income tax for who is liable

Page 298

to file in South Carolina.
Q: Is the basis of your decision in the first audit report consistent with the basis of your decision in the second audit report?
A: Yes.
Q: And on the second audit report, did you include the gross receipt ratios for years 2009 through 2011?
A: Yes.
Q: Okay. Where did you obtain those ratios?
A: I obtained them through an e-mail from my supervisor, Tim Donovan.
Q: Were these ratios consistent with the ratios reported by DIRECTV on the original 2006 through 2008 returns?
A: Yes.
Q: Were any penalties assessed against DIRECTV during the audit periods?
A: For the 2009 through 2011.
Q: What were those penalties?
A: Substantial understatement.
Q: Did you recommend those penalties be applied?
A: Those were applicable to that audit, so yes.
MS. WOOTEN: Okay. No further questions from the Department.

Page 299

MR. KING - CROSS-EXAMINATION BY MR. ROBERTS:
Q: Mr. King, it's nice to see you again.
A: Yeah.
Q: Just have a few questions for you this morning.
A: Okay.
Q: So you mentioned that you conducted two audits. You conducted one on 2006 to 2008 period --
A: (Nods head affirmatively.)
Q: -- you reviewed the amended returns, and then you -- you did a follow-up audit for 2009 through '11?
A: Yes.
Q: During the time that you were conducting those audits and the review of the amended returns and the original returns for 2009 through '11, were you aware of how DIRECTV's business actually operated? Had you done any background research to figure out how it conducted its business?
A: No.
Q: During your deposition, you discussed that -- and again here today, you discussed that you did a field audit out at -- with DIRECTV.
A: (Nods head affirmatively.)
Q: Did you meet with anyone outside the tax

Page 300

department to talk about the operations of DIRECTV?
A: No.
Q: I'd like you -- I'd like to refer to Respondent's Exhibit Twelve. It's the field audit report, 2009 through '11.
A: Okay.
Q: And I'm just a little concerned here, Mr. King, since the story seems to have changed a little since we were last together at your deposition. Can you just take a look at -- just look at -- this is the 2009 through '11 field audit report. Can you just take a look at the recomp sheet?
A: Okay.
Q: On -- it just says page one at the bottom, but the schedule has 2011, '10 and '9 at the top. And you see at the bottom there, there's an explanation of adjustments. Can you just -- there's a heading right below that, says "sourcing of receipts."
A: Okay.
Q: Can you just read that to -- out loud, please, into the record?
A: "It is Department's position that DIRECTV

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Page 301

receipts from South Carolina customers pursuant to their contract with DIRECTV are the receipts which are the income-producing activity. The apportionment ratios determine on a market-based sourcing of South Carolina customer receipts over all receipts as provided by the taxpayer."

Q: Great. And in your deposition, you explained to me that market-based sourcing, quote, "looks to where the customer resides; that's kind of where the market-based is based on." So the field audit report is based on the location of the customer, right?

A: Yes.

Q: Thank you. Now, just now, you testified that -- this is what troubled me because --

A: Okay.

Q: -- clearly you just testified that the audit was based on customer location. And now you -- just now you were talking about the income-producing activities and you said that the income-producing activity is, quote, the -- "the income-producing activity should include subscription revenue." What does that mean?

A: We felt like the subscriptions were for -- were

Page 302

for the customers in South Carolina and that we felt like that's where the activity took place is -- is in South Carolina.

Q: And so, again, you're just -- you're just basing it solely on customer location?

A: I am.

Q: Okay. Thank you. You also mentioned -- and this kind of struck me as odd, too, given our deposition --

A: Okay.

Q: -- that your determination here was consistent with how communications companies were taxed.

A: Yeah.

Q: Can you just explain that a little more for me, please?

A: We felt like that was consistent with how other similar communications companies, as well as cell phone, that type of stuff, which would be in communication, also.

Q: But you just acknowledged that you didn't know how DIRECTV's business operated, right?

A: That's correct.

Q: Okay. So it's probably difficult to make that conclusion?

A: Just in going with what I knew.

Page 303

Q: Okay. Now, in your deposition, I -- you know, I asked you if the Department had any practice or policy with respect to sourcing subscription revenue and you said that, no, you're not aware of any. So this kind of seems to contradict that. Did you just forget that guidance at the deposition?

A: Yeah.

MR. ROBERTS: Okay. I have no further questions, Your Honor.

THE COURT: Redirect?

MR. KING - REDIRECT EXAMINATION BY MS. WOOTEN:

Q: Mr. King, if you will refer to Exhibit Twelve again.

A: (Witness complies.) Okay.

Q: Mr. Roberts was asking you regarding the explanation of adjustments and he had you read a section entitled "sourcing of receipts."

A: Yes.

Q: The phrase "market-based sourcing" was used in this report; is that correct?

A: Yes.

Q: Did the taxpayer use this phrase on their amended 2006 through 2008 returns in the statement attached at the end of the document?

Page 304

A: Yes.

MS. WOOTEN: Thank you, Your Honor.

MR. ROBERTS: I have no further questions, Your Honor.

THE COURT: All right. You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MS. WOOTEN: Thank you. The Department calls Tim Donovan to the stand.

TIMOTHY S. DONOVAN, having been duly sworn, testifies and examines as follows:

MR. DONOVAN - DIRECT EXAMINATION BY MS. WOOTEN:

Q: Good morning, Tim.

A: Good morning.

Q: Could you please state your full name record?

A: Timothy S. Donovan.

THE COURT: Spell that last name for me.

THE WITNESS: D-O-N-O-V-A-N.

THE COURT: Pretty simple.

Q: How long -- or where are you currently employed?

A: The South Carolina Department of Revenue.

Q: How long have you been employed with the Department?

A: A little over 24 years.

Page 305

Q: And what positions have you held during that time?
A: I've been a domestic auditor, a foreign auditor. I worked in -- for eight years in the Office of Appeals. I was the foreign audit supervisor for four years and I'm currently the foreign audit manager over nexus and discovery and foreign audit.
Q: What are the general job duties of your current position?
A: Currently, I manage the foreign audit function, as well as the nexus and discovery section.
Q: Are you familiar with the taxpayer in this case?
A: I am.
Q: How are you familiar with DIRECTV?
A: We conducted audits, you know, for the 2006-2008 period; at that time I was the audit supervisor. For the second period, I was basically the audit manager.
Q: Let's just break those out for a second. How were -- what was your involvement in the first audit period of DIRECTV?
A: In the first audit, as the audit supervisor, I would have had discussions probably with the

Page 306

auditor, kind of overseeing audits of basically all the auditors in the state. And I really became involved in it once the appeal was filed by DIRECTV. I would've received the appeal and myself, as well as our appeals analyst, would've handled the appeal.
Q: And what was the nature of your involvement with the second audit?
A: Again, the second audit, we were still reviewing the appeal of the first audit. I basically would've given Mr. King information in order to send out the second assessment to bring it up to date.
Q: What is your understanding of the taxpayer's sources of income in this case?
A: The taxpayer's sources of income are -- typically come from subscriber -- the majority come from subscriber fees, leases of set-top boxes, installation fees and so on and so forth.
Q: Mr. King testified earlier regarding both audit reports and the findings and basis for those audit reports. Do you agree with the findings and basis in those -- contained in those audit reports?

Page 307

A: I do.
Q: Why?
A: It's consistent with how we apportion income of the taxpayer.
Q: Were any new policy decisions made prior to the issuance of the first audit report?
A: Any policy decisions? No.
Q: Was the auditor carrying out long-standing Department policy?
A: He was.
Q: And do you recall why there is a gap of approximately three years between the first and second audit report in this matter?
A: The appeal was rather lengthy. Once we couldn't reach a resolution at the field audit level, the file was transferred to the Office of General Counsel for the issuance of a Department Determination. Once that determination was drafted and approved, that's when we decided to go ahead and bring the audit up to date and send the assessment for the '09 through '11 years.
Q: In completing the second audit report, Mr. King testified earlier that he retained (sic) the gross receipts ratios from you in calculating

Page 308

the tax liability; is that correct?
A: That's correct.
Q: Did you compute those ratios?
A: I did not.
Q: Where did you receive those ratios?
A: I received those ratios from the taxpayer's representative.
Q: And did you verify that those ratios were accurate before giving them to the auditor?
A: I didn't do any calculation or verification of the ratio, no.
Q: And why did you not verify those ratios?
A: They were received from the taxpayer representative and we had no reason to believe that -- that those ratios were incorrect.
Q: Generally speaking, Mr. Donovan, what is an apportionment method?
A: An apportionment method?
Q: Uh-huh (affirmatively responds).
A: It's essentially a method of determining what portion of income should be sourced to a state or jurisdiction, you know, for taxation.
Q: Is one of those methods the gross receipts --
A: It is.
Q: -- method? Is the gross receipts method

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Page 309

provided for by statute?
A: It is.
Q: Okay. If you will please refer to Exhibit Number -- I apologize -- Thirty in our book.
A: One moment. (Witness complies.) Okay.
Q: Are you familiar with this statute?
A: Yes, this is 12-6-2290.
Q: And are you familiar with the Department's application of this statute?
A: I am.
Q: Okay. And if you will flip to Exhibit Number Thirty-two.
A: (Witness complies.)
Q: Are you familiar with this statute?
A: Yes, this is 12-6-2295.
Q: And are you familiar with the Department's application of this statute?
A: I am.
Q: In your position at the Department, are you familiar with the types of taxpayers who utilize 12-6-2295, specifically A(5)?
A: Yes.
Q: In general, what types of business activities do taxpayers utilize -- utilizing this method engage in?

Page 310

A: Generally, they would be engaged in providing services. You know, previously, before this statute, you know, we were broken down between gross receipts and a three-factor formula. Three-factor form dealt with people that were dealing in tangible personal property. Once it was consolidated, you know, this basically just deals with service companies, companies that don't sell tangible personal property.
Q: And are you familiar with the Department's practices on the sourcing of income from service providers?
A: I am.
Q: Does the Department always source a taxpayer's income to the location of its employees?
A: No.
Q: Would the Department sometimes source a taxpayer's income to the location of the delivery of services?
A: I believe so, yes.
Q: In applying Section 12-6-2295A(5), what does the Department look at when determining how a taxpayer's income should be sourced to South Carolina?
A: We would look at how the business operates and

Page 311

essentially the transaction, you know, what is -- what is transpiring under the transaction.
Q: How would the Department source the income from services received by an engineering firm?
A: In Lockwood, we basically -- the Court looked at the actual engineering services as being the income-producing activity and, therefore, sourced it on a -- basically a proxy of payroll.
Q: How would the Department source the income from the licensing of intangibles?
A: Intangibles are licensed to South Carolina based on where the accounts receivable is created. Basically, the transaction of producing -- you know, like in Geoffrey, the licensing of an intangible, there wasn't a receivable due until a sale took place in South Carolina. And so, therefore, once that took place in South Carolina, that receipt was sourced to South Carolina.
Q: How would the Department source the income from a financing operation?
A: Financing operations, we basically look at what's being financed and where it's being

Page 312

financed and the customer that is basically paying those finance fees of interest and principal.
Q: And in viewing those situations that we just discussed, was -- to your knowledge, was there any calculation of the company's assets in determining the income-producing activity?
A: No.
Q: Why not?
A: That just hasn't been our long-standing procedure.
Q: What is the Department's practice in apportioning income of cable companies?
A: Cable companies, again, we look at the transaction that transpires and we basically go by a gross receipts method of subscriber service to income everywhere.
Q: Is that similar to the practice in -- or the -- what is being done with DIRECTV in this case?
A: It is.
Q: Are telephone companies treated the same as cable and satellite companies with regard to apportioning income?
A: They are. We do have a specific statute in 12-6-2390 or 20 -- I don't know the statute off

Page 313

the top of my head, but -- you know, telephone companies, again, we would source based on the receipts of the customer.
Q: Okay. And are all of these examples consistent with the Department's long-standing administrative policy regarding the sourcing of corporate income?
A: It is.
Q: For the audit period at issue, did the taxpayer provide any information regarding expenses related to business activities in other states?
A: Not that I'm aware of.
Q: To your knowledge, was that information requested by the auditor or anyone at the Department?
A: Not to my knowledge.
Q: If the information had been provided, would that have changed the Department's determination in this matter?
A: I don't believe so, no.
Q: Why not?
A: Again, you know, we look at the transaction as, you know, what the income-producing activity and we would've looked at receipts of DIRECTV for their subscription and their set-top boxes.

Page 314

Q: Mr. King testified earlier that penalties were imposed in this case, specifically substantial understatement penalties. Who makes the determination of whether or not to apply penalties in an audit?
A: I believe it's done by statute.
MS. WOOTEN: Okay. That's all from the Department, Your Honor.
MR. DONOVAN - CROSS-EXAMINATION BY MR. ROBERTS:
Q: Good morning, Mr. Donovan.
THE COURT: Hold on one moment.
MR. ROBERTS: I'm sorry, Your Honor.
THE COURT: All right. Proceed ahead.
MR. ROBERTS: Thank you, Your Honor.
Q: All right. Mr. Donovan, Ms. Wooten asked you if you agreed with the basis of the audit report, which Mr. King testified about and you said you did.
A: Uh-huh (affirmatively responds).
Q: So you would also agree, then, that the audit determination was based on the location of the customer, correct?
A: That is -- that's correct.
Q: Thank you. Okay. And I was -- there was lots of testimony about the long-standing policy in

Page 315

this case and I guess -- I guess I'm just a little confused.
MR. ROBERTS: And I'd like to approach the bench and provide the witness with a copy of the deposition transcript; copy for Your Honor.
Q: So you and -- you testified that the result in this audit was consistent with long-standing policy. This is the deposition transcript from Mr. King's deposition. Can you just -- can you just read the question and the answer starting with line 20 and going to line 23? And read it out loud, please.
A: Line 20, Question: "Does the Department have any practice or policy with respect to sourcing this type of revenue, subscription revenue?" Answer: "Not that I'm aware of."
Q: So this long-standing policy, the auditor conducting the audit wasn't aware of the long-standing policy; that's what this says, right?
A: That's -- that's what the deposition says --
Q: Thank you. All right.
A: -- yes.
Q: So -- and where -- where can I go about finding this long-standing policy? I have been asking

Page 316

people for six months to find this long-standing policy and I can't find it anywhere.
A: It -- we don't have a policy or procedurals manual.
Q: So it's not written down anywhere, correct?
A: Right.
Q: Okay. So if I'm a taxpayer and I want to find out about the Department's policy, who do I call? Because I've done discovery and I've deposed four witnesses and no one I've spoken to can tell me. So if I'm a taxpayer and I want to find out about these guidelines, who do I call?
A: Well, I mean, as far as call somebody in the agency?
Q: I'm a taxpayer. I just wanted to know how the Department thinks I should file my return and I've -- we just heard 20 minutes of testimony about these long-standing guidelines and these --
A: Right.
Q: -- long-standing guidelines. But how am I as a taxpayer supposed to find out about these long-standing guidelines that aren't written

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Page 317

down anywhere and I can't even find them out through discovery?
A: You -- you can essentially request a letter ruling from our policy section.
Q: So the burden's on the taxpayer to figure out the secretive policies that the Department has.
A: I don't -- it's not a secret policy.
Q: But it's not published anywhere, correct?
A: Other than the -- I guess the court cases, basically the long-standing of Lockwood and all the way up through Rent-A-Center Texas.
Q: And, again, I mean, I just go back to this long-standing policy. It's not only that -- it's not only that a taxpayer and taxpayer's counsel can't figure out these long-standing policies, but you just read a deposition transcript that your auditor doesn't even know of these long-standing policies. It's just mind boggling me. It's not written down anywhere, right? Just ...
A: Correct.
Q: And Ms. Wooten also asked many questions about how various businesses -- how the Department sources the revenue from lots of different businesses and I assume those were also based

Page 318

on these long-standing guidelines that aren't written down anywhere?
A: Correct.
Q: Okay. And you mentioned that the one special apportionment formula for telephone companies was actually in a statute, right?
A: That's correct.
MR. ROBERTS: Okay. I have no further questions, Your Honor.
THE COURT: Redirect?
MS. WOOTEN: One moment, Your Honor.
THE COURT: That's fine.
MS. WOOTEN: Just a couple of follow-up questions, Your Honor.
MR. DONOVAN - REDIRECT EXAMINATION BY MS. WOOTEN:
Q: When you refer to the location of the customers in your decision, are you still considering the income-producing activity in reaching that conclusion?
A: Yes.
Q: And with regard to the telephone companies in the statute that was just referenced, is that a special statute that regulated public utilities?
A: It -- I believe the original statute probably

Page 319

was -- it's basically -- the items within that statute are typically, you know, regulated type companies.
Q: Okay. Are you aware of any rule that requires long-standing administrative policy to be written?
A: No.
MS. WOOTEN: That's all, Your Honor.
MR. ROBERTS: I have no further questions, Your Honor.
THE COURT: You may step down.
(Witness excused.)
THE COURT: All right. Call your next witness.
MR. CONDON: Your Honor, the Department now calls John Swearingen.
JOHN SWEARINGEN, having been duly sworn, testifies and examines as follows:
MR. SWEARINGEN - DIRECT EXAMINATION BY MR. CONDON:
Q: Good morning, Mr. Swearingen.
A: Good morning.
Q: Would you -- I know you just spelled your name, but would you give us your full name?
A: John A. Swearingen.
Q: And where are you employed, Mr. Swearingen?
A: The Department of Revenue.

Page 320

Q: And in what capacity are you employed?
A: Currently, I'm -- report to foreign audit supervisor, but I'm in -- I actually handle nexus and discovery and job development credit audits.
Q: How long have you been employed by the Department?
A: Approximately 40 years.
Q: Could you give us a brief summary of what you've done in those 40 years?
A: I started with the Department back in '73 and for about three or four years, I was a corporate income auditor in the Charleston district. Then I moved into foreign corporate income tax audits in -- around 1976. And from '76 to '83, I was foreign income auditor. In '83, I went into the -- the field services division formed an appeals group and I went into the appeals group in '83 and I stayed there until about '85 or '6. And about '86, or somewhere along there, the Department formed a policy group and I went into the policy group from '86 until about '94 or '5, I believe it was. And in '95, I transferred back into audit, into

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Page 321

audit selection, and around '96, I became the foreign audit supervisor, the position Tim currently handles. And I was in that section -- in that position from '96 until about 2006. And then I went into my current position after I -- I actually retired in '06 and came back as part time after '06 to now.

Q: So did you say you were the foreign audit supervisor prior to Tim Donovan --

A: Correct.

Q: -- who just testified?

A: Correct.

Q: Could you describe briefly what you did when you were a member of the policy group from '86 to '94?

A: We handle questions from audit, from within the agency, and from taxpayers concerning issues relative to the corporate income tax, at least my part was, but we did other taxes, also. We tried to develop some rules and guidance on how the Department interpreted certain statutes or application to people filing -- filing their income -- or tax returns.

Q: And as a -- after you left the policy group back in audit selection, but more specifically

Page 322

as foreign audit manager, did that role or that job have any involvement with policy?

A: We kind of were peripheral. If we had an issue or something, we would, of course, consult the policy as to some guidance on the position and vice -- if policy or new statute came out, we would seek some guidance from either the policy or ultimately the attorneys within the agency.

Q: As foreign audit supervisor or manager, would you want the auditors that reported to you to follow Department policy?

A: Yes, of course.

Q: Did you review any of the corporate -- in your employment at the Department, did you review any of the corporate income tax returns that are at issue in this case?

A: I did. I reviewed those amended returns when they were initially filed as part of my job, because I've been the former audit supervisor, foreign audit supervisor. We would like at some of the refund claim -- larger refund claims to assist the office in determining whether to issue the refunds on -- mainly on the amended returns.

Q: And what did you do with those --

Page 323

A: The ones in question --

Q: -- refund claims?

A: The ones in question, DIRECTV, I would probably have noticed the reason they amended them, which was attached in the back of the return, and probably referred it to audit for review before approving the refund.

Q: Based on your long service within the Department, did the Department have a set of audit guidelines?

A: We didn't have a written set. I mean, we just -- usually we had -- we went from the code, the regs, the Commission decisions, court cases. We would review those type things to determine. And then, I mean, of course, we looked at the return and how it was being filed and the instructions for our returns, things like that.

And we -- but to my knowledge, there were no written audit manual. Well, there was a written audit manual back in the '70's and, to my knowledge, we never updated it, but it was around '70 -- may have been one reissued in '83 or '84 that gave general guidance on what you would look at when you did an audit.

Page 324

Q: How were these audit guidelines developed?

A: Usually they were developed in conjunction with the attorneys. When I first started, we had the Attorney General's office, had three or four attorneys assigned to the Department of Revenue. And if some issues would come up, the upper folk, people in our division, would seek guidance on how to -- you know, what position to take on some issues.

And some of them the taxpayer would raise the question. And a lot of times we would get an opinion from the Attorney General on certain issues. The Attorney General used to issue a lot of opinions on income or sales tax within the -- for the Department.

Q: And just to be clear, are the guidelines you're talking about guidelines related to sourcing of receipts?

A: We had some. They -- I think I'd just moved into foreign audit section from Charleston. It was around '77. And the Department -- I later saw it when it came up in Lockwood Greene. They developed what they called a "rule of construction" on how you source receipts under the gross receipts formula. And they -- I was

Page 325

thinking a -- I think as a result of an audit or an issue coming on a engineering firm for a large contract within the state, how you source the receipts from it.

Q: And, I apologize, I missed it.

A: Yeah.

Q: Who are -- who was the "they" you're referring to that developed these, these sourcing guidelines?

A: Well, it started with the -- probably the audit -- whoever -- the audit supervisor, the division director, and they would ultimately talk to the Attorney General. At that time we had two or three at -- I don't know, maybe three or four Attorney Generals assigned to the Department. And those folks would research it and talk to the actual Tax Commission. Back then it was three-man body appointed by the Governor to serve terms and they would actually decide what to do in certain issues.

Q: Back in the '70's and '80's, was the current Department of Revenue referred -- named something different?

A: It was the Tax Commission back then.

Q: Did the South Carolina Tax Commission -- I

Page 326

guess that -- did that consist of a board or something?

A: It was a three-man commission appointed by the Governor.

Q: Did that --

A: And they served -- I can't remember if it was four-year terms or six-year terms.

Q: Do you have any knowledge of that Commission ever addressing these guidelines related to sourcing?

A: As far as I know, they -- it was -- they were reviewed and they discussed at the time issuing a regulation, but for some -- whatever reason, they did not issue a regulation. And, to my knowledge, I'm not sure that they were ever published other than internally. I'm not -- that's what happened, as far as I recall.

Q: Were the guidelines related to sourcing used when a new industry or business --

A: We would --

Q: -- was audited?

A: We would always consult them, I mean -- well, at that time a lot -- we were finding a lot of finance companies that weren't filing -- I mean, this was back in the late '70's, early

Page 327

'80's, a lot of companies were claiming there was no nexus and we would look at how -- we would source their income if we did have nexus. And we would look at particularly finance companies or service providers or companies like that in how we would source their income. And new companies coming in would ask us. They wouldn't ask me particularly because I was just an auditor way back then.

Q: And did you have firsthand experience with implementing these guidelines?

A: Well, I was an auditor, so I would follow the guidance. If we were doing an audit, we would first determine whether the company was dealing in tangible personal property and whether they would use the three-factor formula at the time or the gross receipts formula, or if they were a certain type company, they would use a special apportionment formula for utilities. It was -- I think railroads had a special formula, airlines, telephone companies, water companies, all had special formulas; gas pipe -- gas pipelines. But the main two for most companies were either three-factor formula or the gross receipts.

Page 328

Q: Okay. Mr. Swearingen, would you look at what's been marked as Plaintiff's (sic) Exhibit Number Twenty-one that's in the binder in front of you?

A: You said stipulation of facts, Number Twenty-one? That's DOR -- it says DOR Twenty-one.

Q: And, correct. And it's Respondent's Number Twenty-one.

A: Okay. It says -- I'm sorry.

Q: Yeah, yeah.

A: -- it does say Respondent's exhibit.

Q: Yeah, I misstated that. Specifically, would you turn to section 13 of that document?

A: (Witness complies.)

MR. ROBERTS: Well, Your Honor, I have an objection on this line of questioning here. This Exhibit Twenty-one, it's hearsay and it's not relevant. This is a Stipulation of Facts between two parties, two private parties -- well, one private party and the state -- in case a that was signed in 1986. DIRECTV wasn't even formed until 1994. And it's nothing more than a Stipulation of Facts and they're offering it, you know, to go

Page 329

into evidence for the truth of the matter asserted. This is clearly hearsay, it's not relevant, and it doesn't even talk about subscription revenue.
THE COURT: Well, I know you're divining that they're going to offer it into evidence. They haven't yet. He's about to start --
MR. ROBERTS: I just think --
THE COURT: -- questioning him about it. So what is your objection about him questioning him about it?
MR. ROBERTS: Because he's going to have -- presumably he's -- well, I will sit down and I will object, then, in a minute when he starts reading.
THE COURT: Okay.
Q: Mr. Swearingen, have you had a chance to look at section 13?
A: Actually, I didn't because I was listening to ...(reading). Yeah, it refers to how you determine gross receipts in certain type companies.
Q: Are -- is the content of section 13 in this Respondent's Exhibit Twenty-one the same as the audit guidelines that -- to which related to

Page 330

sourcing that you've been referring?
MR. ROBERTS: Your Honor, I object to this.
A: Yeah. Yes.
THE COURT: Wait a second. I'll strike his answer at this time and I'll hear the objection.
MR. ROBERTS: This is hearsay, Your Honor.
THE COURT: All right. Any response to that?
MR. CONDON: Yes, Your Honor. Mr. Swearingen has firsthand knowledge of the guidelines and what I expect him to say is, is he's going to be able to verify that these represent the guidelines as they existed back then that he used for years.
THE COURT: Is it representative of the guidelines or an application of the guidelines?
MR. CONDON: No, these --
THE COURT: Well, I mean, I guess an application would be representative. It's not the guidelines themselves. It's simply an application of where you utilized the guidelines factually?
MR. CONDON: No -- yeah, as I understand it, these are the guidelines.
THE COURT: Oh, these are the guidelines.
MR. CONDON: Yeah, I mean, they might be formatted

Page 331

slightly different, but they -- they are the guidelines.
MR. ROBERTS: So, Your Honor, based on -- these are not the guidelines. This is a Stipulation of Facts in the Lockwood Greene case. These are not the guidelines. This is hearsay. If you look at the first page of Exhibit Twenty-one, it clearly says at the top there "Stipulation of Facts."
THE COURT: I understand that. But the Stipulations of Fact -- he could lay the foundation that these were the guidelines. It doesn't have to be laid, so.
MR. CONDON: Yes, on ...
MR. ROBERTS: But, Your Honor, simply because a private party agreed in a case that this may have been the guidelines does not mean that these are the guidelines. We have no idea what those conversations were between the parties at that point.
THE COURT: I'll hear what he's got to testify about this and I'll make my ruling accordingly.
MR. ROBERTS: Very well, Your Honor. Thank you.
Q: All right. Mr. Swearingen, if you look at the first part of section 13 here on this exhibit.

Page 332

A: (Witness complies.) Yes.
Q: Well, let's actually flip to the next page. This document that -- was a set of stipulations, apparently, in Lockwood Greene. It lists a bunch of industries and indicates -- apparently indicates how the Department's going to handle each type of industry. Is what's represented there the guidelines as you -- for sourcing as you understood them to be?
MR. ROBERTS: Objection, Your Honor, leading.
A: They are the --
THE COURT: I sustain that. Rephrase the question.
Q: Okay. What are the --
THE COURT: It's close.
Q: Do the -- does the -- does what's in section 13 here represent the guidelines that you've been talking about?
MR. ROBERTS: Objection, leading, Your Honor.
THE COURT REPORTER: I didn't even hear the last part of his question.
THE COURT: Well, I didn't -- rephrase it for
MR. CONDON: Okay.
THE COURT: No, ask the question again because I didn't hear it.
MR. CONDON: Can I just ask another question?

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Page 333

THE COURT: Okay. Go ahead.
Q: What do the contents of section 13 of this document represent?
A: To me, it would have been the guidance we used in determining how to source the receipts from within South Carolina for these companies, these type companies.
Q: And is that what we have been talking about for the last few minutes?
A: Yes.
Q: And is this --
A: I mean, I recall distinctly one about finances from within. I mean, I think it was -- of course, I couldn't find a copy of the older audit manual, but I'm pretty sure the one on finance companies, these were listed in the audit manual. But I just can't locate a copy of it. It would have been like 20 or 30 years ago. But we did -- I mean, this is how we would interpret how we applied the gross receipts factor for these type companies.
Q: Is what's here in section 13 a complete and accurate representation of the guidelines as you understood them?
MR. ROBERTS: Leading, objection, Your Honor.

Page 334

A: As best I recall.
THE COURT: Hold on a second. Let him finish the question and then I'll make a ruling on it.
MR. ROBERTS: Sorry, Your Honor.
THE COURT: I mean, I think the direct question can start with "is," if that's what you're going on. It has to finish out correctly.
Q: Are -- is the contents -- or are the contents of what's in section 13 a complete and accurate representation of what you believe the guidelines were?
MR. ROBERTS: Objection, Your Honor, leading.
THE COURT: Overruled.
A: As it relates to the companies listed, this is how we would apply the gross receipts factor and that's how we were taught as auditors and as a supervisor is how -- if someone had asked me the question, this is how I would've told them to apportion the receipts or source the receipts from within for these type companies.
MR. CONDON: Your Honor, I'd like to now move that Plaintiff's (sic) Exhibit Twenty-one be entered into evidence.
THE COURT: Respondent's?
MR. CONDON: Respondent's, I'm sorry.

Page 335

MR. ROBERTS: Your Honor, I object on hearsay, as well as on relevance. I don't think the witness has authenticated this. In fact, he said that he went back and tried to find the guidelines and he couldn't find a copy and that he remembered the finance company piece, but not all the other stuff.
And it's clearly hearsay. The Department is clearly offering this to go into the record for the truth of the matter asserted which is that these are the guidelines.
THE COURT: Let me back up. Your first objection went to authenticity. Did y'all not stipulate to authenticity?
MR. CONDON: (Nods head affirmatively.)
THE COURT: So I'm going to move on from that one. Then the hearsay aspect is, it's an out-of-court statement; I agree with you on that. But what he's testified to is, this particular out-of-court statement is a representation of the guidelines that the Department had.
So he's offering it -- or he's attesting that that is the guidelines that they utilized. So he's not -- he's offered it for the truth of

Page 336

the matter asserted in the statements in there. He's just also setting forth that these documents represent that which they utilized. And there is no statement in there that he's seeking to verify the truth in or the veracity thereof. Are you following me?
MR. ROBERTS: Yes, Your Honor.
THE COURT: So what is your response to that?
MR. ROBERTS: My response is, when we first started speaking about this, Counsel for the Department said that these are the guidelines. And that's clearly what they're being offered into evidence for.
THE COURT: Well, I don't take them as -- if he's offering them as guidelines, the testimony is, based on the memory of the witness, that these appear to represent that which he remembered to be the guidelines and they would be -- this Court would admit it only for that purpose. All right?
MR. ROBERTS: Fair enough, Your Honor. I have a second objection --
THE COURT: Yeah, go ahead.
MR. ROBERTS: -- on relevance. These -- as I've said before, this is a Stipulation of Facts in

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Page 337

1986. DIRECTV was formed in 1994. There is nothing in here discussing subscription revenue. And we keep hearing about how the basis for the assessment in this case was these long-standing guidelines. This is being offered to establish something relating to those long-standing guidelines and these don't talk about subscription revenue.

THE COURT: That goes to the weight of the exhibit and, certainly, that is a pertinent point that you can raise as to what I need to consider in this case. But as far as their presenting -- they're responding, actually, to that -- some points that you've raised in your case in chief. So I overrule that one.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: I'll still hear your argument on that later on.

MR. ROBERTS: Thank you, Your Honor.

MR. CONDON: Thank you, Your Honor.

THE COURT: But has it been offered?

MR. CONDON: Yes, it has been offered.

THE COURT: Okay. It's admitted.

(Respondent's Exhibit Number Twenty-one was admitted into evidence.)

Page 338

Q: Mr. Swearingen, were you involved in the Lockwood Greene case?

A: Not directly, no. I was -- I was actually -- I think I was in -- may have been right after I left appeals. I think it was '85 or so, but I don't believe I was directly involved in Lockwood Greene.

Q: Was the way the Department approached its audits affected by the decision in Lockwood Greene?

A: No, because it was my understanding that Lockwood Greene said that what we were doing was correct. But Lockwood Greene applied to architects and engineers. I think an engineering firm, actually. And that the guidelines we were utilizing were the correct -- correct application.

Q: Did the Department use a payroll factor in Lockwood Greene?

A: Yes, we did.

Q: Why would the Department have used a payroll factor in Lockwood Greene?

A: It was a method to come up with the services performed within the state to generate the engineering fees.

Page 339

Q: Could Lockwood or the Department have used other methods, another method, or -- to calculate the gross receipts from within South Carolina?

A: I assume that if Lockwood when they billed their customer and designated which state the billing services were performed in, they could have done it that way. But I don't believe they did it, their billing that way.
During the course of the audit, that was determined the best way to determine where it was -- actual engineering services were performed, which state, was based on the payroll within each state.

Q: What's the Department's view of the applicability of Lockwood Greene?

A: It's been, as far as my knowledge, the position it only applied to certain type companies; engineering, architects. We used to call them "personal service companies," companies that actually billed for their services; meaning, they actually -- an employee did work and they would bill for that employee's work.
Prior to the guidance that came out in '77, which never got put in as a regulation, we

Page 340

would source all those receipts to South Carolina, even though some of them may have been out of state.
I think that was the reason for the change that led to the proposed rules of construction, as we called -- termed it back then. But it never -- was never promulgated as a regulation. But it dealt primarily with contracts involving architects or engineers. It was an actual case. I believe the Commission ruled -- had a decision on it, but ...

Q: Are you familiar with the Department Determination that's -- that was issued in this case?

A: I have looked at it recently.

Q: And how do you understand the Department's conclusion as to where DIRECTV's subscription receipts ought to be sourced?

A: They were -- subscription receipts, services receipts, are from receipts rendered -- services rendered within South Carolina. I mean, they -- the -- we would have looked at gross receipts and where the gross receipts are earned.
And in this case, we thought or our position

Page 341

was, you're paying for a subscription to cable TV and the service you're paying for is a service that puts the TV -- the pictures on your TV within South Carolina. So the income-producing activity is actually taking place in South Carolina.

Q: Okay. So, just to be clear, out of -- out of the taxpayer's nationwide gross receipts, how much of that would be in the numerator of the gross --

A: It would be the --

Q: -- receipts factor here?

A: -- charges he had -- he receives from his customers or providing the subscription service in South Carolina, which is what our gross receipts formula says. And, of course, the set rental -- whatever he rents from the set -- those little boxes on the ...

Q: Is the sourcing that the Department stated in the Department Determination in this case similar to how the Department treats other types of companies?

A: Yes. I mean, we don't have any -- we never had any guidance -- guidelines on cable, per se, because cable wasn't around back then. So we

Page 342

would just look at where -- what we thought was the receipts from within South Carolina. And this -- it was -- the closest thing we had to it was telephone companies, which is a separate section. But just like telephone companies, we would be looking to see where that service is or where the receipts from that service is and ...

Q: So, again, just to make sure the record is clear, what types of companies would be similar to DIRECTV?

A: In our mind, it's telephone companies, cell phone companies, that type; internet.

Q: And didn't you mention one more?

A: I can't recall. I mean, that's ...

Q: To refresh your memory, didn't you include cable TV companies in that --

A: Correct.

Q: -- list?

A: Cable TV, right. Which I'm not sure the distinction between cable TV and -- to the customer, they're just watching the same TV on the box in their -- on their TV. They both come in on a box with a cable from somewhere to a box next to their TV set and they watch a TV

Page 343

show or whatever.

Q: All right. If you would, sir, turn -- let's turn to -- in the black book again to Respondent's Number Thirty.

A: (Witness complies.) Thirty, okay.

Q: Okay. Is this what's on this one page document something you've read before?

A: Yes. It covers the gross receipts and how -- from within. It comes up with a ratio for apportioning income of companies that don't deal in tangible personal property.

Q: Is this the statute that's related to service providers?

A: Correct.

Q: You just mentioned gross receipts. When you read the term there "gross receipts," what do you think about?

A: Think about the charges and that specifically -- well, I'm not sure if it states -- it says, "Gross receipts from within this state," is the numerator and then total gross receipts everywhere is the denominator. So I think of every charge they would make to their customer within South Carolina.

Q: Do you think of costs?

Page 344

A: No.

Q: Do you think of production?

A: No.

Q: All right. If you would, sir, turn to Respondent's Number Thirty-two.

A: (Witness complies.) Okay, Thirty-two.

Q: And is this something you're familiar with?

A: Probably not as familiar with this as most people because I was transitioning out of being the supervisor. I was somewhat familiar, but not -- I knew about it.

Q: Based on your current employment and long-term employment with the Department, what's the Department's view of how the income-producing activity should be identified under this Section 12-6-2295?

A: First, you have to look at what -- determine what the income-producing activity is. And in our -- in the case of DIRECTV, we feel it's the subscription services, is the income, charging the customer within South Carolina for the subscription service, which is -- we feel is -- provided in South Carolina is the income-producing activity.

Q: Again, based on your years of experience here

Page 345

and your current employment with the Department, why didn't the Department include in -- include DIRECTV's activities performed out of state into -- as an income-producing activity?

A: We didn't think they were relevant to determine what was earned within the state. We're only looking at what they would charge their South Carolina customer.

Q: Are you familiar with the -- with the Geoffrey case?

A: Yeah.

Q: Is there any analysis or facts maybe in the Geoffrey case that you think might be related to this case?

A: They were trying to determine what the income activity was for Geoffrey, what created the royalty income that was in question, and how it were to be sourced. In that case, they looked at the sale of the product and where the sale took place as the income-producing activity.

Q: And what was -- if you know, what was Geoffrey's position --

A: I believe they --

Q: -- on where it should be sourced and why?

Page 346

A: I believe they said it was -- had to do with the attorneys and the Department that oversaw the -- all the legal work dealing with the trademark or patent, whatever it was, in the state wherever they were located and they were trying to source it to that home state, that state where the attorney was.

Q: And ultimately were the royalty fees from the use of the trademark in Geoffrey sourced to the state where the patent attorneys or other work was done?

A: There -- it was decided they would be sourced to wherever the sale took place. In that case, it was South Carolina. Or there was some discussion as creating a receivable within the state, but that was generated by the sale that took place here and not the work of the attorneys dealing with the patent or copyright, or the billing, whatever took place in the other state.

Q: Based on your knowledge and experience with the Department, is South Carolina a cost-to-performance state with respect to apportioning net income for service providers?

A: Not to my knowledge.

Page 347

Q: Is the Department's Determination in this case consistent with Lockwood Greene?

A: We think it is because we look at the income-producing activity and that's, I think, what Lockwood Greene said.

MR. CONDON: No further questions at this time.

MR. SWEARINGEN - CROSS-EXAMINATION BY MR. ROBERTS:

Q: Mr. Swearingen

A: Yeah.

Q: -- just have a few questions for you here. Please refer to Respondent's Exhibit Twenty-one.

A: (Witness complies.)

Q: I guess turning back to -- wherever it starts here -- paragraph 13, starts on page 26 there and continues several pages. You were not involved in the drafting of these guidelines, right?

A: No.

Q: And you testified that there may have been a manual at some point, but the last time it was updated was in 1983 or something like that and it wasn't ever published, right?

A: The manual was actually published.

Q: But the updates -- it wasn't updated since

Page 348

1983, correct?

A: Since '83. It was published in '83.

Q: But it had not been updated since then, correct?

A: Correct.

Q: Okay. And -- so DIRECTV was formed in 1994. So that manual wouldn't even apply to a company like DIRECTV, right?

A: Pardon?

Q: DIRECTV was formed in 1994. So that manual would never have even applied to a company like DIRECTV, right?

A: It would not specifically mention a cable company or --

Q: Great. Thank you.

A: Because I don't believe cable companies --

Q: That's fine.

A: All right.

Q: Now, you testified that these guidelines here that we're looking at in Respondent's Twenty-one were developed during the '70's, sometime like that.

A: Yeah.

Q: Satellite industry, as we were just talking about, came around in 1990. So you would

Page 349

acknowledge that these guidelines do not talk about subscription revenue or don't talk about how to source subscription revenue, right?
A: They don't mention subscription revenue.
Q: Thank you. And you also mentioned that there were no guidelines that -- with a cable companies, with DIRECTV, that, you know, you considered them to be the same and that there were no guidelines on cable companies, correct?
A: There were no guidelines on cable companies.
Q: Correct? Right?
A: Correct.
Q: Thank you. You would also agree that the Department's Determination in this matter is based solely on the location of the customer, correct?
A: Right.
MR. ROBERTS: Thank you. I have no further questions, Your Honor.
THE COURT: Go ahead.
MR. SWEARINGEN - REDIRECT EXAMINATION BY MR. CONDON:
Q: Hopefully just one question, Mr. Swearingen. Is it your understanding the Department's Determination in this matter is related to customer location or delivery of a service?

Page 350

A: Well, to us --
MR. ROBERTS: Your Honor -- objection, Your Honor; that's a leading question.
MR. CONDON: It's just an "either/or," Your Honor.
THE COURT: Well, "yes" or "no" is the problem; that's why he's objecting. Give me the question one more time, can you? Or just ask --
Q: Is it your understanding that the Department Determination was based on the location of the customer or was it based on delivery of the service?
THE COURT: Yeah, I'll overrule that.
MR. ROBERTS: All right.
A: Does that mean I can answer?
Q: Yes.
A: Actually, when -- it's actually the delivery of the cable service to the customer in South Carolina and the customer pays the bill. But the customer is paying for the delivery of a service, which the cable company is -- charges for the service.
MR. CONDON: All right. Thank you, sir. No further questions.
MR. ROBERTS: I have no further questions, Your Honor.
THE COURT: All right. I've got a few.
THE WITNESS: Yes.
THE COURT: When we consider the extent -- what's the phrase -- extent to the income-producing activity -- the extent of the income-producing activity, why did you not consider any other development, marketing, other aspects of this company or why would -- maybe you didn't -- in your opinion, why should that not be considered?
THE WITNESS: In gross receipts -- there's two formulas: The three-factor formula and the gross receipts. The three-factor has a -- three different factors: Payroll, property, and sales. You look at all three of those. Gross receipts, there's only the actual receipt from within South Carolina, whether it's a customer -- and then the only exception to my knowledge is in the Lockwood Greene -- I mean, the personal service, engineering/architect, where the service is performed.
THE COURT: Well, you still -- in determining what gross receipts are, you still determine the extent to which the income-producing activity

Page 351

Page 352

occurred in South Carolina, do you not?
THE WITNESS: Right.
THE COURT: So why would other aspects of the company outside of South Carolina not be considered?
THE WITNESS: It's like telephone service. You're paying to have your local telephone work in your home. And the same with cable, you're paying to see the -- look at -- you're paying for the service to get the signal within your home and that's what you're paying for, not the -- whatever happens -- you're not paying for the legal people in the department -- company's department, legal department, to draw up the contracts with all the signal -- ESPN or whoever. And you're not paying for the satellite. You don't really care about -- all you want is the signal coming to your TV in your home and that's what you're paying for, or that's what we think you're paying for.
THE COURT: So the income-producing activity is solely that which when the customer decides to pay and that's it?
THE WITNESS: And the -- he catches what he's ask -- being contracted to get/receive, which is the

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Page 353

cable signal.
THE COURT: Okay. Any follow-up on what I've asked?
MR. ROBERTS: No, Your Honor.
MR. CONDON: No, Your Honor.
THE COURT: All right. Step down.
(Witness excused.)
THE COURT: We're going to take a short break.
(Off the record from 10:42 a.m. to 10:58 a.m.)
THE COURT: Mr. Roberts, I've been contemplating one of my rulings. It doesn't affect the case anyway, but I'll tell you, that -- not the objection on the "either/or," but the previous objection you made on leading.
I started thinking about that and, honestly, the question that was asked that you objected to, finally, in that grouping was worse than the other ones that had been asked. But I think at that point in time it was clear to me where we were going. The answer was going to come out. But I was just going to go ahead and tell you that. I think I missed on that one, but ...
MR. ROBERTS: Thank you, Your Honor.
THE COURT: Probably not going to be the only thing I miss on, but -- oh, well. Y'all call your

Page 354

next witness.
MR. CONDON: Your Honor, at this time -- and I apologize to Opposing Counsel. We didn't expect the morning to go so fast, but we would like to go ahead and read the deposition of Bill Spina in at this point.
MR. ROBERTS: We have no objection.
MR. CONDON: We had just talked earlier that maybe we'd save that till last, but we didn't expect the morning to go this fast, so.
THE COURT: Oh, y'all were going to save the most exciting thing for last.
MR. CONDON: Absolutely. Eat lunch and then come back and be --
THE COURT: Read a deposition.
MR. CONDON: Yeah, probably didn't want to save this to the last.
THE COURT: All right.
MR. CONDON: All right. So it's under a Joint Exhibit, I believe, the -- what we're going to read and what's marked the -- and it's Joint Exhibit One. And Mary Beth Campbell is going to play the role of Bill Spina.
THE COURT: Well, she looks like a guy.
MR. ROBERTS: He would be very pleased.

Page 355

THE COURT: You said he would be very pleased?
MR. ROBERTS: Yeah.
THE COURT: He would be very pleased if he wanted to be -- have a voice of a lady.
(Off the Record)
THE COURT: All right. Are y'all just going to go straight into the deposition or are you going to tell me who this guy is or who this ...
MR. CONDON: We can make a brief little statement about who he is, if you would like.
MS. GEER: I think the deposition goes into who he is.
THE COURT: Oh, it does?
MR. CONDON: Did we highlight those parts?
MR. ROBERTS: Yeah.
THE COURT: That's what I was asking.
MR. CONDON: Yes.
MR. ROBERTS: Right, yeah.
MS. GEER: Yeah.
MR. CONDON: Good. We highlighted those parts.
MR. ROBERTS: Yes, those portions are designated, Your Honor.
THE COURT: Okay.
MR. CONDON: I forgot we had highlighted those, yes. Okay. So we're going to start on page six,

Page 356

line 20.
THE COURT: Well, if you've already designated it, I don't know if you need -- if y'all are going to need to refer to each one of the lines.
MR. CONDON: No, I just wanted to get whoever is following along to --
THE COURT: Okay.
MR. CONDON: -- know where we're starting, at least --
THE COURT: Okay.
MR. CONDON: -- for this time. But at certain times, we will jump from one section to the next; you're right.
Okay. Question: "Also, when I refer to DIRECTV in this deposition, I'll be referring to DIRECTV, Inc. I know there's a lot of affiliated companies, but DIRECTV, Inc., is the primary taxpayer in this case. So if I just say DIRECTV, please take it as DIRECTV, Incorporated. And, of course, if you are referring to anything other -- to any other entity other than DIRECTV, Inc., please let me know. Would you state your full name, please?"
MS. CAMPBELL: "Yes, William Joseph Spina."
MR. CONDON: "Are you currently employed at

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Page 357

DIRECTV?"
MS. CAMPBELL: "Yes."
MR. CONDON: "What is your current position?"
MS. CAMPBELL: "Senior director of income taxes."
MR. CONDON: "How long have you been in that position?"
MS. CAMPBELL: "In this position? Let's say the last, I don't know, ten, 15 years. Ten years. I've been with DIRECTV for 30 years, though."
MR. CONDON: "What other positions have you held at DIRECTV?"
MS. CAMPBELL: "Well, I started as, you know, an income tax compliance person. I was doing sales tax. I think I promoted to manager in charge of compliance, income tax compliance. That's both domestic, federal income tax, and state income tax. And then in -- somewhere in the mid or early nineties, I got promoted to senior manager and I was in charge of tax planning for domestic issues."
MR. CONDON: "Okay. Have you been -- were you involved in the actual preparation of the South Carolina income tax returns that are at issue in this case?"
MS. CAMPBELL: "No, I am not involved in the actual

Page 358

preparation. I'm in charge -- the compliance group reports to me. We have a director under me who runs that function. So I wouldn't say I was directly involved in the preparation."
MR. CONDON: "What does 'compliance' mean in terms of kind of managing the income tax process?"
MS. CAMPBELL: "Compliance is preparing and filing income tax returns."
MR. CONDON: "All right. What's the -- so that's the kind of preliminaries. Let's talk a little bit about operations. I kind of inferred this a moment ago, but is DIRECTV, Inc., the one and only company that provides digital broadcast satellite services here in the United States?"
MS. CAMPBELL: "It's the company that has subscribers, yes."
MR. CONDON: "Why do you say it that way? Not that anything is wrong with that, but are there other companies that provide programming; is that the distinction you're making?"
MS. CAMPBELL: "No, that is the company."
MR. CONDON: "So what products or services does DIRECTV, Inc., sell?"
MS. CAMPBELL: It sells programming packages to subscribers, video programming packages."

Page 359

MR. CONDON: "Do subscribers purchase one package or do they bundle several packages together?"
MS. CAMPBELL: "They purchase one package and then can buy other pieces. I'm sure you've heard of the NFL package, for instance. They can add that to their one package as an example."
MR. CONDON: "And what are those operations?"
MS. CAMPBELL: "DIRECTV has subscribers in South Carolina, at least as set-top boxes in South Carolina. It has local collection facilities in South Carolina. It sells tangible properties to South Carolina subscribers."
MR. CONDON: "Okay. What" --
THE COURT: Sells tangible?
MS. CAMPBELL: "Tangible property to South Carolina subscribers."
THE COURT: At this point in time, I'd want to stop and ask some questions, but I guess that's not possible.
MR. CONDON: "Okay. What about installation of the dish and the set-top boxes in a customer's home or a business's location? Didn't you mention that? Who does that?"
MS. CAMPBELL: "That is done -- well, before 2008, that was done by HSPs, home service providers.

Page 360

They are vendors that perform that service for us. In 2008, we started buying some of those HSPs. We bought (sic) them in-house. We call those employees owned and operated, which means they're employees of DIRECTV that install for us. They started in 2008 and it wrapped up '09, '10 and '11."
MR. CONDON: "Were you describing what happened in South Carolina there or were you describing nationwide?"
MS. CAMPBELL: "Nationwide."
MR. CONDON: "Do you know if -- do you know when or if DIRECT has bought -- DIRECTV has bought -- brought the HSPs in-house in South Carolina?"
MS. CAMPBELL: "We did not."
MR. CONDON: "Okay. What's the -- this will be similar to the question I asked about what services it performs, but what are the sources of income for DIRECTV?"
MS. CAMPBELL: "Well, DIRECTV as we said has subscribers that buy programming packages. It also leases set-top boxes. It offers an optional warranty on the leased boxes, which we call the 'protection plan,' which a subscriber can buy in case their equipment doesn't work,

Page 361

breaks before they're entitled to a new box so they can get the new box free."
"It has some other charges if -- especially in 2006 period, all boxes were standard definition. They were analog boxes. That's when we started moving more to the HD, high definition boxes."
"If you lease a high definition box, you'll pay an HD fee. In this time period, I think it was about ten dollars. They also have a DVR. So if you have a DVR, you pay an extra fee."
"They had a multi-room viewing charge if you had a box that would allow you to start a program in your living room and go to your bedroom and finish the program. I think those are the fees that we charge for subscribers."
MR. CONDON: "Are all these fees billed or charged monthly?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Would the bill list each of those items you mentioned separately on each monthly bill?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Does DIRECTV employ engineers?"
MS. CAMPBELL: "DIRECTV Operations employed engineers

Page 362

at this time."
MR. CONDON: "So that's a different company from DIRECTV, Inc."
MS. CAMPBELL: "Yes."
MR. CONDON: "During the 2006 to 2011 period, did DIRECTV employ in-house attorneys?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Certainly without disclosing anything confidential, what did those attorneys do? Okay. Did you know an answer to that question?"
MS. CAMPBELL: "Sure."
MR. CONDON: "About the attorneys, what did they do? What -- what -- what they did?"
MS. CAMPBELL: "We have attorneys doing everything attorneys do, which means that we have patent attorneys, we have contract attorneys, and on and on."
MR. CONDON: "Would the attorneys who do the contract work -- and by contract work, I'm talking about program negotiation type of contracts -- are they employees of DIRECTV, Inc.?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. During the -- do you know for

Page 363

each year, 2006 through 2011, how many DIRECTV employees resided in South Carolina?"
MS. CAMPBELL: "Yes."
MR. CONDON: "How many employees?"
MS. CAMPBELL: "I don't know the exact amount, but in the early years, 2006, we had one employee -- did you say residing?"
MR. CONDON: "Yes, I did say residing."
MS. CAMPBELL: "Okay. In the early years, we had around five, and in the later years, we got up to 12 DIRECTV employees that resided in South Carolina. They did not work in South Carolina. They worked in North Carolina. We believe they are -- they were owned and operated individuals who installed in North Carolina."
MR. CONDON: "Okay. How many employees during those six years worked in South Carolina?"
MS. CAMPBELL: "We had one in the early years and two in the later years."
MR. CONDON: "What did those employees do?"
MS. CAMPBELL: "They were dealer representatives. They basically had a relationship with the dealers, who are "mom and pop" operations that sell our product. They would tell them how to sell our product, what our product does, so on,

Page 364

so forth."
MR. CONDON: Excuse me for not knowing, but does that mean like maybe I could go to Wal-Mart and buy -- subscribe to DIRECTV? Would that be like a dealer you're talking about?"
MS. CAMPBELL: "No, that's not a dealer. Dealers are, like I said, small business people, mom and pops that have a little shop and they sell DIRECTV to people off the street."
MR. CONDON: "Okay. Let's move on to property from employees. Do you know in which state DIRECTV owns -- owns or most of its property is located?"
MS. CAMPBELL: "Yes."
MR. CONDON: "What state is that?"
MS. CAMPBELL: "California."
MR. CONDON: "Okay. Thank you. What property does DIRECTV own in South Carolina during these tax years 2006 to 2011?"
MS. CAMPBELL: "It owns the set-top boxes that it leases to subscribers in South Carolina. It owns a local -- it owns four to six local collection facilities. There are 300 nationally, but it owns four to six in South Carolina. It also may have some displays. You

Page 365

mentioned Wal-Mart. It might have a DIRECTV display in Wal-Mart, something we probably paid around a thousand, $500 for, something around that price range."

MR. CONDON: "You mentioned set-top boxes. Does it also own the dishes that sit out in the yard or around the houses?"

MS. CAMPBELL: "No."

MR. CONDON: "Who owns the dishes?"

MS. CAMPBELL: "The subscriber owns the dishes." When you ...

MR. CONDON: "When you mentioned four to six local collection facilities, was it -- were you not exactly sure or was it at some time four, sometimes five, and sometimes six during the relevant period here?"

MS. CAMPBELL: "Yeah, it started at four and moved to six, as I understand it."

MR. CONDON: "Okay. Do you know the nature of these local collection facilities? What type of property is at a local collection facility?"

MS. CAMPBELL: "Yes."

MR. CONDON: "Could you describe that, please?"

MS. CAMPBELL: "Sure. Local collection facility is a stack of computers that is often right in the

Page 366

local broadcast company and it takes their local feed. It digitizes it and sends it through fiber optics through our regional up-link facility."

MR. CONDON: "Did DIRECTV lease any equipment in South Carolina during the 2006 to 2011 time period?"

MS. CAMPBELL: "I believe we had a small lease of a property where we may have maintained a little inventory or it could have been a local collection facility that we leased the real property for that. I'm talking really small. I'm talking ..."

MR. CONDON: "Okay."

MS. CAMPBELL: "And I'm not sure in what years that was."

MR. CONDON: "I'm going to back -- going to go back for a second because I thought of something I didn't ask in an earlier question. You named -- I asked you, you know, what sources of income DIRECTV had and you mentioned subscriptions, leases, optional warranty on the leased boxes -- especially in 2006, analog boxes, that wasn't a fee, but now there may be a fee, may be an HD fee, a DVR fee, and

Page 367

multi-room viewing charge. Are there any other types of charges that are -- and I'm not -- any other types of charges that are on a customer's monthly bill?"

MS. CAMPBELL: "There could be the sale of property. If they lose a remote, we charge them for it."

MR. CONDON: "Anything else you can think of that would be on a monthly bill?"

MS. CAMPBELL: "No."

MR. CONDON: "Okay. I'd like to make this 2006 original return Exhibit One. Please turn -- I think it's four pages back. It's Schedule H-2, the computation of gross receipts ratio."

MS. CAMPBELL: "Okay."

MR. CONDON: "So in a column there under Schedule H-2, there's a column that says number two, total everywhere. Do you see that?"

MS. CAMPBELL: "Uh-huh (affirmative response)."

MR. CONDON: "And I think if I'm putting in the commas right, that's approximately -- or that number is about $13.7 billion. What does that number represent or what does that number include?"

MS. CAMPBELL: "That's our total revenue everywhere."

MR. CONDON: "Okay. So -- okay. And going back to

Page 368

Schedule H-2, in the column proceeding 'total everywhere,' and the column marked number one in South Carolina, there's an amount of about $268 million. What's included in that number?"

MS. CAMPBELL: "That would be the sale of tangible property in South Carolina, the lease of the set-top boxes in South Carolina, and the subscription fees in South Carolina."

MR. CONDON: "Do you know how much of that 268 million is represented by subscription fees in South Carolina?"

MS. CAMPBELL: "I do not."

MR. CONDON: "How is this 268 million, the gross receipts in South Carolina, how is that calculated?"

MS. CAMPBELL: "It would be the sales of tangible property on the invoices to South Carolina subscribers, the charge for leases to South Carolina subscribers, and the charge for subscription fees."

MR. CONDON: "How would -- because I know you've got customers other than South Carolina subscribers. How does DIRECTV identify a customer, you know, to calculate this kind of number in its system? How would it identify a

Page 369

customer in South Carolina?"
MS. CAMPBELL: "Well, we have their address."
MR. CONDON: "Okay, so by the billing address. That would be how you would pull up the revenues?"
MS. CAMPBELL: "Yeah. We know where they live because they're leasing our property there."
MR. CONDON: "So at that point it's just mere addition, then. Once you identify all the South Carolina customers, you would just add up the relevant charges on their monthly invoices for the year; is that right?"
MS. CAMPBELL: "I'm sure computers do that."
MR. CONDON: "Yes, but would that be the process?"
MS. CAMPBELL: "Yeah, sure."
MR. CONDON: "So I'm looking at Exhibit Three, which appears -- which is the second amended return for 2006. And my question is, what was the purpose of this second amendment in 2006?"
MS. CAMPBELL: "The purpose seems to be to comply with the South Carolina statute."
MR. CONDON: "Okay. And is this the amendment that Deloitte advised you on?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. I'm sorry, I was mumbling a little bit there. Did you say yes?"

Page 370

MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. So on Exhibit Three, let's flip four pages back and look at a similar Schedule H-2."
MS. CAMPBELL: "Okay."
MR. CONDON: "It appears to me that the number -- that the dollar amount in the total everywhere column is the same amount that's on -- in the similar field on Exhibit One. Do you read that the same way, sir?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. So let's -- so total revenues didn't change."
MS. CAMPBELL: "Uh-huh (affirmative response)."
MR. CONDON: "But in South -- but the 'in South Carolina' number appeared to change. What was -- I guess since it was reduced, what was taken out of the amount in the 'in South Carolina' column?"
MS. CAMPBELL: "The receipts from the South Carolina subscribers for programming, service receipts; not the sale of tangible property and not the lease of the boxes."
MR. CONDON: "So the difference there is roughly between Exhibit One and Exhibit Two about

Page 371

265,000 -- excuse me, 265 million. So that -- is it a fair assumption that that's the amount of subscription revenues for programming from South Carolina customers in 2006?"
MS. CAMPBELL: "Yes."
MR. CONDON: Let's look at the very last page of Exhibit Three. Could you describe the purpose of that document? It appears to be labeled Exhibit A on the bottom right."
MS. CAMPBELL: "It explains the purpose for filing the amended return; the reason, I should say, the reason for filing the amended return."
MR. CONDON: "Okay. And so it seems to say that DIRECTV believed that the applicable South Carolina statute required a cost-to-performance method for sourcing subscription revenues rather than a market-based -- a market-based sourcing method; is that a fair statement?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Since this statement here refers to cost-to-performance, I just want to make sure, was there -- on the amended return, Exhibit Three, was there any allocation of any kind of receipts from South Carolina -- well, was there any allocation of receipts from leases of

Page 372

set-top boxes to other states, receipts that came from South Carolina customers?"
MS. CAMPBELL: "The receipts related to set-top boxes" --
MR. CONDON: Wait a minute.
MS. CAMPBELL: I'm sorry. Because here an objection was --
MS. GEER: I was just going to say, we can skip the objection on that one.
MR. CONDON: Oh, you can?
MS. GEER: Yeah.
MR. CONDON: Okay. Okay. Continue.
MS. CAMPBELL: "The receipts related to set-top boxes that are sourced to South Carolina were to South Carolina customers. They were for boxes in South Carolina."
MR. CONDON: "Okay. Since there is some property -- DIRECTV does own some property and has at least one employee in South Carolina during the applicable period, was there any -- was there any subscription revenues from programming sourced to South Carolina on this Exhibit Three?"
MS. CAMPBELL: "No."
MR. CONDON: "Okay. Let's look at -- since we've

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Page 373

already talked about it or referred to it earlier, let's look at and mark Section 12-6-2295 as Exhibit Four."
"Exhibit Four was marked for identification by the court reporter and is attached hereto."
"Okay. Mr. Spina, I believe this is the statute you referred to that DIRECTV was following both on its amended return and its original return in 2006; is that right? And take a moment to read it or look at it."
MS. CAMPBELL: "On the amended return, Exhibit Three, we applied this law."
MR. CONDON: Okay. But earlier when we talked about Exhibit One, which was the original return, it says that DIRECTV believed it was following that section when it filed its original return."
MS. CAMPBELL: "That's correct. If I can make a statement there. I don't think we were properly aware of this section when we filed the original return."
MR. CONDON: "Is there a statute in South Carolina -- because when we looked at the last page of Exhibit Three, which was the reason for the amendment, it said DIRECTV was moving,

Page 374

thought the cost-to-performance method was the proper method. Was there a statute you can point me to that supports or justifies the use of the cost-to-performance method?"
And at this point Mr. Roberts objected.
MS. GEER: We can skip that.
MR. CONDON: We can skip that, too?
MS. GEER: Yes.
MR. CONDON: Okay.
MS. CAMPBELL: "I believe we used language that was cost to performance pro forma. It was unfortunate that we used that language."
MR. CONDON: "Which language was that?"
MS. CAMPBELL: "The language used in the amended return because we know it says income-producing activity."
MR. CONDON: "So the reference to cost-to-performance was an unfortunate usage?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. So we just talked about 2006 and an original return that was filed one way, the statement calling it a market-based sourcing way."
MS. GEER: "Objection; the return didn't say that."
MR. CONDON: "And the statement then said it was

Page 375

changed to a cost-to-performance method. Mr. Spina, did DIRECTV do essentially the same thing, amend the returns based on the same reasoning and thought process for 2007 and 2008?"
MS. CAMPBELL: "Yes."
MR. CONDON: "I'm trying to shorten this up a little bit, because I don't necessarily want to go through the tax returns like we did if all -- if all the answers are going to be the same, but I do want to ask one question particularly. If you remember on the 2006 return, there was a difference in the amount of revenue sourced to South Carolina between Exhibit One and Exhibit Three. Do you remember that?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. And I asked you and you confirmed that the difference -- and it reduced by about $235 million -- that that difference would represent the subscription revenues from programming for South Carolina in 2006. Is that how you remember my question and your answer?"
MS. CAMPBELL: "Yes."
MR. CONDON: "So would the difference in the 2007

Page 376

and '08 Schedule H-2s also the reduction in the -- in the 'in South Carolina' amount also represent the subscription revenues from programming from South Carolina customers in those years?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. Let's mark this Exhibit Six, please."
And in parenthetical "Exhibit Six was marked for identification by the court reporter and is attached hereto," end quote.
"Flip to the fourth page, our favorite Schedule H-2. Have you found that?
MS. CAMPBELL: "Yes."
MR. CONDON: "okay. Does the 18.5 billion, like in the earlier returns we talked about, represent DIRECTV's total revenues, approximate their total revenues?"
MS. CAMPBELL: "Yes."
MR. CONDON: "And what are the components of the 26 million in the 'in South Carolina' column?"
MS. CAMPBELL: "That would be the sale of tangible property to South Carolina subscribers, plus the lease of the set-top boxes to South Carolina subscribers."

Page 377

MR. CONDON: "I know you've mention it several times and I probably should have asked you earlier. Do you have any idea how much the sale -- well, what the ratio is, the sale of tangible personal property to lease of set-top boxes, in that number?"
MS. CAMPBELL: "The lease of the set-top boxes would be much higher."
MR. CONDON: "Much higher?"
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. So is it fair to say that this 2009 return -- it's not an amended return; it's an original return -- that the 2009 return was filed with respect (sic) apportionment in this Schedule H-2, the computation of gross receipts. It was prepared in a manner consistent with the amended returns of 2006 through 2008."
MS. CAMPBELL: "Yes."
MR. CONDON: "Okay. And, again, for brevity, there's probably two more tax returns for 2010 and '11 that are originally filed tax returns, no amendments, at least no relevant amendments for those years, I don't think. Were the original returns for 2010 and 2011 with respect

Page 378

to the computation of gross receipts ratio prepared in the same as the 2009 return?"
MS. CAMPBELL: '10, yes; '11, no."
MR. CONDON: "What's the difference with '11?"
MS. CAMPBELL: "In '11, we added to the numerator. We added the ratio of payroll in South Carolina to payroll everywhere; that ratio times receipts from services."
MR. CONDON: "Can you say that one more time, what you added?"
MS. CAMPBELL: "Yes. We added the ratio of payroll within South Carolina to payroll everywhere; that ratio times the receipts from services."
MR. CONDON: "What was the reason -- so the method of calculating the ratio on H-2 seemed to change. What was the reason for that change?"
MS. CAMPBELL: "I think we realized that income-producing activities in South Carolina did occur and we should be apportioning them to the service receipts."
MR. CONDON: "And you mentioned that payroll was used to do that; is that right?"
MS. CAMPBELL: "Right."
MR. CONDON: "Why wasn't any property considered?"
MS. CAMPBELL: I would say Lockwood Greene."

Page 379

MR. CONDON: "What does -- and if there's any exceptions between the six years at issue, please identify it. But during these six years in preparing these tax returns and amendments, what does DIRECTV believe the income-producing activity is?"
MS. CAMPBELL: "Well, the formula in Lockwood Greene and also potentially adding a property factor to that."
MR. CONDON: "Okay. Well, that seemed to talk about how we might calculate the ratio. But what does DIRECTV believe that income-producing activity or activities are?"
MS. CAMPBELL: "I see. We believe that the income-producing activities are the assets and the employees that perform the service which puts the video into the television of its customers -- the customers."
MR. CONDON: "I think what I -- I'm mentioning all years because I'm talking about the amended returns in the early years and then, of course, the original returns in the later years. So kind of the final returns as they've been filed. I just wanted to confirm that the subscription revenues for programming are not

Page 380

in the numerator for any of those years."
MS. CAMPBELL: "That's not correct. They're in there for 2011."
MR. CONDON: "For the subscription revenues for South Carolina customers that are not in the numerator, where would those be sourced to?"
MS. GEER: You can skip.
MS. CAMPBELL: "I think you're asking what -- what do we do in other states?"
MR. CONDON: "Yeah, that's probably a simple way to put it."
MS. CAMPBELL: "We follow state law and, as you know, some states use market sourcing for their sale -- for the sales factor, some states use cost-to-performance, and some states use income-producing activity. We follow the law as we understand it."
MR. CONDON: And that's it, Your Honor.
THE COURT: All right.
MR. CONDON: Thank you.
THE COURT: Do y'all wish to ...
MS. GEER: Nothing.
THE COURT: All right. You can step down, I guess.
MS. CAMPBELL: Thank you.
MR. ROBERTS: Mr. Spina, step down.

Page 381

MR. CONDON: Thank you, Mary Beth.
THE COURT: All right. We're going to take a lunch break, then, I guess? You're waiting on a witness, I assume?
MS. WOOTEN: Yes, Your Honor. Our next witness is here. It's Dr. Glenn Harrison. We're happy to proceed similar to how Petitioner proceeded yesterday in doing preliminaries before we break for lunch or we can break for lunch and come back; whatever you would like to do.
THE COURT: Preliminaries, knock that out.
MR. ROBERTS: Preliminary are fine with us, Your Honor.
THE COURT: Yeah, let's just knock that out --
MR. ROBERTS: Does that make sense?
THE COURT: -- and keep on moving.
MS. WOOTEN: Okay. At this time --
THE COURT: Well, I say knock that out and keep on moving. Know that out and then break.
MS. WOOTEN: At this time the Department calls Dr. Glenn Harrison.
THE COURT: The movement would be out of the courtroom.
GLENN W. HARRISON, Ph.D., having been duly sworn, testifies and examines as follows:

Page 382

DR. HARRISON - DIRECT EXAMINATION BY MS. WOOTEN:
THE WITNESS: Good to go.
Q: Could you please state your full name for the record?
A: Glenn William Harrison.
Q: And, Dr. Harrison, where are you currently employed?
A: I'm employed at Georgia State University in Atlanta.
Q: And what is your job? What is your title?
A: I have two titles. One is -- I am the C.V. Starr, Chair of Risk Management and Insurance in the Department of Risk Management Insurance in the Robinson College of Business and I am also the director of the Center for the Economic Analysis of Risk located at GSU.
Q: And let's start with the first -- what are your duties as the C.V. chair?
A: My duties there are typical for an academic; that is, research, teaching, and service. So research being academic research, scholarly research. Teaching is teaching a range of courses over the years. And service is appearing on university committees and handling administrative matters within the department.

Page 383

Q: And what are the duties of the second position you mentioned?
A: Well, the second position relates to my center that I'm the director of, the Center for the Economic Analysis of Risk. There, I oversee the research activities of the constituent departments of the CEAR, which is the acronym for my center. That includes my home department, Department of Risk Management and Insurance in the business school. It includes the School of Accounting within the business school. It includes the Department of Economics over in the Andrew Young School of Policy Studies. It includes the Department of Finance in the business school. It also is affiliated with the research department at the Federal Reserve Bank of Atlanta.
Q: And what are your primary areas of research?
A: They vary over the years. I've -- I'm an economist, is my general training in economics. I have worked in a number of areas including environmental economics, tax policy, regional economics, public finance, a field called "experimental economics." I work in behavioral economics. I've worked in law and economics

Page 384

and I've worked in international trade. And I've published in all of those areas, including some in health economics.
Q: You stated public finance. Can you describe the public finance research area a little more?
A: Sure. Public finance refers to that area of economic activity that is affected by government activity in a broad sense. In other words, it includes the raising of revenue, the use of revenue, the manner in which revenues are raised, tax incidence, which -- and the term "incidence" here can refer to both legal incidence and economic incidence. And, indeed, one of the important areas of research is identifying differences between legal incidence and economic incidence.
It also refers to the nature of the goods that are produced by government. They're referred to by economists as "public goods," that they're shared by a lot of people, as disting (phonetic) from private goods, which are goods that privately consumed. And that makes a very, very big difference in terms of the implications for providing those -- raising revenue for providing those.

Page 385

Q: You also mentioned law and economics. Can you describe that in a little more detail?
A: Sure. The field of law and economics, which has its own journal and, indeed, has its own associations, refers to the interaction, the two-way interaction, between law, broadly defined, and economics; that is, the extent to which legal rules, legal jurisprudence, legal principles affect economic behavior. And in the reverse direction, the extent to which economics affects the application of the law, the efficacy of the law, and what might by economists be considered good laws or bad laws in terms of their revenue raising objectives or welfare enhancing objectives.
Q: And could you summarize your work history for the Court, please?
A: Certainly. It's in my CV and, as I said, I've moved from one areas to others over the years. My work history has been initially in the fields of general -- what's called "general equilibrium modeling," which means, essentially, modeling as an economist all of the sectors of the economy, both the private sectors, the public sectors, all of the

Page 386

industries in the economy.
I started actually doing that in terms of regional fiscal incidence. So some of my earliest work was in looking at regional inter-jurisdictional impacts using general equilibrium models.
A lot of that work also applied in international contexts because for economists, those are often synonymous. Domestic inter-jurisdictional issues are very similar from a modeling point of view and an analytical point of view to many of the international issues that we -- we studied. So a lot of my research was in both of those areas.
I spent a lot of time doing work in environmental damage assessment, environmental risk assessment. I spent time working in behavior economics, broadly defined, and there's a large number of publications in that area.
I've spent time working on health economics, in particular with respect to legal policies and litigation in that area. And I've spent a lot of time more recently looking at risk management, broadly defined, the evaluation of

Page 387

risk attitudes, the evaluation of risk perception, and most critically, risk management decisions that individuals, companies, and governments might make.
Q: As part of your teaching experience, have you taught a course called "economics and law"?
A: Yes, with that title or very closely related title, such as law and economics. I've taught that for -- I couldn't tally up the number of years, but it would be something like 15 or 20 years, both here at the Moore School of Business when I was a professor at USC, and also at the University of Central Florida, I taught those classes.
I don't teach them now because I'm actually in a department which has lawyers who like to teach that class and I have as a result of my administrative duties to CEAR, a reduced teaching load. But I taught that course for 15 or 20 years.
Q: Could you summarize your educational background?
A: Certainly. I have a Bachelor of economics honors, as the Australian English designation. So you do an honors degree, which is an extra

Page 388

degree. It's basically a Bachelor's of -- Bachelor of economics. I did a Master's degree in Australia at Monash University. I came to the United States and did a Master's degree at UCLA and a Ph.D. in economics at UCLA.
Q: Have you ever testified as an expert at trial before?
A: Yes, I have.
Q: Approximately how many times?
A: In trial, I would estimate about 15 times, 15 to 20 times.
Q: Have you ever testified as an expert before the South Carolina Administrative Law Court?
A: Yes, I have, in fact, in front of Judge Anderson, I believe.
Q: Do you recall those cases or any of the issues in those matters?
A: In general terms I do, yes. I often -- the details slide away with the years.
Q: If you will please refer to Respondent's Exhibit Number Fifteen.
A: (Witness complies.) Yes, I have that.
Q: Do you recognize this document?
A: Yes, I do. It's got a photograph of me.
Q: What is this document?

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Page 389

A: It appears to be my current CV.
MS. WOOTEN: At that time, Your Honor, I'd like to offer Exhibit Fifteen into the record.
MR. ROBERTS: We have no objection, Your Honor.
THE COURT: It's admitted.
MS. WOOTEN: Thank you.
(Respondent's Exhibit Number Fifteen was admitted into evidence.)
Q: In looking at your CV, does this contain your expert testimony experience and the research and work experience that you've just described to the Court?
A: Yes, it does. In the back, I've list -- in the back of the CV, it lists my testifying experience in terms of the cases in which I've been designated as an expert and it completely lists my research, my scholarly research afterward.
Q: In what areas have you been recognized as an expert?
A: The exact designations I don't recall; there's been so many cases. Economics and applied economics. I've also been recognized as an expert in economics and law.
Q: Referring back to your CV, are there any

Page 390

publications of particular note that might be relevant to the issues in this case as you understand them?
A: Yes, my publications on regional fiscal incidence that I refer to and some of my publications in law and economics to the extent that they demonstrate an ability to understand the interaction between law and economics.
MS. WOOTEN: At this time, Your Honor, I'd like to offer Dr. Harrison as an expert in economic principles generally and in economics and law.
MR. ROBERTS: Well, Your Honor, I'd like to --
THE COURT: Voir dire?
MR. ROBERTS: -- ask the witness a few --
THE COURT: Okay.
MR. ROBERTS: -- questions, maybe.
DR. HARRISON - VOIR DIRE EXAMINATION BY MR. ROBERTS:
Q: Mr. Harrison, how many articles on state taxation and particularly on apportionment of income have you written?
A: I have written no articles on that narrow topic.
Q: Okay. Thank you. Have you taught any courses on state taxation and specifically courses involving apportionment of income?

Page 391

A: No, I have not.
Q: How many awards in state taxation have you received?
A: I have received no awards in state taxation.
Q: All right. Thank you.
MR. ROBERTS: Your Honor, I would object to having Dr. Harrison admitted as an expert in economics and the law; the law part. I don't think he -- there is nothing in his CV or in the testimony that we've just heard that would establish that he has any qualifications to talk about the apportionment statutes that are at issue in this particular case.
THE COURT: Do you wish to respond?
MS. WOOTEN: Sure, Your Honor.
THE COURT: Or ask any further questions?
MS. WOOTEN: Sure. Just as a general response, we haven't asked to offer Dr. Harrison as an expert on apportionment law, state apportionment taxation. We've asked him to broadly look at economics and law in general. He has referenced that he has taught classes for several years. He's done publications. He's done research in that area. So, again, we would just note that we are asking for

Page 392

economics and law and not specifically state apportionment issues.
THE COURT: He is qualified in keeping with your request.
MS. WOOTEN: Thank you, Your Honor.
THE COURT: All right. Anything else?
MS. WOOTEN: No, Your Honor.
THE COURT: Well, let's take a break for lunch.
(Lunch break from 11:42 a.m. to 1:30 p.m.)
THE COURT: All right. Who's up? Just don't ask any important questions for about two minutes until I can get my computer on.
MS. WOOTEN: I'll make sure to ask all the important questions.
THE COURT: Oh.
MS. WOOTEN: I'm kidding.
THE COURT: Go ahead. I'm fine.
MS. WOOTEN: Okay. When we had left off, we were talking about Dr. Harrison's expert designation and I just wanted to clarify your ruling, Your Honor. We had offered him as an expert in economics and law. I know there was some objection and I just want to clarify what your ruling was with regard to his designation.
THE COURT: Do you want the court reporter to read

Page 393

it back?
MS. WOOTEN: I can go into this if you would like to.
THE COURT: No, the bottom line is I said I was qualifying him in keeping with your offering.
MS. WOOTEN: Okay. And to clarify --
THE COURT: And if your offering was properly made, then you should be happy, but if you messed up on your offering, then you should be unhappy.
MS. WOOTEN: I wouldn't say that I messed up, but I would like to clarify if there's any question as to what I was offering him in. We are not offering him as an expert on South Carolina apportionment statutes from a legal perspective.
THE COURT: Well, I think I was -- yeah.
MS. WOOTEN: -- from a legal perspective, but we are asking him for testimony regarding apportionment statutes from an economic's perspective; looking at the terms of the statute from an economic's perspective, not a legal perspective.
THE COURT: Yeah, I think that was your objection anyways, so -- but I'll hear what you've got to say.

Page 394

MR. ROBERTS: The comment I would make is that I don't think there's anything in his CV that would qualify him to even talk about apportionment. He doesn't have any experience in state taxation, hasn't written on it, he hasn't spoken about it, so I'm not sure what the qualification is to even talk about apportionment.
THE COURT: What's your response to that?
MS. WOOTEN: I can ask a few questions of Dr. Harrison, if the Court would like.
THE COURT: Okay. Well, I won't say whether I like it or not. I'm just saying right now I ain't made up my mind, so.
MS. WOOTEN: Okay. Thank you, Your Honor.
DR. HARRISON - VOIR DIRE EXAMINATION BY MS. WOOTEN:
Q: You had discussed earlier that you taught law and economics course for approximately 15 to 20 years; is that correct?
A: That's correct, yes.
Q: What were the topics discussed in that class --
A: I actually made --
Q: -- or course?
A: Sorry. I made a point of discussing the full range of topics. I often taught that course

Page 395

for undergraduates, prelaw undergraduates, in fact, and wanted to cover all of the topics. So one of those that are included was taxation and, indeed, I had some discussion of inter-jurisdictional taxation, both international and domestic, flowing from my work on regional fiscal incidence.
Q: And as part of that course, did you examine and discuss statutes, specifically tax statutes, again?
A: Yes, I did. In fact, my normal mode of conduct for those classes was to go through Supreme Court cases, to go through specific cases with the students, and draw out the economic implication of them. A good example of that would be takings cases. Lucas v. South Carolina Coastal was a very famous one here in South Carolina, but it was also a very famous one in terms of the takings clause. So I would have the students go through that case and, again, the vast majority of these students are prelaw, so that was a good, easy way to motivate them and then talk about what are the economics behind the statutes or the case law.

Page 396

Q: And you had testified earlier that you have testified in prior cases before the South Carolina Administrative Law Court; is that correct?
A: That is correct, yes.
Q: If you will refer to your CV on page 20.
A: (Witness complies.) Yes.
Q: Can you name the cases that you testified in as an expert before the South Carolina Administrative Law Court?
A: Yes, they're listed there. One is -- I'll just mention the taxpayer for short --
Q: Sure.
A: -- for shorthand. One is ESA Services, that was in 2008; the second in 2010 was Carmax; the third was Rent-A-Center, but those were joined, Rent-A-Center West, Rent-A-Center Texas; Duke Energy Corporation.
Q: And do any of -- do you recall if any of those cases examined apportionment statutes?
A: All of them to some degree dealt with apportionment.
Q: Okay. And looking specifically at Rent-A-Center Texas, do you recall the issue in that case?

Page 397

A: Yes, in very general terms.
Q: Do you recall if there was an apportionment issue in that case?
A: Oh, there was, yes.
Q: And you were admitted as an expert in that case; is that correct?
A: That is correct.
Q: Do you recall the designation that you were admitted under under that case?
A: I believe it was as an economist and -- as an expert in economics and an expert in economics and law.
Q: And do you recall the Judge that presided over that case?
A: Yes, Your Honor here.
MS. WOOTEN: At this time, Your Honor, we'd like to renew our designation for Dr. Harrison as an expert in economic principles generally and in economics and law.
THE COURT: You know, she's in a way taken the argumentum ad hominem approach in identifying me as the Judge that did this in the past, but I'll hear your objection.
MR. ROBERTS: I would just maintain the same objections I've had, Your Honor. I don't

Page 398

really have anything else to add.
THE COURT: I'll qualify him --
MS. WOOTEN: Thank you, Your Honor.
THE COURT: -- as requested.
MS. WOOTEN: I'm sorry?
THE COURT: As requested regarding apportionment.
MS. WOOTEN: Thank you. For economic principles perspective; is that correct?
THE COURT: Yes.
MS. WOOTEN: Thank you.
DR. HARRISON - DIRECT EXAMINATION BY MS. WOOTEN (Continued):
Q: Dr. Harrison, did you review any documents in preparation for this case?
A: Yes, I did.
Q: And what documents do you recall reviewing?
A: Primarily, I reviewed the Department Determination. I also reviewed the response from the taxpayer. Then I -- as a result of the references in those cases -- in those materials, I reviewed the relevant statute and I reviewed the relevant case law that was referred to in those documents.
Q: As part of your preparation, did you specifically look at Section 12-6-2290?

Page 399

A: Yes, I did.
Q: Okay. If you will refer to, please, Respondent's Exhibit Thirty.
A: Three-zero?
Q: That's correct.
A: (Witness complies.) Yes, I have that.
Q: And are you familiar with this statute?
A: Yes, I am.
Q: From an economic standpoint, what is your understanding of this statute?
A: From an economic standpoint, this statute is identifying the nature of the business, the nature of the corporation, that is going to be subject to income taxation in South Carolina and indicating how it is going to be treated, how apportionment is then going to be treated.
MS. WOOTEN: Excuse me.
Q: And in looking at the statute, how is that income treated?
A: Well, the income is treated as gross receipts, in this case. If the industry in question doesn't meet the criteria for which you would apply the -- and prior to the current statute, the three-factor apportionment rule.
Q: And from an economic standpoint, what is the

Page 400

purpose of a gross receipts method?
A: The purpose of a gross receipts method can be to identify the extent of the business activity in South Carolina and, indeed, the extent of the income-producing activity in South Carolina.
Q: If you will now please refer to Respondent's Exhibit Thirty-two.
A: (Witness complies.) Okay.
Q: Are you familiar with this statute?
A: Yes, I am. This is 2295.
Q: And from an economic standpoint, what is your understanding of this statute?
A: Well, the purpose of this statute is really to define the term "sales" and "gross receipts" as referred to in 2290, to give some clarity to that and, in particular, the section that's relevant here is section five.
Q: A(5); is that correct?
A: That's correct, sorry.
Q: Okay.
A: It's A(5) not -- yep.
Q: And are you familiar with the taxpayer in this matter?
A: Yes, I am.

Page 401

Q: How are you familiar?
A: I am familiar from receiving the information about the Department's Determination and the taxpayer's letter and knowing generally what DIRECTV does. I should state that I'm not a DIRECTV subscriber, never have been, and probably never will be.
Q: What is your understanding of the sources of income DIRECTV has in South Carolina?
A: The sources of income derive fairly transparently from the payments of subscriptions for the product, the service that is provided to the homes in South Carolina, as well as the leasing from the boxes and that appears not to be in dispute, the latter part.
Q: And in your review of this case, have you reviewed the tax returns for DIRECTV for this audit period?
A: Yes, I did. I did review those.
Q: And what is your understanding of those returns specifically with regard to the gross receipts ratio?
A: My understanding is that the taxpayer initially apportioned receipts for some of the earlier years in the manner that the Department of

Page 402

Revenue had deemed consistent with the statute; that is -- and then they amended their returns to use an alternative apportionment basis that lowered the amount of money to be paid to South Carolina.
Q: And are you familiar with the taxpayer's argument on the gross receipts issue?
A: Yes.
Q: Okay. Can you briefly describe your understanding of that issue to the Court?
A: My understanding of the issue in terms of the economics that it implies is that they believe that the term "income-producing activity" refers to all activities that the corporation engages in and that pursuant to 2295(A)(5), they believe that means that one should look to the location of the intermediate or prior activities.
They would call them "income-producing activities." I think that's an incorrect term from an economics point of view. But they would look to the location of all of the activities of the corporation and then use that as the basis for discerning an apportionment factor to South Carolina.

Page 403

Q: You state that it's an incorrect terminology. Can you explain that statement a little bit more? I believe you said that they're looking at the income-producing activities outside of South Carolina; was that your testimony?
A: Not quite, but let me --
Q: Can you clarify that, please?
A: Sure. And, again, what I mean by -- this is an economist -- is there's a range of activities that all businesses engage in -- let's agree on that -- and that includes putting -- in this instance, let's focus on DIRECTV that includes the rocket science that we heard about yesterday of putting satellites up, it means downloading information, it means negotiating contracts and so forth. So all of that is completely understood and not in dispute that that that those activities exist.
Where the disagreement comes in -- and, again, I'm looking at this as an economist -- is where you draw the line between the activities in general that the -- that any business engages in and the income producing, the activities that actually produce the income.
My understanding of what the taxpayer is

Page 404

arguing in this case -- and I disagree with it -- is that all of the activities are income producing, that you cannot differentiate cost producing activities, and income-producing activities -- and that's the terminology that I would use here -- that many of the prior, secondary, intermediate activities that we heard about yesterday that are very real, are cost producing activities. If they simply occurred, then they'd be generating costs. They would not be generating any income, any revenue, whichever terminology you want to use. The only activity that we are talking about that actually generates income is the purchase of the product in South Carolina. It's purchase nationally, but of course we're focusing on the purchase in South Carolina.
Q: Thank you. You stated you reviewed the Department's Determination in this matter; is that correct?
A: That's correct, yes.
Q: And are you familiar with how the Department determined what is the income-producing activity in this matter?
A: Yes, I am.

Page 405

Q: And what is your understanding of that decision?
A: My understanding of that decision is that the Department focused on the delivery of the service in South Carolina, that the Department took the value of the subscription revenue in South Carolina as a direct measure of the value of those services in South Carolina. So there's no need for proxies. There's no need for approximations of any kind. You actually know the value that South Carolinians placed on the delivery of that service into the homes in South Carolina. And that they -- that's also a transparent item to identify from the accounting information that's provided. So that's my understanding of what the Department did.
Q: And is the Department's Determination of the income-producing activity in this matter economically reasonable?
A: Yes, it strikes me as economically reasonable in the sense that it is consistent with most of the principles that we normally apply when we're deciding if a taxation system is reasonable. It's also transparent. It's also

Page 406

consistent, in my understanding, with the statute and the case law.
Q: From an economic perspective, why is it appropriate for the taxpayer's income from South Carolina subscription revenue to be sourced to South Carolina?
A: Quite simply because that best represents the extent of the -- the extent of the business connection with South Carolina as far as the provision of the service goes. That's the clear statement from the statute and that's the most direct way to represent that and calculate it.
Q: And from an economist standpoint, what is the service being sold in South Carolina, the thing that gives value and generates income?
A: It strikes me as transparent that it is the provision of television services in your home. When I lived here, I used to live out in Irmo. I would like to go home and watch television in my home in Irmo. I didn't particularly want to have to travel to El Segundo to watch NFL on a Sunday night. So the service, to me, if I had been purchasing DISH in -- DIRECTV, forgive me -- in South Carolina would be to be able to

Page 407

watch NFL in my home in Irmo.
Q: The Department Determination references the decision of Lockwood Greene and the taxpayers argued that this case supports their position. During your deposition, you were asked questions regarding the distinction between Lockwood Greene and the facts of this case. You stated that your -- in your response that you had not given it much thought; is that correct?
A: That's correct.
Q: And why hadn't you given it much thought?
A: Actually, to be quite honest, because I was surprised that they even mentioned Lockwood Greene because Lockwood Greene had an exception for media broadcasting services, so I thought that was a slip on their part.
MR. ROBERTS: Objection, Your Honor. We're getting beyond the scope of economics here. He's giving a legal interpretation of the case.
THE COURT: Response?
MS. WOOTEN: I'm just asking him from an economics perspective some things that were asked in his deposition.
MR. ROBERTS: There was no question -- there is no

Page 408

question involving economic standpoint there.
THE COURT: Well, he went on -- he started talking about economics, but then he talked about the holding in Lockwood Greene. And he could get that from -- he said -- he made the statement that that's what the holding was, as opposed to his perspective. So I'm going to sustain the objection in accordance to how he testified.
MS. WOOTEN: Okay.
Q: From an economics perspective, could you answer that question?
A: I'm not sure what the question is that leads to an -- I was responding to what I was asked --
Q: I'm sorry.
A: -- why I was surprised.
Q: From an economics perspective, can you explain the distinction between Lockwood Greene and the facts of this case?
A: Certainly. Lockwood Greene had to do primarily with an engineering services firm. In fact, Lockwood Greene is a more famous firm in South Carolina. It also did architectural services, but the instant case was about engineering services. And the holding there had to do with whether engineering services, the apportionment

Page 409

should be on the basis of the place of activity, as the Court referred to it then. And as we've heard discussion, they used payroll to measure that from an economic perspective. The court also held that the same principles would apply to firms such as those providing accounting services and --

MR. ROBERTS: Objection, Your Honor. Again, he's not talking about an economic standpoint. He's giving his interpretation of Lockwood Greene.

THE COURT: Any response?

MS. WOOTEN: Which is from an economic perspective. I'm not asking him for the legal positions argued or the holding of Lockwood Greene from a legal standpoint. I'm asking his economic perspective how he's viewing the case.

MR. ROBERTS: He just testified that "the court held this." He's interpreting the case. He's not talking about it from an economic standpoint.

THE COURT: Well, I'm going to allow him to testify and place in the record that the caveat for which the Court is going to receive this is that it is his perspective of how he came to the conclusion that he came, but not the

Page 410

holding that was made in Lockwood.

MR. ROBERTS: Okay.

THE COURT: All right?

MS. WOOTEN: Thank you, Your Honor.

THE COURT: So proceed.

A: So an issue to an economist actually reading Lockwood Greene is: Does the economic nature of the firm change the way that the holding is applied? And that was the question that Mr. Gregory asked me in deposition. It was a perfectly sensible question. It's a question I think the Judge was asking about during opening statements. Because one of the features of the holding, as I interpreted it, from -- as an economist, is that for some types of firms, you know, economic types of firms, you should use apportionment based on cost of placement, and for other types of firms, such as media broadcasting, that does not apply. So, the question that Mr. Gregory asked me in deposition was: Is there some economic rationale for that distinction? It's not -- I'm not trying to interpret the Court's logic. They didn't state a full logic there, but he asked me what was the economic rationale for

Page 411

that.

Q: And what is the economic rationale or distinction between an engineering firm and a taxpayer such as DIRECTV?

A: The economic distinction that I would draw from that is that, if you take a firm such as an engineering firm or a law firm, in the examples that Dr. Pomp gave the other day, are perfectly fine. What is essential about the firm is the provision of expertise and opinions. To take the example in -- the court gave in Lockwood Greene of the firm located in South Carolina and the customer in North Carolina, but it could be a legal firm or an accounting firm -- it matters not whether the client drives down to receive the opinion or stays in North Carolina to receive the opinion. That's the example -- my paraphrasing of the example that Dr. Pomp gave, quite correctly, for those classes of firms. So what is essential is, from an economic --

MR. ROBERTS: Your Honor, I have an objection here. This is all brand new testimony. He did not prepare a written report. We didn't go into all this in the deposition. In fact, as

Page 412

Ms. Wooten said, he didn't really answer the question in the deposition because he said he hadn't had time to consider it. So we're kind of being -- you know, this is out of the blue for us, Your Honor.

THE COURT: Well, where does that statement come from? Is there something that the Department has given that presumes that they told you were that they were not going to go beyond the scope of --

MR. ROBERTS: We know nothing about his opinion. He didn't prepare a written report. Discovery was not supplemented, so ...

THE COURT: Was there a requirement that discovery be supplemented, is what I'm getting at?

MR. ROBERTS: There's a requirement that discovery be supplemented up until the time of trial, Your Honor.

THE COURT: All right. And where was -- is that in the ...

MR. ROBERTS: That's rules --

THE COURT: I mean, did y'all have an agreement? That's what I'm trying to get at. Is it coming out of our rules or was it coming out of --

MR. ROBERTS: We had interrogatories, Your Honor,

Page 413

and I believe Rule 33 requires that they be supplemented up until the time of trial.
THE COURT: Okay.
MS. WOOTEN: Your Honor, my understanding is there was no requirement per our agreement to have Dr. Harrison do an expert report. Dr. Harrison is -- or they are here to cross-examine him on any testimony that he has given today. You know, he's here to answer any questions they have.
THE COURT: All right. One more time. How is the scope exceeding that of your understanding of his --
MR. ROBERTS: Well, we asked him at his --
THE COURT: He was identified as an expert.
MR. ROBERTS: Correct, Your Honor.
THE COURT: He was asked questions.
MR. ROBERTS: He did not answer this question because he said --
THE COURT: I understand. That's obvious.
MR. ROBERTS: He said he had not thought of it and, also, he said -- we asked him for all of his opinions in this matter and, you know, this is a new opinion.
THE COURT: Yeah, but I -- this is a close one

Page 414

because I don't think he's gone that far afield of his opinion. Ask him the question again and let me just see where we're going to go here.
MS. WOOTEN: Okay. I asked him if there was an economic distinction between the engineering firm in Lockwood and the taxpayer in this case.
THE COURT: I'm going to overrule that at this point in time.
MR. ROBERTS: Okay.
THE COURT: But you're getting close.
MR. ROBERTS: Okay.
THE COURT: Go ahead.
THE WITNESS: The economic distinction is that for the taxpayer in this case, there is an essential part of the service delivered that has to occur physically in South Carolina. For an engineering firm, for an accounting firm, for a legal firm, it is not essential that the service occur in South Carolina. So in that sense, here you have the service being delivery of a product in a house in Irmo and in that sense, there's a physical matter that follows that it is different than accounting firms, legal firms, engineering firms.

Page 415

Q: Were you present yesterday for Mr. Goswitz's testimony?
A: Yes, I was.
Q: He testified regarding DIRECTV engineers. Does the fact that those engineers are located outside of South Carolina, does that impact your opinion on where the income should be sourced from an economic standpoint?
A: No, not in the least.
Q: Why is that?
A: Because we have a direct way to measure the income-producing activity in South Carolina, which is the provision of a service to a house in Irmo. Moreover, we have a way to accurately assess the value of that service, by looking at the amount of money that the subscriber paid in South Carolina.
Q: There was also some testimony presented yesterday regarding whether the business activities outside of South Carolina -- and I believe they're referred to as "value drivers" -- are the income-producing activities of the taxpayer. From an economic standpoint, do you agree with that?
A: Those terms are used in a business context but

Page 416

they can also be vaguely defined. So the term "value driver" can be used if you're doing a holistic analysis of a firm, a so-called "functional analysis" that Dr. Cody talked about, but they can be ambiguous in terms of what is driving value. So I tend not to use those terms myself.
Q: Can you explain how they're ambiguous?
A: Well, they're ambiguous because if you're talking about activities of the firm that are undertaken in anticipation of generating revenue, which is the language that I heard used yesterday, then that is completely correct. They are used in anticipation of generating revenue, but they are not the income generating activity.
The income-generating activity/producing activity is the sale of the product in South Carolina in this case. So they are antecedent to it. They are prior to it. They are intermediate activities, to use the language of economists. There are different terminology that you could use here. But they are cost generating. They are not income generating.
Q: From an economic standpoint, what is the final

Page 417

product or service in this case that's being sold in South Carolina?
A: NFL Sunday Night Ticket in an Irmo house and the other things that DIRECTV provides.
Q: And, again, in your opinion from an economic standpoint, how is that the income-producing activity in this case?
A: It's the income-producing activity because all of the other activities -- and there are many other activities -- do not generate income. They generate costs, as that term is standardly used. The only activity that generates income -- and we're leaving aside the leasing of the box right now. The only activity there that generates income is if somebody in South Carolina leases a box and is willing to pay for the subscription. If they lease the box or in some cases such as with -- I know with DISH you can purchase the box and they don't pay subscription, you just have a dead DISH box there.
So, in the case of DIRECTV, I understand from yesterday that they only lease the boxes now. But unless you pay that subscription in -- for delivery in South Carolina, you do not get to

Page 418

watch the product.
So DIRECTV incurs lots of costs -- in fact, that's a loss-making activity -- until that final activity occurs in South Carolina and the other states, of course, that generates the income.
Q: And were you present for Dr. Cody's testimony yesterday?
A: Yes, I was.
Q: Does his testimony change your opinion?
A: No, not in the least.
Q: Can you explain that to the Court?
A: Well, one of the things that he was saying, vis-a-vis the point I was just making, that all of the activities were cost generating and there's only one activity that was income generating, is he was presenting the view that you can't separate income and cost.
I mean, he talked about how -- may be paraphrasing what he said -- that even if you take the check that is paid for the final receipt of the service, there is a cost of processing that. So you can't differentiate income and cost. And with respect, I was embarrassed to hear a Ph.D. economist say

Page 419

something like that; that is just silly.
MS. WOOTEN: Your Honor, can I have a minute, please?
Thank you, Your Honor. That's all we have on Direct.
THE COURT: Who's up?
DR. HARRISON - CROSS-EXAMINATION BY MR. ROBERTS:
Q: All right. So, Dr. Harrison, at your deposition, you testified that, quote, "an income-producing activity is some activity but for the occurrence of that activity there would be no income," correct?
A: I recall saying something like that, yes.
Q: Thank you. In your deposition -- and I think just now, as well -- you also testified that DIRECTV is the broadcast center, the up-link facilities, and satellites can't be considered income-producing activity because, quote, "They are cost producing activities. They are not income-producing activities." Correct?
A: That is correct. That's what I said --
Q: And so when your --
A: -- just a moment ago.
MS. WOOTEN: Your Honor, I would ask that he would let the witness finish his statement before he

Page 420

asks the next question.
THE COURT: Let him finish the answer.
MR. ROBERTS: He answered my questions.
THE COURT REPORTER: I can't hear, though.
THE COURT: Oh.
MR. ROBERTS: Fair enough, sorry.
A: Yes, that's essentially what I said, that those are cost-producing activities and the only income-producing activity was the receipt in South Carolina.
Q: Okay. So, in your opinion, activities that generate cost for a taxpayer cannot be income-producing activities, right?
A: As those terms are standardly defined, that's correct.
Q: Thank you. In your deposition, you testified that, quote, "But here the income-producing activity is the person purchasing the product in South Carolina that occurs wholly within South Carolina." Correct?
A: That's correct, as I just said a moment ago in relation to the other questions.
Q: And you further testified in your deposition that the income-producing activity was, quote, "Turning on the box, watching the TV, and

Page 421

paying the bill." Correct?
A: That's correct, yes.
Q: You would acknowledge that all of those are activities of the customer, correct?
A: That is correct, other than the -- actually, no, that's not correct. Those are activities initiated by the customer, but the service only actually flows into the person's house if, indeed, all of the other activities have occurred. So those other activities are needed, but they're -- you don't actually see the service unless there's a satellite there.
Q: But those other activities, the delivery of the service into the house, you would acknowledge that delivery is a cost, right?
A: That's correct, that's a correct --
Q: And you just -- and you just said that cost cannot be an income-producing activity.
A: Let me answer my previous question, if you may. Do you want me to answer it?
Q: Right away.
A: Okay. Those are costs. All of those are costs. They are costs that are needed to produce the product.
Q: And did you not just testify that an activity

Page 422

that generates a cost cannot be an income-producing activity?
A: That's correct, and that follows from the definition of the terms as normally used in accounting and economics and business.
Q: So, again, the only -- in your opinion, from an economic standpoint, the only income-producing activity that occurs in this case are activities of the customer, correct?
A: In South Carolina, yes.
MR. ROBERTS: I have no further questions, Your Honor.
THE COURT: Redirect?
MS. WOOTEN: Nothing from the Department, Your Honor.
THE COURT: You may step down.
THE WITNESS: You don't have any witness questions?
THE COURT: Not right now.
MS. WOOTEN: Your Honor, just one administrative matter. Dr. Harrison has a flight this afternoon, so we would ask that he be excused.
MR. ROBERTS: Sorry, Nikki, I didn't hear, I'm sorry.
MS. WOOTEN: Dr. Harrison has a flight scheduled this afternoon and I was asking that he be

Page 423

excused from further questioning.
MR. ROBERTS: That's perfectly fine with us.
MS. WOOTEN: Okay.
THE COURT: You're excused.
THE WITNESS: Thank you.
MS. WOOTEN: Thank you.
(Witness excused.)
MR. CONDON: Your Honor, can we take a five-minute break?
THE COURT: You may.
MR. CONDON: My witness has seem to run out to the bathroom or something.
THE COURT: All right.
(Off the record from 1:38 p.m. to 1:50 p.m.)
MR. CONDON: You ready?
THE COURT: Yeah.
MR. CONDON: Your Honor, we call Professor John Swain.
THE COURT: Another professor.
JOHN A. SWAIN, having been duly sworn, testifies and examines as follows:
MR. SWAIN - DIRECT EXAMINATION BY MR. CONDON:
Q: Good afternoon, Mr. Swain.
A: Good afternoon.
Q: Would you please state your full name for the

Page 424

record?
A: Yes, John Allen Swain.
Q: And where do you live?
A: Tucson, Arizona.
Q: And who is your current employer?
A: The University of Arizona, Rogers College of Law.
Q: And how long have you been employed at the University of Arizona law school?
A: Since fall 2001.
Q: What is the nature of the work you perform at the University of Arizona?
A: I'm a professor of law at the University of Arizona, so I teach law classes, I engage in legal research, and I give service to the university.
Q: Do you teach on state and local tax issues?
A: Yes, I -- my course load is primarily in the taxation area. I teach state and local tax, as well as a number of other tax courses, federal income, corporate tax, advanced corporate tax, international tax, nonprofit organizations, and I may be missing something.
Q: Would the state and local tax course you teach include multi-state income tax apportionment?

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Page 425

A: Yes, we teach multi-state income tax apportionment.
Q: If you would, sir, turn to -- in the black exhibit book there -- what's been marked as Respondent's Exhibit Fourteen.
A: (Witness complies.) Yes.
Q: Is that a document you recognize?
A: Yes, it's my CV/resume, whatever term you want to use.
Q: Did you prepare it?
A: Yes, I did.
Q: And is it a current and complete copy of your CV?
A: Yes.
MR. CONDON: Your Honor, I'd now like to put Respondent's Exhibit Fourteen into the record.
MR. ROBERTS: We have no objection, Your Honor.
THE COURT: It's admitted.
MR. CONDON: Thank you.
(Respondent's Exhibit Number Fourteen was admitted into evidence.)
Q: Professor Swain, on the first page of Respondent's Fourteen, it says under "academic positions" you're a Chester H. Smith professor of law. What does that mean?

Page 426

A: It means I'm a tenured professor of law who was awarded a chair or a -- sometimes we have other words for it -- in honor of -- this was a former professor at the University of Arizona College of Law.
Q: Are you the author of any textbooks?
A: Yes.
Q: And would you tell us what those textbooks are or textbook is?
A: Well, I'm the author -- I'm coauthor of a casebook Hellerstein, Stark, Swain and Youngman, which is a casebook on "State and Local Taxation." I also am author -- coauthor of the treatise, Hellerstein, Hellerstein and Swain, "State Taxation."
Q: How is the --
A: And I --
Q: I'm sorry.
A: I'm also coauthor of "The Streamlined Sales Tax" and book with Walter Hellerstein.
Q: So regarding what you call, I believe, casebooks, "State and Local Taxation" --
A: Uh-huh (affirmatively responds).
Q: -- "Cases and Materials" --
A: Yes.

Page 427

Q: -- how is that used?
A: Well, I use it in my course to teach state and local tax to law students and, also, we have a number of students from the accounting program at the Eller Business School. And so I teach a lot of accounting students, as well, in my class.
Q: Okay. Does that book also cover multi-state income tax apportionment?
A: Yes, we have a lengthy chapter on corporate income taxation and it mainly addresses issues of apportionment or related issues, what is called the "unitary business," those types of issues.
Q: And you described or you mentioned -- I shouldn't say "describe" I don't think yet. You mentioned Hellerstein and Hellerstein treatise, I believe. Would you describe it?
A: Yes, and you made the -- I don't know if it's a mistake or not. You called it Hellerstein and Hellerstein. If you read the inside cover carefully, it's Hellerstein, Hellerstein and Swain now.
Q: I apologize, sir.
A: But we're working on the fourth edition where

Page 428

my name will appear on the spine and maybe it will sink in. But, anyway, that's fine. I mean, Wally and his father are giants in the field.
Q: And how is this -- or what the -- what's the extent of what's in this treatise?
A: Well, the treatise largely covers the federal constitutional limits on state taxation. It covers income taxation, both personal and corporate, and sales and use taxes. It's the primary coverage of the book. And we are treatise writers. We look at the cases. We analyze them. We critically evaluate them, often using, you know, tax policy principals to do that.
Q: Is there a discussion of, again, multi-state income tax apportionment?
A: Yes, particularly chapters really six through nine; six through ten, maybe, yeah.
Q: Have you written any articles that are relevant to the issues in this case?
A: Yes.
Q: Would you identify an article or two?
A: Well, one would be "The Market State Approach to the Attribution of Receipts from Services"

Page 429

I wrote in anticipation of a UDITPA rewrite that never happened, as Professor Pomp explained. And, actually, that article then has been used to update the treatise. It's also the source of this article here, as well as the treatise, reforming state corporate income taxes, market state approach --

Q: And when were those --

A: -- and state tax --

Q: -- two articles written?

A: You know, I'm -- I should speak more clearly here. So, there is an article called -- it's the last entry on page three -- "Reforming the State Corporate Income Tax: A Market State Approach to the Sourcing of Services and Receipts," and that's Tulane Law Review and that's 2008.

And then up on the page, I guess, the fourth entry is an article that's derivative of I think more the treatise, but the treatise is sort of derivative on this Tulane article called "The Market State Approach to Attribution of Receipts from Services" with Walter Hellerstein and State Tax Notes. Those are the key articles. I've done some

Page 430

thinking about income tax nexus, which actually I think bears on this case. And there's an article there called "State Income Tax Jurisdiction: A Jurisprudential and Policy Perspective" in the William and Mary Law Review in 2003. And I think nexus is out there in this case, something that we might want to think about.

Q: When you publish things --

A: I'll, you know -- anyway, there's some other articles that are pertinent, you know, that have some thinking that's pertinent relating to -- actually relating to nexus and jurisdiction.

Q: When you publish articles or your casebook or the treatise, do -- are subjects sometimes addressed tax policy issues?

A: Yes, we frequently -- I mean, we're in academia. We have the luxury of thinking about how things should be and that's what we do a lot in tax policy when we apply tax policy. That's often the normative questions: You know, how should -- what's the right answer to question X or Y or Z?

Q: Do you have any expert witness experience?

Page 431

A: Some, yes.

Q: How many times have you been qualified as a witness in court?

A: I haven't been qualified here yet, have I? No. So --

Q: Not yet.

A: -- twice. In Nevada a year ago, January, and then a year or two before that in Alaska.

Q: Have you ever served as an expert but just didn't have the opportunity to get qualified in court?

A: Yeah, about four other times I've been deposed and the cases either were resolved or -- I'm not sure I followed them that closely or the -- or the matters proceeded on a motion, something -- a summary judgment or something of that nature. I think there was a matter in this state, a Duke Energy, where that was the case.

Q: In what types of cases have you served as an expert witness?

A: I think the first time I was asked to be an expert witness was in Minnesota involving Minnesota's jurisdiction to tax credit card companies that were out of state and were not

Page 432

physically present in Minnesota. In -- and that was the State of Minnesota that had retained me.

There was a case in Tennessee called Vodafone. That was a case about whether a taxpayer -- excuse me, whether the Department of Revenue was entitled to equitable relief from the application of the apportionment statute. And it was an apportionment statute derivative of kind of the statute that we're talking about that's going to be discussed today, UDITPA Section 17.

And they were asking for equitable relief from -- the Department was asking for equitable relief from that statute or the Tennessee version of it.

In Alaska, I -- not represented, excuse me. I was an expert witness for the big oil companies, the TAPs Owners, the partnership that -- or joint venture that owned the Trans-Alaskan Pipeline. And that was a property tax case, involved the valuation of the pipeline, but also how the Alaska tax system and various features of it worked together to tax the oil companies and whether

Page 433

it was being interpreted sort of in pari materia properly together or in unison.
Q: Uh-huh (affirmative response).
A: There's Nevada, I guess, is the other -- I should -- okay. Nevada was the most recent one and that involved a dispute about whether a Nevada sales tax exemption discriminated against interstate commerce.
And then here in South Carolina, I testified in the Duke Energy case, a deposition -- I was deposed. And that was involving the interpretation of the receipts factor -- I believe the receipts factor and whether something called receipts from treasury function activity should be included in that receipts factor.
Q: Okay. Professor Swain, are you knowledgeable about UDITPA?
A: Yes.
Q: And how long have you worked with or have studied or been aware of UDITPA?
A: Well, one aspect of my resume is that before entering academia, I was in private practice for 14 years and that was devoted exclusively to state and local taxation. And during that

Page 434

time, we looked at UDITPA a lot and it was part of the practice. So, since whenever I got licensed in 1984, I guess, the first time I ran across it.
MR. CONDON: Your Honor, I'd like to now offer Professor Swain as an expert in tax policy and multi-state apportionment.
MR. ROBERTS: We don't have any objection, Your Honor.
THE COURT: He's so qualified.
MR. CONDON: Thank you.
Q: Professor Swain, have you reviewed any documents in preparation for your deposition or in work here here today?
A: Yes.
Q: What kind of things have you looked at to help you form an opinion and gather facts in this matter?
A: I looked at the director's decision. I looked at my own writings. I looked at some other writings in that are out there, like State Tax Notes magazine is sort of a leading organ in our field.
I looked at the -- I pulled the annual report of DIRECTV off the Internet. I pulled a

Page 435

securities analysis of the company, standard reports analysis off the Internet; UDITPA, those South Carolina statutes. I took a look at the Lockwood case. That's what's -- I'm recollecting, yeah.
Q: Yesterday, did you hear Professor Pomp's testimony?
A: Yes.
Q: He talked about UDITPA. Is there anything you want to explain or talk about UDITPA in thinking about Professor Pomp's testimony?
A: I think it would be helpful to refresh our memories, understanding that the Court has already heard testimony on UDITPA, and I'll try to use some discretion and not sort of beat a dead horse.
Q: Yes, please. I think we'll all appreciate that.
A: But we have a Uniform Division of Income for Tax Purposes Act; it was put together in 1957. Before that, states initially tried separate accounting as a way to compute corporate income. They quickly moved to formula apportionment.
I would say by the time UDITPA was drafted,

Page 436

there was some consensus around the three-factors -- property, payroll, sales -- called the Massachusetts formula. And UDITPA embodies -- has adopted those three-factors for the use in apportionment income; property, payroll, sales.
The property and payroll factors tend to reflect the contribution of the states where production occurs. The sales factors is there to reflect the contribution of the market state to the taxpayer's income.
I guess one thing I would say is there's some sort of suggestion that the sales factor was merely a political addition and, of course, where there's tax reform, there's lobbyist and politics, but there's sound policy reasons for having a sales factor, and that's to reflect the contribution of the market state to the taxpayer's income.
As I like to say and as an economist, Peggy Musgrave said -- I think I've quoted her in one of the articles I talked about -- said, "It takes supply and demand to make income." We can't measure precisely which blade of the Marshallian scissors supply and demand are, you

Page 437

know, more important, so we make a rough justice average of those.
And, you know, in some ways, in listening to the testimony over the last two days, it's kind of what people are focusing on. One side's focusing on the supply side and the other side is focusing on the demand side. And it takes both to create value and create income.
But, anyway, I digressed a bit. The sales -- so that's the purpose of the sales factor. I think there's pretty clear consensus on that's the purpose of the sales factor, to support the market's contribution to the taxpayer's income.
I guess another thing I would add is an economist, Charles McLure has suggested -- and this was one of his most important works, I think, in this field -- that when you look at three-factor apportionment, it's kind of like three taxes. It's a property tax, it's a tax on payroll, and it's a sales tax. And that can provide some insights when you think about the formula.
When you look at how UDITPA was drafted, the sections that we're focusing on today, I think, are Section 16, which talks about how you

Page 438

source, how you attribute sales of tangible personal property for UDITPA purposes, and that has a place of delivery rule.
I'd shorthand would call it "destination approach." I could call it where the market is, where the customer is. You can use all those kinds of terminology, at least if you're viewing it from 30,000 feet. But it's the place of delivery. And that does a good job of implementing the role of the sales factors to reflect the market's contribution.
Section 17 has been more -- I've criticized it because the language of Section 17 under what -- sort of the traditional interpretation is, talks about where the cost-to-performance are. And that's more where your property and payroll are, typically; at least that's how it's been interpreted traditionally. We'll get into this in a moment; there are other interpretations of that -- of that Section 17 language.
But that's the criticism of Section 17 under the traditional interpretation, is that it's not doing its job. It's reflecting the contribution of -- really it's duplicating in

Page 439

many sense as the supply side, the payroll, the property, the expenses, even. It's like an expense factor.
Q: Let me interrupt for a second --
MR. ROBERTS: Your Honor? Excuse me, Your Honor, I have a question. The witness keeps looking down and seems to be reading something. I'm just wondering if he brought up notes or a script and if it's notes or something, he did not prepare a written report and so we would be entitled to those notes.
THE COURT: Well, you're entitled to them if he starts using them to testify.
MR. ROBERTS: Well, he seems to be reading from something.
THE COURT: Are you using notes, sir?
THE WITNESS: Yes, I am. I'm referring to them. I'm happy to give them a copy. I don't know what the court rule is.
THE COURT: Well, I normally keep up because I remember, number one, I can make the ruling that he cannot use the notes to refresh his memory and that ends it. Or I can allow him to use the notes to refresh his memory or -- I mean, I assume this is not a past recollection

Page 440

where you can't -- or you can't remember your past thoughts -- I mean, past recollection recorded, but -- so ...
MR. ROBERTS: Well, I mean, Your Honor, he was offered and admitted as an expert in tax policy and multi-state apportionment. So it seems like he should just know all the stuff that he's talking about and not have to look at notes.
THE WITNESS: When I lecture in class, I use -- I'm sorry.
THE COURT: Well, at this point in time, I'm going to allow you to look at what you've used so far and then if you do need to use notes, to let us know that you're using those notes, and then they will be entitled to look at them. But if you could show the pages you've used so far.
THE WITNESS: It's just this one page (indicating).
THE COURT: Okay.
THE WITNESS: And it's completely illegible.
THE COURT: Would you like to look at it?
MR. ROBERTS: Yes, we would, actually.
THE COURT: Walk up.
THE WITNESS: (Tendering.)
MR. CONDON: (Tendering.)

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Page 441

MR. ROBERTS: Can we just have a few minutes, Your Honor?
THE COURT: Yeah.
MR. ROBERTS: Thank you.
THE COURT: All right. Are we ready?
MR. ROBERTS: Yes, Your Honor, I have -- I would just -- I would -- we would ask that he not be permitted to use these notes. I mean, he's being offered as an expert.
THE COURT: The approach I'm going to take is -- I've already said is, if he needs to use the notes, he'll notify us of that and then we'll address that at that point in time.
MR. ROBERTS: Fair enough, Your Honor.
MR. CONDON: At this point in time, I've allowed you to look at them. If you think there's a need to cross-examine him on that which he's already testified to, and then if he needs them later on, he consults them and then we'll address that issue later.
MR. ROBERTS: Fair enough, Your Honor. I appreciate it, thank you.
MR. CONDON: All right. I'm just going to put these upside down, then --
THE WITNESS: That's fine.

Page 442

MR. CONDON: -- just in case you need it later. Before you grab it, let's talk.
THE COURT: All right.
MR. CONDON: Okay.
THE COURT: Proceed.
Q: Professor Swain, I was about to ask you, you were talking about Section 17 of UDITPA and you had mentioned a traditional view, but I was actually thinking about something else and I missed what you said the traditional view of Section 17 was.
A: Well, the traditional view is that those factors, that is the -- or the rule that says income-producing activity based on cost-to-performance is -- for a service business would mean you look at where the service business's activities are to create its service.
And I think, you know, one reason -- and I had mentioned nexus earlier, why I think that's a traditional view is that, unlike Section 16, Section 17 doesn't have what's called the "throwback rule." And I think that the drafters of UDITPA in 1957 were a little concerned that if they were throwing -- you

Page 443

know, if services were attributed to the market to where the services were delivered, that those market states wouldn't have nexus. And they kind of contemplated whether -- I'm guessing, but -- that, "Well, do we have a nexus -- let's write a rule that doesn't have a throwback requirement."
And by "throwback," I mean, for example, in Section 16, that regards sales of tangible personal property it said if the sale into the market state -- if the taxpayer is making the sale, is not subject to the jurisdiction of the market state, we're going to throwback that sale to the state of origin, where the state from which the property was delivered.
So, I would call that the traditional approach under UDITPA. There is plenty of confusion over UDITPA. There's plenty of contrasting interpretations. We discussed those in the treatise.
Q: If that's the traditional view of Section 17, is that -- is there well-settled -- is there a well-settled rule on what "income-producing activity" is?
A: No, it's not well-settled and in the treatise,

Page 444

which I think is marked as an exhibit here somewhere, we discussed that. And, if I may, I'd like to just -- to read from this. I relied on the treatise in preparing my opinion. So we have a section -- there was an exhibit -- I don't know if I need to refer to it or not, but -- anyway, it's paragraph 9.133(A) of the treatise where we sort of layout the overview and our policy critique, which I've tried to do in the last few minutes, of Section 17.
And then we move to section 9.183(B) which is called "The Income-Producing Activity/Cost-to-Performance Test in Practice." In other words, how courts are actually -- and state administrators are actually applying that test.
And we look at in subsection 9.133(B)(1), it's called "Income-Producing Activity in General." And I won't read all of this, but it's -- we say in the second paragraph of that subsection, "Although a taxpayer's income-producing activity in the separate items of income, if it generates any, may be" --
THE COURT: Go a little slower.
THE WITNESS: I'm so sorry, yeah.

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Page 445

THE COURT: There's a tendency when you read to go faster and my court reporter has got to keep up.
THE WITNESS: Okay.
THE COURT: Start it again.
THE WITNESS: It says, "Although a taxpayer's income-producing activity," paren, "and the separate items of income if it generates any," end paren, "may be self-evident in many cases. In other cases, that determination is far from obvious."
Then we proceed in text to discuss a number of cases. For example, a Wisconsin case that takes -- basically takes a destination approach called Ameritech. Then there's a contrasting case that takes a more traditional approach. There are cases that look at each sale -- for example, each subscription as a single income-producing activity. But then on the other hand, there are cases that say it's the entire business that's the income-producing activity.
There are cases that exclude sales activity -- I think that's the more traditional approach -- exclude sales activity from income-producing

Page 446

activity. There are cases like the Heller Western case in Arizona, which is where I practice, where you pretty much only exclude the sales activity and you exclude the antecedent events and the -- and in that case, it involved the -- the raising of funds to lend to customers in Arizona, the cost of raising money in California, an out-of-state, weren't considered at all. It was just -- and I recommend that case to the Court.
At the end of this long -- the paragraph is long, but the footnotes are about two pages -- with these cases that go yin and yang and yin and yang.
We concluded: "Suffice it to say, at least for anyone who's had the fortitude to win his or her way through the preceding footnotes, as we observed at the outset of this discussion and as other commentators have recognized, UDITPA's income-producing activity/cost-to-performance rules are, quotes, "confusing and indefinite" and plagued by, quotes, "vagueness" -- and I'm saying quotes because we're citing other articles -- plagued by vagueness, ambiguity, substantial debate, lack of clear guidance,

Page 447

whipsawing, tremendous flexibility and, hence, tax planning opportunity, frequent litigation, inconsistency and confusion for taxpayers and taxing authorities alike. And in a sense this case is another reflection of that.
Q: All right. Thank you. If -- so were there developments or more recent developments -- and, of course, we're talking since the '50's and UDITPA. We're talking -- "recent" is kind of relative. But are there more recent developments after UDITPA and after this traditional view was formed of Section 17 that may have affected the view of Section 17?
A: Yes, I think there's kind of an environmental change, contextual change that I'll explain. So, as I said earlier when I started talking about nexus and jurisdiction to tax and how that might have affected Rule 18 -- I mean, excuse me, Rule 17 -- because in 1957, there were much more limited views of what market -- the jurisdictional reach of market states. There was a case -- and I'm going to forget the year -- '64 or '7 of Bellas -- National Bellas Hess, which said you need a physical presence in this state in order to -- for the state to

Page 448

have taxing jurisdiction; said that as a matter of both due process and commerce clause. It wasn't until 1992, we had a case called Quill, which is another nexus case, that said, "Well, there's not a due process problem. And for sales and use taxes, at least, there's a commerce clause problem, but not -- for sales and use taxes, we're going to preserve the Bellas Hess rule, that you need a physical presence, but we haven't enunciated that test in other -- with respect to other taxes," which a lot of us concluded suggested that the physical presence test after all wouldn't apply to corporate income taxes.
South Carolina has the leading case a year or two later after Quill, the Geoffrey case that said, "That's right." It involved the leasing or the licensing of an intangible that was situated, owned, protected and so on in Delaware and licensed to Toys R Us here in South Carolina.
And South Carolina Supreme Court said -- it said, "Yeah, the Quill physical presence test does not apply to corporate income taxes." And I think it's also interesting to note, too,

Page 449

that that court situs them -- in other words sourced those receipts from the licensing to the market state -- to South Carolina under the same statute that -- I think that applied in the Lockwood case.
It didn't look to where the license -- the intangible was created, the trademark was created or protected. It looked to the market, applying that same statute as Lockwood.
And so, you know, there's been a lot of talk of Lockwood and we can think about it in many different ways and the lawyers can do that.
But I think the dirty little secret in Lockwood is that case was decided in an environment, but what the taxpayer was really saying, either in that case or similarly situated taxpayers would be able to say: "No, our income is being earned out there where our customers are and we aren't subject to tax jurisdiction. We aren't subject to tax jurisdiction in those -- in those jurisdictions and we're going to -- we're -- we aren't going to be subject to tax on that income anywhere."
I think someone looking at that argument would have been cynical about it, said, "We need kind

Page 450

of a place of performance approach," or whatever you want to call it, whatever was the language in the -- situs where the Lockwood offices were -- in a way that I'm not sure in the 21st century we need to worry about.
So there is -- you asked me for changes after UDITPA. Those are, I think, some important changes.
The other important change is this Moorman case that was mentioned, which essentially upheld the single-sales factor apportionment.
You know, there is a suggestion that it might be challenged under the right facts. You can do an as-applied challenge to any apportionment factors, even the three-factor formula.
But, in fact, when the Supreme Court blessed the single-sales factor formula in Moorman -- and a lot of the thinking before then in part based on case called General Motors out of District of Columbia -- there was some thinking the Supreme Court might codify UDITPA, essentially -- excuse me, codify the three-factor formula. Well, it didn't and that blew the lid off of whatever uniformity existed at that time.

Page 451

States have proceeded to -- really at an accelerating pace for a while, anyway -- adopt single-sales factor apportionment, like Iowa had in Moorman, and I'm not aware that any of those statutes have been declared unconstitutional.
You know, in fact, the statute that -- the only case that I'm familiar with where the Supreme Court rejected a apportionment formula is a case called Hans Rees' Sons out of North Carolina; that's where the taxpayer was located, as I recall.
And that was with a single property factor apportionment formula and the taxpayer said, "Well, we've got all these sales in other states. You need to take those into account."
And under those facts, the Court agreed. And that statute -- that application of that statute in Hans Rees and Sons was held to be unconstitutional.
Now, think about it. Under at least DIRECTV's and I would say the traditional approach to UDITPA's 17, when all you've got is a sales factor, that's really not a sales factor anymore. It's a stealth property factor. It's

Page 452

a stealth payroll factor. It's a stealth receipts factor. You aren't giving any credit to the market state.
And when that's your only factor, your receipts factor, and you're saying, "It's where my payroll, my property, and my costs are," that's a pure property -- at least pure nonsales where your sales are nonmarket state rule. It completely shifts it in the other direction without giving any credit, really, to where sales occur.
And under those facts in an old Supreme Court case, Hans Rees' Sons, that was held to be unconstitutional, which I find interesting.
Now, having said that, if Hans Rees' -- if Hans Rees' grandsons came to me with the same facts, I wouldn't take the case on a contingency. I wouldn't take the challenge to Moorman on a contingency. I think that the Supreme Courts allowing just about anything that isn't completely arbitrary and capricious in formula apportionment.

Q: In your opinion, did the resolution of the nexus issue, where courts ruled that an entity did not have to have physical presence in order

Page 453

to -- for a state to have jurisdiction, did the resolution of that issue have a direct impact on taxing jurisdiction moving to a single-sales factor?

A: I think so. I think since Moorman, we had single-sales factor apportionment. And when it comes to services, in particular, the people say -- people say this in, you know, national seminars I go to and everything, "You can't think about single-sales factor apportionment without thinking about market state attribution."

And you wouldn't be doing that unless you had -- the market states had nexus with the services that are performed in their state remotely by out-of-state persons. You really couldn't have moved in that direction.

But what's happened since Moorman, again, we have single-sales factor apportionment; South Carolina has adopted that and phased it in.

And so the answer is "yes," I think the change (sic) the nexus rules opened the door to single-sales factor apportionment and in part because of the -- you could attribute receipts to the market states without having nowhere

Page 454

income.

Q: Now, you said earlier that you read the Department Determination, right?

A: Uh-huh (affirmatively responds).

Q: In your opinion, does the position the Department expressed in its Department Determination reflect good tax policy?

A: Yes, it does and I'll explain.

Q: Please.

A: I said earlier that the function of the sales factor was to reflect the contribution of the market state to the taxpayer's income. And if the -- the effect of the Department's Decision is to do that, is to give South Carolina its due as a market state for providing a market for DIRECTV, even though DIRECTV is remote; it's not located here. It's not located in South Carolina. So that's one reason.

The second is, when we get to single-sales factor apportionment, there is something else going on. I mean, there's a -- why did states rush to -- why was single-sales factor apportionment attractive?

Let's just go back to what McLure said. The three-factor formula is a property tax, a

Page 455

payroll tax, and a sales tax. States -- when you have mobile capital, when capital can move wherever it wants to and produce products and then deliver them remotely to markets, capital will move to low tax jurisdiction; it will move to tax havens.

So if you want to maintain that three-factor formula and you are discouraging people from investing in your state, you're discouraging them from employing people in your state -- and this has been the feeling of states in adopting single-factor apportionment, that it's both -- you know, initially, it may have been an economic development tool for some of the first movers, but now it's an economic sort of preservation tool. You need to run with the pack in a competitive environment with mobile capital, and states running with the pack adopting single-sales factor apportionment.

And so, is the Department's position consistent with that, what I think is the underlying policy of states in adopting single-sales factor apportionment? Yes. It's taking a market state approach to the attribution of receipts in the sales factor, rather than ...

Page 456

If we took DIRECTV's approach -- and I could just put it -- I think to make it clearer, let's say a satellite company wanted to establish itself in South Carolina. Under the interpretation proposed by DIRECTV, we would source all the receipts to South Carolina because all their operations are here in South Carolina.

Again, it's a stealth property/payroll/expense factor under that interpretation. And it's exactly the opposite of what the legislature of -- I think what legislatures want to do when they adopt single-sales factor. It defeats the purpose of it.

Q: And a point --

A: It creates that tax that -- on labor and capital that states are trying to avoid.

Q: And just one point of clarification. When you're referring to single-sales factor, are you including in that the single gross receipts factor in South Carolina's statute?

A: Yes, I'm using them interchangeably; just "sales" rolls off the tongue more easily.

Q: Okay. Were there any other reasons why the Department's Determination reflects good tax

Page 457

policy?
A: Yes. There's actually something I wanted to say about -- but anyway. The other reason -- let's see. We've covered purpose of the sales factor, the sort of economic development purpose.
The third is, one of the tax policy values we talk about is equity. We want to treat like taxpayers in like manner. And one of the other problems with UDITPA is we treat a seller of tangible personal property on a definition -- on a destination basis, we attribute sales to the destination; while under the traditional Section 17 approach and the approach that DIRECTV is advocating for your statute, we would approach -- we wouldn't attribute those sales to the destination. We'd attribute them to the -- you know, where their activities are to -- you know, their business operations are. And so you're treating those two classes of taxpayers differently. Let me try to be more concrete.
One of DIRECTV's competitors is Netflix and they're in competition with each other. Netflix, as I understand it, originally had a

Page 458

model where they leased rented --
MR. ROBERTS: Objection, Your Honor. This is well beyond the scope of his expertise.
THE COURT: In what regard or -- I mean, you've got some blanket statements.
MR. ROBERTS: Competition between companies, I don't think he knows anything about Netflix.
THE WITNESS: I read your annual report. I read ...
THE COURT: You can lay the foundation.
MR. CONDON: Okay.
Q: Professor Swain, do you -- did you read DIRECTV's annual report?
A: Yes, I did and I also read a securities analyst's review of the companies prospects.
Q: Did it describe DIRECTV's or did one or both of the documents describe DIRECTV's operations?
A: It described the operations. It described its competitors by name, including Netflix, Hula (sic), some others. I think there was some testimony earlier in this case in that regard from DIRECTV about who their competitors were and how competitive their industry is.
Q: And are you generally familiar with what Netflix does?
A: Yes, yes.

Page 459

Q: Okay. So would you go -- would you continue with your --
A: Yeah, so --
Q: -- discussion, then?
A: So what we can have is functionally similar or very similar business competitors that would be treated differently.
If Netflix is renting content to customers in South Carolina, I don't think there's any dispute under your statute that those receipts are going to be sourced to South Carolina. Well, if they're being delivered through satellite, which people aren't arguing is tangible personal property, they're saying it's a service, and if we adopt DIRECTV's approach, then none of DIRECTV's receipts would be apportioned, or not nearly as much, from the subscriptions to South Carolina. And South Carolina would be treating two business competitors differently. And so that's a concrete example of equity.
The other thing is you just get very difficult characterization disputes and the lot turns on those. Like recently, there was a case in Louisiana. It wasn't an apportionment case.

Page 460

I think it was just whether something's taxable or not.
But the South Carolina tax authority made the argument that pay-per-view and -- there's something else here. Pay-per-view is the one I can think of. There's another similar service that cables offers. They argued that it was the sale of tangible personal property for another purpose. And the Court in Louisiana said, "No, it's not; it's a service." And -- but what if the case had gone the other way? We'd completely change how we apportion the income of the functionally equivalent activity. Or you could have one business that's a little bit more of a tangible personal property provider than the other in the views of some Court to create some certainty for the taxpayer. It creates inequity in terms of how you're treating businesses.
Q: Do you believe that -- or in your opinion it does -- does the Department's Determination, is it consistent with South Carolina Statutes 12-6-2290 and 2295?
MR. ROBERTS: Objection, leading. And legal conclusion, Your Honor.

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Page 461

THE COURT: Well, go back to Vortex when I was ruling in your favor. I said even if it touches on the ultimate opinion, as long as it doesn't state an interpretation it's okay. So I think he's okay on that aspect. I'll sustain on the leading; although, on that one, you're not dead-on on that one, either.
Rephrase the question.
Q: Is there any line of authority that supports the Department's Determination in that it's good tax policy?
A: Yes, there's a line of authority in other jurisdictions that have held under similar statutes and I think in either -- it was either even tougher sledding because those statutes were cost-to-performance statutes. You don't have cost-to-performance -- either under -- even under cost-to-performance statutes in Arizona, Wisconsin, courts have held that basically we have a destination approach. Function -- you know, a quasi market-state sourcing, if you will.
There are Indiana rulings that take that view, that say the ultimate income-producing activity is the delivery to the customer. We have

Page 462

Florida rulings that take that view, multiple Florida rulings. One of them cites the treatise and also discusses the Wisconsin case, Ameritech; the Arizona case, Heller Western. This is a line of authority that a court could rely on in interpreting income-producing activity and cite in the positive loss sense, "Here are these authorities to reach what I think is the correct policy result."
Q: Now, earlier you stated that there were conflicting interpretations of income-producing activity coming out of Section 17 of UDITPA; is that right?
A: Yes.
Q: Because of that, would you be asking for new law in South Carolina?
A: No, it -- well, it's the Court's call. I mean, I can't interpret the statute for the Court. But there's room to interpret the statute and if the Court's interpreting the statute, no, it's not a change of law.
Q: And did you hear Professor Pomp testify yesterday that because Section 12-6-2295(A)(5) does not include the phrase "based on cost-to-performance," that there were

Page 463

alternatives available to sourcing gross receipts to South Carolina? Did you hear that statement?
A: Yes, I did.
Q: Is the existence of these alternatives good tax policy?
A: Well, there are many values in tax policy, but it certainly hurts the value of certainty. If there -- if under the current statute, under UDITPA, under cost-to-performance where we have a standard such that it is, it's confusing and indefinite, plagued by vagueness, ambiguity, substantial debate, lack of clear guidance, whipsawing, tremendous flexibility and, hence, tax planning opportunity. That's not a very good way to -- that's not a very good tax statute because there's too much on the taxpayer side opportunity for tax planning and the other thing is the taxpayer is subject to second guessing by the Department.
Oh, well, this -- this views is better. You under reported by "X." So you're constantly -- you'd be at constant risk of audit, and I think you are now, because there's a lot of different views on what you include in cost -- do you

Page 464

include independent contractors or not? Direct costs or not? Sales costs or not? You're exposed. You're exposed during the -- when the -- as a taxpayer when the limitations period is open for the -- because of those -- that lack of clarity in that standard.
And if we -- and if it's more open, I don't think that's good. I mean, is there more -- "flexibility" is a nice sounding word, but I think it ends up being uncertainty.
Q: So do you think this case can be resolved under the current statute?
A: Well, I would -- well, for example, I would just -- again, there's authority that could -- I think it has to be revolved under the current statute one way or the other. I think there's authority that supports the Department's position.
I also think if the position is the income-producing activity is limited to the delivery of the service, to the supply -- the demand side of those Marshallian scissors, it's a lot easier to measure. There's a lot more certainty, because it's pretty easy to measure receipts and it's pretty easy to situs them,

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Page 465

generally speaking.
Q: If the General Assembly had an economic development goal in mind when it enacted 12-6-2295, would the taxpayer's position in this case have an effect on economic -- on that economic development goal?
MR. ROBERTS: Objection, Your Honor. He was admitted as an expert in tax policy, not economic policy. We already had an economist testify.
THE COURT: You're also speculating about what the General Assembly would intend and that would be an interesting expert, but ...
MR. CONDON: Well, I am --
THE COURT: I am going to sustain -- go ahead.
MR. CONDON: I am asking him a hypothetical by saying that and I believe --
THE COURT: You're hypothetically asking him about what the General Assembly would intend? I'm not being --
MR. CONDON: Yes.
THE COURT: -- coy. I'm just trying to understand.
MR. CONDON: Yes. And I believe there's been testimony, sufficient testimony, that indicates that, as Professor Swain himself said, moving

Page 466

to single-sales factor as South Carolina has done for both -- well, they've always been single-sales -- single gross receipts factor for services, but moving to single-sales factor for tangible personal property in 2007, that those kinds of moves are often done for economic development reasons. Additionally, economic development is hand-in-hand with tax policy. I mean, there's no question about that.
THE COURT: Give me the question one more time and I'll give my ruling.
MR. CONDON: Okay. Assuming that the South Carolina General Assembly had an economic development goal in mind when it created -- or when it enacted Section 12-6-2295, would the taxpayer's position in this case have an effect on the economic development goal?
THE COURT: I sustain the objection.
Q: I meant to come back to it earlier, Professor Swain, but earlier in your deposition, I asked you a question and you -- your brain was kind of going around and you were saying you were thinking about something else. Was there something else you wanted to add? I don't even

Page 467

remember the subject matter that we were discussing then.
A: Yes, I mean, someone might ask: Why are states willing to tax their markets but don't want to tax labor and capital, because they're X-ing out the payroll and property factors?
And the reason they're willing to tax their markets is essentially because the markets are much less mobile. Taxpayers have to come -- they want the sell subscription TV to South Carolina and they can't move South Carolina to the Cayman Islands and then make sales to South Carolina. So that's what the states are stuck with.
And you see this pattern, when capital isn't mobile or when the value isn't mobile, like in the natural resources industry, states will tax, heavily tax natural resources. They'll impose severance taxes on natural resources in a way they wouldn't do -- they'd never impose a severance tax on the shipping of a vehicle out of Columbia, out of South Carolina to another state, because taxpayers wouldn't put up with that very long. Mobile ones can -- I mean, mobile ones would.

Page 468

THE COURT: Well, traditionally, I could move South Carolina to the Cayman Islands, I might would think about that.
MR. CONDON: That would be where the list is.
No more questions, Your Honor.
THE COURT: All right.
MR. ROBERTS: I do have some questions.
THE COURT: I'm surprised.
THE WITNESS: I'm sorry.
MR. ROBERTS: No, no, take your time.
THE WITNESS: Wet my whistle.
MR. SWAIN - CROSS-EXAMINATION BY MR. ROBERTS:
Q: I think you testified a little while ago that you're one of the co-authors on the Hellerstein treatise "State Taxation," right?
A: That's correct.
Q: Can you just generally describe how the various sections and updates of the treatise are prepared?
A: How they're prepared?
Q: Yeah, just in terms of --
A: So we go --
Q: -- the review that you go through and things like that.
A: The division of labors that Walter Hellerstein

Page 469

works on the volume one, which includes corporate income taxes, includes the sections where -- that I mentioned earlier, and I do the updates on the sales and use tax in volume two, essentially.

Q: Okay. Like, I know that when we write articles like at our firm, you always have things cite checked and make sure all our quotes are accurate and things like that. And I would assume that it's important to you as a co-author and a respected academic that your writings are as accurate as possible, correct?

A: We do the best we can.

Q: I believe you just testified that in this case, the Department's, quote, "taking a market state approach to source receipts in this case." Correct?

A: It's a market state result they're achieving. It might be achieving it through a statute that isn't explicitly -- what I call an explicit market sourcing statute, but that's the result in the case.

MR. ROBERTS: I'd like to -- I believe this is already into evidence. I'd like the witness to read something.

Page 470

MR. CONDON: Can I see that?

MR. ROBERTS: Sure.

THE COURT: You can have this one.

MR. ROBERTS: You can have that one. Sorry, Bill.

Q: This is a couple of pages from the deposition -- from your deposition transcript. Can you just read lines eight to ten out loud, please?

THE COURT: This is from Dr. Swain's?

MR. ROBERTS: Professor Swain's deposition testimony, yes, Your Honor.

THE COURT: Okay.

A: You know, I think this is incomplete because you've asked me this question in many ways during the deposition, but I'll -- so it says, "Has South Carolina adopted a market-based approach to interpreting statutes?" A: "In this case it has."

Q: Okay. Thank you. In your deposition we had a long discussion about all this stuff and you just testified again that part of your opinion was that for equitable purposes, we should treat taxpayers in a like way and that you would like to -- you know, that sales of tangible personal property are sourced on a

Page 471

destination basis and you think that receipts from services likewise should be sourced on a destination basis, correct?

A: Yes, and intangibles in South Carolina are also sourced on a destination basis. Services is the only exception --

Q: And --

A: -- under your view.

THE COURT REPORTER: I'm sorry, I can't hear.

THE WITNESS: Under DIRECTV's view. Services would be the only exception.

Q: And you further testified in your deposition that, quote, you would "prefer a destination approach in all instances." Correct?

A: I'm sorry?

Q: You further testified in your deposition that with respect to receipts from services that you would, quote, "prefer a destination approach in all instances." Right?

A: Actually, I'd want to see that line --

Q: I will show you.

A: I'd like to see the deposition page.

Q: Line 14. Line 14 on page 66.

A: (Reading.)

Q: Does that not say that you would prefer a

Page 472

destination approach in all instances?

A: Okay. The question was, "But that's somewhat different question than what I asked. You said, you know -- you said before that, as a matter of tax policies, Section 12-6-2295(A) should be construed to -- should be construed to require destination-based approach similar to the sale of tangible personal property. And you also said, as well, in some cases it may not. But under your policy it would always -- it always would because you think it should be a destination-based approach, correct?" Answer: "I would prefer destination approach in all instances and I'm not sure how South Carolina courts are going to construe. You're asking me a statutory construction question."

Q: Have you ever testified on behalf of the taxpayer in case in which the state was asserting a market-based sourcing approach against the taxpayer?

A: In Vodafone in Tennessee, the Tennessee taxing authority was attempting to change the rule, was my view, and not construe their statute. It was what we call a Section 18 equitable apportionment case. And I testified that this

Page 473

wasn't a proper application of the equitable approach -- equitable apportionment statutes regardless of how just they thought their approach was.
And it was interesting, the attorneys in that case, they were quite well aware of my destination approach writings and they asked me to testify in that case because it had to do with a different tax policy issue, frankly as the construction and when can we deviate from a statute retroactively.
Q: And you testified in that -- and you testified on behalf of the taxpayer that -- you prepared a report in that case, correct?
A: Yes.
MR. ROBERTS: Your Honor, I'd like to mark and introduce a new exhibit and I can authenticate it through the witness, Your Honor.
(Off the Record)
Q: You can flip through that to -- do you recognize that document?
THE COURT: Well, I think we need to follow the approach of Rule 613. You're using extrinsic evidence to impeach the witness?
MR. ROBERTS: Mostly, Your Honor, yes. I think the

Page 474

opinions that he's expressing today are inconsistent with the opinions that he's expressed in other cases involving similar issues.
THE COURT: Then I think the approach is you -- to draw the witness's attention to the statement, the date, the time, the place, give him the opportunity to confirm or deny the statement, and if that -- if they confirm or deny what -- well, if they confirm it, that ends the inquiry and you don't go into it.
MR. ROBERTS: That's fine, Your Honor.
THE COURT: So you're offering that into evidence, is your phrase just now. I think we --
MR. ROBERTS: So I can just read the passage
THE COURT: -- follow --
MR. ROBERTS: -- and I can have him confirm it?
THE COURT: Rule 613, yeah, the Rules of Evidence.
MR. CONDON: Your Honor, I'd object, though, because it's labeled an affidavit, but I've never seen an affidavit that's not executed. I don't see any execution or notary or anything in here.
MR. ROBERTS: It's right here on page six.
THE COURT: Well, we can go into --
MR. CONDON: Oh.

Page 475

THE COURT: We can address that if, indeed --
MR. ROBERTS: This is his expert report.
MR. CONDON: Okay. Stand corrected. Thank you.
Q: So, again, so you prepared an expert report in Vodafone case in Tennessee, correct?
A: That is correct.
Q: And the issue in the Vodafone case, the Department sought to source Vodafone's service receipts to the billing address of its customers, correct?
A: Under Section 18, which was the exercise of an equitable power, to deviate from their construction of their statute.
Q: My question was: The Department in Vodafone sought to source Vodafone's service receipts to the billing address of its customers, correct?
A: Correct, based on Section 18; not Section 17.
Q: And in that case, page 18 of your report, you said, "At the end of the day, the Department will have effectively substituted a destination-based rule for the statutory prescribed origin-based rule. An entire section of UDITPA will have been retroactively repealed by administrative fiat." Did you say that?

Page 476

A: I'm sorry, can I -- where are we again?
Q: Page 18 at the top of the page.
A: I'm sorry, which line?
Q: Three lines down from the top -- or, I'm sorry, four lines down from the top.
A: "At the ..."
Q: "At the end of the day ..." Five lines. I can't count, I guess.
A: Yes, they were attempting to deviate from their interpretation of their statute. In this case, the Department is interpreting their statute. Those are two very different things.
Q: And so based on the opinion that you're giving in this case, then, had the Tennessee Department of Revenue simply interpreted their statute to require a market-oriented result, you would've had no problem with that, correct?
A: That's absolutely correct.
Q: Thank you. All right. Now, you heard testimony earlier today from Mr. Swearingen
A: And I'll add that --
MR. ROBERTS: Your Honor, I've already --
THE WITNESS: -- I would file this affidavit --
THE COURT: He can explain the answer. Go ahead.
THE WITNESS: If the Department of Revenue in this

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Page 477

case was using Section 18, I'd essentially file this same affidavit, I'd suspect. I haven't read this in five years, but I think I'd file the same affidavit. They're trying to retroactively impose a new rule rather than construe a rule. The Court will decide whether it's a proper construction or not. I think they're taking the high road.

Q: All right. So your testimony earlier today, Mr. Condon asked Mr. Swearingen point blank whether South Carolina was a cost-to-performance state and Mr. Swearingen said, no, you're not a cost-to-performance state.

MR. ROBERTS: I'd like to introduce Plaintiff's Exhibit Eleven.

THE COURT: Plaintiff's?

MR. ROBERTS: Petitioner's. Sorry, Your Honor.

Q: Turn to the bottom of page 333, footnote 13, please.

A: (Witness complies.) Yes.

Q: And just read footnote 13 out loud to the Court, please.

A: Yes. It says, "According to two knowledgeable observers, as of late 2010, four states use a

Page 478

proportionate cost-to-performance method: Arkansas, Mississippi, North Carolina, services only; South Carolina, services only." And then there's the citation sentence for that.

Q: Thank you.

A: That --

Q: You would acknowledge that that statement is inconsistent with what Mr. Swearingen testified to earlier today, correct?

A: No, it's not inconsistent.

Q: I thought Mr. Swearingen testified that South Carolina was not a cost-to-performance state and this footnote says that South Carolina is a cost-to-performance state.

A: Let's read the sentence that precedes the footnote, okay? It says, "There is, however, a more fundamental objection to UDITPA's cost-to-performance rule for attributing receipts from services whether applied in all or nothing basis or on a percentage attribution basis, as some states do -- as some states do." This footnote, the purpose of it was to identify states that have this apportioned approached to their service -- their services attribution. It does have some loose language.

Page 479

I mean, they say "cost-to-performance" here. It's a one sentence trying to recapitulate the statutes to four states. We can all read the statute to see whether cost-to-performance was in South Carolina statutes. The intent of this footnote was to identify states that use this proportionate method and not to make some definitive statement about whether it's a cost-to-performance state. And we can read the statute and know that's it's not.

Q: In your opinion, the income-producing activity in this case is the delivery of the signal, right?

A: Are you calling for a legal conclusion?

Q: I believe you said it earlier, that the income-producing activity in this case was the delivery of the signal --

A: I think it's a --

Q: -- or delivery of a service.

A: -- reasonable construction of the South Carolina statute, and that's the providence of the Court, to construe income-producing activity for the purposes of the South Carolina statute as being the delivery -- essentially

Page 480

the delivery of the service to the customer, yes.

Q: And you would acknowledge that there is a cost associated with the delivery of the service, correct?

A: Yes, there's a cost associated with the delivery.

Q: And so you would also agree, then, that an activity that generates a cost can be an income-producing activity.

A: It can be, yes.

Q: Thank you. All right. You mentioned before that you had reviewed the Lockwood Greene case in preparation for this case. And you're aware of the holding that the court in Lockwood Greene adopted the place of activity view which sourced to the place of -- the performance of services and rejected the origin of payment view. So based on the opinion that you've given today from a tax policy standpoint, you would disagree with the result reached in Lockwood Greene?

A: I would disagree with the result in 2015. Actually, I'd think hard about it and if I were deciding the case when that was decided,

Page 481

because of the nexus rules at that time, I'd be kind of maybe sanctioning a tax avoidance --

Q: But from a tax policy -- sorry, I didn't mean to interrupt you.

A: Well, tax policy inclusions might be different in 1984 because of the way the nexus rules work. You don't want to source sales to jurisdictions where you don't have the ability to enforce the tax. Now you do have the ability to enforce the tax. So I think the tax policy considerations are different and, you know ...

Q: Looking at Lockwood Greene today from a tax policy standpoint, you would disagree with that result.

A: Yes, if it was a taxpayer today, yes, under today's legal regime.

Q: We've also heard from the Department's witnesses today that the Department draws the distinction between personal service providers and all other service providers. From a tax policy standpoint, you would agree that there's not a very good tax policy reason for distinguishing between service providers when we're dealing with the same apportionment

Page 482

statute, correct?

A: I think that's right. I would market source all services where administratively feasible. Administrability is another value we think about and I wonder if what's going -- of whether there's kind of -- you have a de minimus law firm or accounting firm or something that can't -- it's just easier to report on an origin basis for them; that might be a policy rationale based on administrability. But, yeah, generally I'm a -- support market sourcing. I'll also note that the distinction between personal services and other types of services is not uncommon in the law. That's just as a legal matter, though, not a policy matter.

Q: From a tax policy --

A: Yeah.

Q: -- perspective.

A: Yeah.

Q: Correct. The South Carolina Legislature adopted single-factor sales factor for service providers in 1958. It seems pretty reasonable to conclude, I think, that had they wanted to go to a market state approach, they had plenty

Page 483

of time to adopt such a statute.

A: Well, I think you need to read that statute in pari materia -- I can't pronounce it -- sort of in conjunction with the changes to the South Carolina law that have occurred. And when they're sitting in the Legislature adopting single-sales factor apportionment for tangible personal property and they look over here and they see they've already got that or what looks like it for services, why amend the statute? And, by the way, the statute was amended and those words "income-producing activity" were incorporated into a statute that is destination sourcing for tangible personal property. Does destination sourcing more clearly than this particular provision for intangibles, but for the fastest growing part of the economy, services, they're going to live in the past era? I don't think -- I don't think -- my personally -- either South Carolina or the legislatures across the country don't want to do that. That's why -- I don't think they want to do that.

Q: You would acknowledge that for sales of tangible personal property there is a specific

Page 484

statutory provision that says that you (sic) sourcing it on a destination basis, correct?

A: Yeah, it's much less ambiguous.

MR. ROBERTS: Thank you. No further questions, Your Honor.

THE COURT: Redirect.

MR. CONDON: Thank you, Your Honor.

MR. SWAIN - REDIRECT EXAMINATION BY MR. CONDON:

Q: Professor Swain, would you grab -- I didn't write down the number, but the excerpt of your -- from your deposition that Counsel asked you about?

A: What page?

Q: It's labeled page 30 and -- 29 and 30 of your deposition.

A: Okay.

Q: All right. So Counsel asked you about what's highlighted there on page 29, that you said that South Carolina has adopted a market-based approach. Do you see that?

A: Yes.

Q: But you also said that was incomplete. Could you explain that?

A: I could, though, you know, we kind of dance around on the semantics. There's -- there's --

Page 485

I'd say there's three classes of statutes, okay? Or interpretations of statutes. There are what I call the traditional interpretation of UDITPA; it's DIRECTV's. There are explicit market sourcing statutes that many states have adopted; that's the other end of the spectrum. Then there are states that have construed their place of performance, even their place of performance costs to performance statutes in a market sourcing manner or approach. So I'm not -- I'm not unhappy with, you know, this being incomplete. Elsewhere in the deposition, we kind of danced around, you know, explicit, implicit, market-based in effect or end result.

Q: Would you --

A: It's fine. It's fine.

Q: Would you flip to page 30, the next page?

A: (Witness complies.)

Q: Counsel did not ask you to read what's highlighted there. Would you read what's highlight there?

A: "Certainly the result in this case reaches a market-based result." That's an example where -- yeah. And I said, "Okay. All right."

Q: Okay. Would you also -- would you now turn to

Page 486

the other -- or one of the other items Counsel gave you, this tax analysis special report. It's the "Market State Approach" --

A: Yeah.

Q: -- "to Attribution of Receipts."

A: Uh-huh (affirmative response).

Q: And you were asked about footnote 13, so please turn to footnote 13.

A: Uh-huh (affirmative response). (Witness complies.)

Q: And the language that Counsel asked you about, where did that language about South Carolina being a proportionate cost-to-performance state come from?

A: Well, we're quoting some other authors here. I mean, I'm not going to disavow responsibility. I mean, I know Walter Hellerstein wrote this but not me, but it's our article, but -- and we're citing somebody else and quoting them, who's trying to summarize the law of four states in one sentence, and it's cited for the proposition other than what I think was being implied.

MR. CONDON: No further --

A: The other thing --

Page 487

Q: Go ahead, if you want to.

A: I think it's important -- if anyone wants to read this article, it's important to note kind of in a complete -- in the idea of completeness: "In preparing this article, Professor Swain and Hellerstein draw freely from portions of the forthcoming revision of chapter nine of their treatise."

So this language -- and we redacted, for example -- you know, when I talked about that language about confusing, whipsawing, indeterminate, contradictory, that's not in here, because that wasn't our point to sort of criticize or interpret Section 18.

So that language isn't in here and if I were trying to figure out what Swain and Hellerstein are saying, I would refer to this chapter nine and the updates that have arrived since then, including the last one which wasn't in the exhibit that was authenticated earlier. I don't know if it was introduced, which includes yet another Florida authority that has market state result under an income-producing activity statute and cites the treatise.

MR. CONDON: No more questions, but a question for

Page 488

the Court. Professor Swain mentioned some cases in his Direct testimony. Would the Court like those citations? They are in our prehearing brief.

THE COURT: I'm going to ask y'all to give proposed orders. I think you can decide to put those citations in the proposed order or not.

MR. CONDON: Okay. Thank you, Your Honor. No further questions for Professor Swain.

MR. ROBERTS: We have no further questions, Your Honor.

THE COURT: Okay. I had a question that I can't remember -- well, let's see. What I wanted to clear up what you testified to. You were talking about Section 17 and you said, "The traditional interpretation of looking at cost-to-performance is duplicating the...," and I didn't --

THE WITNESS: Oh, I'm -- the property and payroll factor. Because when you think about what the costs are, it's often your capital investment, your property, your payroll, and then also I'd say other expenses and it'd be like an expense factor. So it's like a -- it sort of morphs into a factor that has property, payroll, and

Page 489

your other expenses.
THE COURT: All right. Any follow up on that?
MR. ROBERTS: No further questions, Your Honor.
MR. CONDON: No, Your Honor.
THE COURT: You may step down.
(Witness excused.)
MR. VALLEJO: Your Honor, we would like to call two rebuttal witnesses, but we'd like for permission for a ten-minute break.
THE COURT: All right. I can go with that.
(Off the record from 3:17 p.m. to 3:28 p.m.)
THE COURT: Who's up?
MR. VALLEJO: We'd like to call Dr. Cody to the stand as rebuttal.
THE COURT: Is Dr. Cody in here?
MR. VALLEJO: He is.
THE COURT: There he is. He's behind you.
DR. BRIAN CODY, having been previously sworn, testifies and examines as follows:
DR. CODY - DIRECT EXAMINATION BY MR. VALLEJO:
Q: Good afternoon, Dr. Cody.
A: Good afternoon.
Q: Were you present for Dr. Harrison's testimony earlier today?
A: Yes, I was.

Page 490

Q: And did you hear him make a distinction from an economic perspective between personal services and other services?
A: I did hear him make that distinction, yes.
Q: Did you him testify that for personal services, the delivery of the service, the location of the delivery of the service, is not essential, but at least from the perspective of DIRECTV, that the location of the delivery of a service is essential. Did you hear that?
A: I did hear that.
Q: Could you please give us your views on that distinction from an economic perspective?
A: Certainly. I think it's quite simply a false distinction. Every service is delivered. It's essential that the service provider provide their service delivered to their customer. So trying to say that delivery for one kind of service provider another is essential or not I think really misses the whole point. It's essential for all service providers.
Why is that important? Well, I think when you focus on that false distinction, then you lose any type of connection that you then have to the underlying economics. And, in particular,

Page 491

elevating delivery to the only factor that matters in distinguishing ignores really all of the other income-producing activities that are part of delivering and producing that service.
So I think it really -- as I say, it's a false distinction. It elevates delivery as the only thing we need to know about in order to determine how to determine what the income-producing activities are, where they're located, and that just doesn't make economic sense to me.
Q: From your perspective and from an economic perspective, specifically, is there a guiding principle for treating personal services -- for sourcing receipts from personal services based on place of activity rule and other services based on a different rule?
A: No. From an economic perspective, I can't see that there is a guiding principle for that.
There is a guiding principle for getting to the proper answer and that guiding principle, I believe, is to do a complete analysis of the provision of the service.
Looking at what the functions are that are being formed, the assets that are used in the

Page 492

provision and the production of that service and the risks, that is the guiding principle that's here. We have a methodology to determine what those income-producing activities are, characterizing them, and locating them. But making a distinction without doing that I don't think is proper.
Q: Did you also hear Dr. Harrison testify earlier that activities that generate a cost cannot be income-producing activities?
A: Yes, I did.
Q: I believe in that context, he called your testimony an embarrassment and he said it was silly. And I would just like your reaction to those statements and conceptually the activities that generate a cost cannot be income-producing activities from an economic perspective; what's your view?
A: I'll deal with the economic side just -- firstly, I'll let the statement stand for themselves. I was slightly taken aback and quite frankly a little embarrassed for our profession at the outburst, particularly in a proceeding like this; put that aside.
In terms of cost-producing activities, I've

Page 493

looked to try to find a definition of "cost-producing activity." I never heard the term and, quite frankly, until I read Dr. Harrison's deposition and his testimony today was consistent with what was in that deposition.
So I looked. I tried to find a definition of "cost-producing activity." I couldn't find any. I searched on Google, Google Scholar, which is one of the authorities that Dr. Harrison cites in his deposition where he's mentioned in his articles.
The only place I could find it had to do with pollution, with externalities. It had nothing to do with the kind of issues that are before this hearing today in this court.

Q: And from a boarder perspective, what do you think of the notion that a activity that generates a cost cannot be an income-producing activity?

A: I don't understand that. I don't think it makes economic sense and here's why. We've been told a number of times -- and I believe Dr. Harrison reiterated this point -- that the delivery of the signal to the customer is the

Page 494

income-producing activity. Well, certainly there's a cost associated with that. So under his own definition, that can't be an income-producing activity.
So I say, okay, well, can there be any income-producing activities then? All the way up to the billing, even up at the billing point, DIRECTV either has to send an invoice to its customer, process electronic fund transfer where I have automatic payment; there are costs associated with all those.
So everything that DIRECTV does has a cost associated with it. So under that definition, DIRECTV has no income-producing activities. The only income-producing activity that they've been able to identify that doesn't produce a cost for income -- for DIRECTV is the customer actually writing the check and handing it, all right? That's an activity of the customer, not of DIRECTV.
So I fail to see how saying that we have this distinction between cost production, cost-producing, and income-producing and saying that they're mutually exclusive leads me to what I believe is a conclusion which is not

Page 495

reasonable from an economic perspective and unsupportable.

Q: Did you hear Dr. Harrison testify that the Department's approach in this case was economically reasonable?

A: I did.

Q: Could you please compare and contrast the Department's approach to the approach that DIRECTV is advancing in this case?

A: Yes, and let me start with the latter since it's been a day or so since we've gone through that.
The analysis that DIRECTV is presenting and that I've looked at in my analysis looks at the entire span of DIRECTV's activities; from content acquisition, broadcast services, marketing, and customer service. And I won't go into all the details of those. I think we've heard ample testimony about the extent that those activities, the value that's there, whether you're a sports fan or a movie fan or -- I'm a bit of a -- as you might expect, kind of a financial markets junkie, so I like that kind of broadcast. News, music, whatever it is, there's something there for you.

Page 496

And so the analysis looks at that entire span of operations, including and very importantly the delivery of the signal to the customer, and says: What are the activities involved with each of those phases of the business and where do they take place?
And importantly then try to say, how can we locate those income-producing activities in a reasonable fashion? Here we have something that we need to comply with a very important obligation, paying our taxes, all right, and doing that in a reliable and defensible and transparent way.
And so the analysis put forward is to look at as a proxy for where those activities take place is to look at payroll and assets. Two measures which are proxies -- they're not perfect, but they're proxies -- and they provide a practical and actually a very well-trod path for allocating and determining the location of income-producing activities. They've been part of three-factor formulas that have been used and applied in a consistent fashion over a number of years. They're practically and easily implemented, all right?

Page 497

They use data which can be readily identified and calculations, which are straight-forward to me.
I contrast that to the position that the Department has taken. And the Department has taken the position that -- yes, I recognize that there's this whole span of activities that go on. In fact, Dr. Harrison, I heard him say, it's important that he doesn't have to drive to El Segundo in order to watch a football game on a Sunday afternoon. He values being able to get that signal into his living room on that Sunday afternoon out in Irmo. That's great; I do, too.
But then he goes on to completely ignore for purposes of determining an income-producing activity everything that it takes to get that signal from the stadium, El Segundo, to his home.
He says, "The only thing I need to know is that I sit in my living room and pay my bill. That tells me everything I need to know about DIRECTV's income-producing activities."
That just doesn't make economic sense to me.
In fact, it involves a great leap of faith, if

Page 498

you will, in terms of disregarding the analysis, what's important from an economic perspective, and coming to that conclusion.
Now, if I contrast the two, very different approaches, I think, in particular when you look at DIRECTV's approach and the analysis I've used which looks like at all of the factors, as opposed to just where the customer is; which, quite frankly, sounds a lot like market, as I've come to understand in these proceedings.
Certainly -- and, Your Honor, this goes back to a question that you asked yesterday, which I -- is a very pertinent question, I think, as we're looking at these analyses, is that any economic analysis, we need to make certain assumptions in order to get from the theory to practical grounds. And that, certainly, there are some simplified assumptions that we make and I make in my analysis.
Payroll and assets are proxies; they're not perfect measures. I use payroll as a proxy as a reasonable measure of labor contribution, assets contribution of capital. Certainly I'm making some assumptions about averaging the

Page 499

return that I'm giving to capital. All the capital gets the same return. Likewise, each dollar of payroll gets the same return.
But those are assumptions that we've been comfortable with for 50, 60 years as we look at various three-factor formulas, single-factor formulas, and so forth. So they're no stronger assumptions than we've been comfortable with from both an economic perspective and from completing our tax obligations than we've done before.
I contrast that to the assumption that is in the Department's and in Dr. Harrison's approach. And that assumption is: I can assume away all of the other activities. I only need to know where the customer is. I don't have to worry about them. I just classify them as incidental. Yeah, I'll give some -- a little bit of credit. Yeah, there's some value there, but I just simply assume them away.
That, to me, is a very, very strong assumption. It's not based on fact. I don't see the economic theory behind it to support that; it's just an assumption.

Page 500

So what's the implication there, then? If I look at my analysis, these assumptions are well-founded, they've been accepted, and implemented. If there's any deviation from the actual, say, true result, it's within tolerable bounds and there's no bias one way or the other.
If I look at Dr. Harrison's approach and the Department's approach, only in very rare circumstances would the customer location from an economic perspective tell me what I need to know. We've heard a few of those examples here.
But in the other cases, and certainly the case here, that assumption is -- leads us exponentially away from where we should be, because it ignores this whole span of activity, billions of dollars of investments, million and billion dollars of payroll to perform this ongoing service; drives us so far away from the actual result.
And as I think about these two, I came back to a quote, I think it was Einstein, and Einstein said about theories, but -- that we should try to make things as simple as possible, but not

Page 501

simpler, all right? Because when we make things too simple, we go astray. And I think that's a way to contrast our two examples here, is that the factors -- the proxies that I have used in my analyses make things practical, they follow theory, something we can work with. They're appropriately simple, easy to administer. The Department's approach is too simple and because it's too simple, it's not based on the facts and it drives us away from what's right and it presents a distorted view of the income-producing activities of DIRECTV and leads us to an answer that is not economically supportable, nor reasonable.

MR. VALLEJO: Thank you, Your Honor. No further questions.

THE COURT: Any questions?

MS. WOOTEN: Just a few follow-up questions, Your Honor.

DR. CODY - CROSS-EXAMINATION BY MS. WOOTEN:

Q: You just referenced that the method that you propose to use in this case uses a payroll and property factor; is that correct?

A: Yes.

Page 502

Q: And those factors are part of the three-factor formula?

A: No, I -- I believe I said that they -- those same factors have been used in other instances, as commonly used in three-factor formulas. I wasn't trying to say that mine was a factor formula, but simply that they have been used as proxies in the past for labor and capital.

Q: Does South Carolina currently use a three-factor formula for apportioning income of service providers to South Carolina?

A: The -- the regulations as I understand it are, as I've been describing here, that we look to the income-producing activities. And I'm simply looking at labor as referenced by payroll and assets by property as a way to determine income-producing activities. I'm not trying to assert, nor am I claiming any type of conclusion on the statute.

MS. WOOTEN: That's all, Your Honor.

THE COURT: Follow-up on those questions?

MR. VALLEJO: No, Your Honor. We have no further questions.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

Page 503

(Witness excused.)

MR. VALLEJO: Your Honor I would like to recall Professor Pomp to the stand, please.

DR. RICHARD POMP, having been previously sworn, testifies and examines as follows:

DR. POMP - DIRECT EXAMINATION BY MR. VALLEJO:

Q: Good afternoon, Professor.

A: Good afternoon.

Q: Were you present in the courtroom when Dr. Harrison was testifying today?

A: I was.

Q: And you listened to his testimony carefully?

A: I did.

Q: Did you hear him use a term "cost-producing activity"?

A: I did.

Q: Have you ever heard this term before?

A: In one of the -- I think this is either my second or third time listening to Professor Harrison, I always get very insecure when I listen to Professor Harrison. It doesn't last that long, but in the short-term, I begin to wonder: Have I missed something for 40 years? Have I been teaching students improperly for 40 years? Is there some concept that I somehow

Page 504

fail to understand in 40 years? I had never heard of cost-producing activity until I read his deposition. And I've gone through the archives of the Uniform Division of Income for Tax Purposes Act. So I -- I Googled it, also. I'm glad to see I did the same thing the Ph.D. in economics does. I looked at Google Scholar and Google and some of the other databases and what I found are cost-imposing activities where -- and pollution is the most common one -- where I do something and it imposes a cost on you. But I have never heard "cost-producing activity" in the context of income-generating activity. And again, Your Honor, if you think back to the example we discussed yesterday, the income-generating model of a law firm, I pay an associate a hundred dollars and I bill the associate out at $200, there's an income-generating activity. And of course it's a cost. Most income-generating activities --

MR. CONDON: Your Honor --

A: -- that I --

MR. CONDON: Your Honor, I object.

THE COURT: Whoa.

Page 505

MR. CONDON: Professor Pomp was made an expert on tax policy. He's interpreting economic statements made by an economist who was qualified in economics. So I don't see that Professor Pomp's -- that, first, he's qualified to talk about economics and, second, that his opinion of economics opinions are relevant.
THE COURT: Response?
MR. VALLEJO: Response is that I'm asking him in the question as a tax policy expert in connection with apportionment issues.
THE COURT: I think maybe you need to ask a new question and get us going down -- so I'll be clear on the path we're on.
MR. VALLEJO: Of course.
Q: So, Professor Pomp --
THE COURT: Because you're only on the first question, aren't you?
MR. VALLEJO: Yes, yes.
THE COURT: And you've been going for a while, but ...
Q: Professor --
A: I'm trained to talk in two-hour slots when I teach, so it's an occupational hazard, I'm sorry.

Page 506

Q: Professor Pomp, from a tax policy perspective as it relates to apportionment issues, have you ever heard the word -- the term "cost-producing activity" used before?
A: No.
Q: And what's your view from a tax policy perspective, again, in connection with apportionment issues for state taxation, of the idea that a activity that produces a cost cannot produce an income-producing activity?
A: I think it is entirely wrong. I think income-generating activities are going to be costs. It takes money to make money. I don't think I need to be a Ph.D. in economics to know that. You spend money and hopefully you get back more than what you spend. It's a pretty basic business model.
Q: Did you also hear Dr. Harrison say that we know the numerator in the South Carolina apportionment formula because we know the gross receipts in South Carolina?
A: Yes.
Q: Could you please tell us your view of that from a tax policy perspective in connection to apportionment issues for state tax purposes?

Page 507

A: I put this in the same school of the "but for" fallacy. The statute tells us that we have the gross receipts of a service provider and now let's determine the South Carolina gross receipts. How are we going to do that? We're going to measure the extent to which the income-producing activities occur in South Carolina.
Dr. Harrison short-circuits that whole process by saying, "Oh, we know the South Carolina gross receipts; here they are. They're what people paid in South Carolina." No, no, that's what the statute's goal is. You don't start with that as your conclusion and end with that. So, you know, that's just a misreading of the statute. So I think it's another fallacy.
Q: Thank you, Professor. Turns to Professor Swain's testimony, were you in the courtroom during his testimony?
A: I was.
Q: Did you listen carefully to his testimony?
A: I did.
Q: Did you agree with Professor Swain's description of the destination principle for tangible personal property?

Page 508

A: In part. I think what did not become clear is that up until very, very recently, South Carolina used the traditional three-factor formula for apportioning the income of a manufacturing activity. Payroll, property and sales.
Sales is on a destination principle. I talked about that yesterday. It's where the goods are shipped into, the state into which they're shipped. Payroll and property are origin based. They're more consistent with Section 17. These are income-generating activities.
So the traditional three-factor formula is a mixture of origin and destination and it's only the sales factor that is destination.
Now the State is moving to just the use of the sales factor and so you will have an exclusively destination-based formula at that point. But certainly for decades you've the payroll and property origin-based factors, so.
THE COURT: So this is tangible personal --
THE WITNESS: Tangible personal property, that's right. That's what he was referring to, because he says that, well, we should approach the destination principle even in the -- well,

Page 509

in the case of services, that we should mimic the destination principle used in tangible. But, again, for decades there was two origin factors, so.

Q: And how does this concept relate to the throwback rule that we also heard Professor Swain mention?

A: Yes. I mean, I guess the first thing, I agree with Professor Swain's article where he says, "The UDITPA apportionment formula is not based on the rigorous application of any particular accounting standard or economic theory." That's page 292 of Professor Swain's Tulane argument.

And the National Tax Association, I'm now reading from page -- at least page eight in the printed version of my report is the hearing officer. I don't think it tracks the pagination that Mr. Condon has in the exhibits, but it's under a heading, "A Brief History of Formulary Apportionment."

"The National Tax Association, which was quite active in proposing an evenly weighted three-factor formula, also didn't claim the formula was based on any economic principle or

Page 510

theory or that it was better than other formulas at measuring where income was generated. To the contrary, the National Tax Association recognized that all formulas were arbitrary. The most important thing was a formula that the states could agree on."

So I think Professor Swain and I would disagree on whether the sales factor has to be destination. It's not a biblical mandate. You know, you've got to just look and see what makes sense. It's not one of these principles that sits there as a Metta principle above everything else.

And Professor Swain gets there because he says it should reflect the marketplace; people say that. But yet his example of the throwback rule belies that explanation.

Now, South Carolina doesn't have a throwback rule, but his explanation was entirely on the money. If I'm in this state and I sell into a neighboring state where I'm not taxable, that sale will be thrown back to this state, because we feel you shouldn't be assigning sales to states in which you're not taxable.

Well, there's a nice example where you're not

Page 511

trying to reflect the market. The market is clearly the state where you're not taxable. You're throwing it back because you have some other competing principle.

Dividends, interest, capital gains, they're included in many states in the receipts factor. And it's hard to, you know, get a marketplace theory out of that. So I guess I don't -- you know, I don't worship on the alter of this marketplace for the sales factor above all else, so.

Q: Professor, we also heard Professor Swain testify that he disagreed from a tax policy perspective with the result in Lockwood Greene today. But going back to the period in which Lockwood Greene was decided, that may have been okay because it may have avoided some tax avoidance purpose or effect by the taxpayer. Can you comment on that?

A: Yeah, I thought that was a creative spin on Lockwood Greene, that why they did what they did was to avoid receipts being assigned to a state where Lockwood Greene may not have been taxable.

There's, of course, nothing in the opinion that

Page 512

even suggests that. The court says that the engineering firm's business carried on in a state is reasonably measured by the services rendered by its personnel in the state. So it wasn't what the court was thinking of or if it was, it didn't articulate it.

But Lockwood Greene had offices in other states and it had projects in numerous states. And where you have office, you have nexus. Where you have projects, you're more than likely going to have people visiting, meeting, looking at the site, and those are all nexus creating.

So I would be a little skeptical that Lockwood Greene did not have nexus in the states in which it was looking to assign its income. It's possible but, again, I don't think it's likely and I don't see where that influenced the court at all in its decision.

Q: Professor, we also heard from Professor Swain about certain cases in other jurisdictions, including Ameritech, and Heller, and a couple of others. Could you please comment on his discussion of those cases?

A: Yes. I mean, Professor Swain is absolutely right, that if you start to look in other

Page 513

states, you're going to get a mixed bag. And as I think His Honor and I discussed yesterday, it's all facts and circumstances.
Look, if it were simple, we wouldn't be here, right? You don't do simple stuff. You get the hard stuff. So there's no straight-forward answer to this, so.
But each of those cases is unique in some way and they involve states where the statute was all or nothing. And you could see a court not wanting to reach and "all or nothing" situation where, "Oh, my goodness, if we apply cost-to-performance" -- and many of these states were cost-to-performance -- "our state's not going to get any income at all because the plurality of the costs were somewhere else."
We, of course, don't have that situation in South Carolina.
But, also, Your Honor, and let's just take one. I'm not going waste time dissecting each of these cases, but let's just look at Heller.
There were two sets of regulations in Heller and the court describes those regulations as being consumer-located -- consumer-location orientation. So looking at the regulations,

Page 514

they were biased in favor of where the consumer was.
Well, that's a whole different context from South Carolina, the equivalent of Section 17 without cost-to-performance. And there are cases that are -- go the other way, too. So I'm afraid there's not going to be any easy answer as you start to explore what other states have done.
Q: Professor Swain also testified that the Department's position in this case is good tax policy. Would you comment on that?
A: I think it's good tax policy for an executive branch agency to follow the legislature branch. The legislative branch has adopted a "to the extent the income-producing activities occur here in South Carolina." It is good tax policy to follow what the legislature has said. There were times I thought I was at a legislative hearing. But follow the law.
Now, yes, there's some flexibility here in South Carolina because you're free of cost-to-performance as, you know, the way to do it. But it doesn't give you the freedom to substitute destination because you think that

Page 515

is better than origin or where the income-generating activities takes place.
Now, let me just take -- let me note something else, Your Honor, that makes South Carolina different, which is why talking in the abstract about some of these issues really is not terribly useful.
Because I want to go back to this situation where under Section 17 of UDITPA, if three percent of the cost-of-performance takes place in each of 32 states and four percent takes --
MR. CONDON: Your Honor, I object. Professor Swain never talked about -- I think he's going to get into greater proportion language and Professor Swain never talked about that in his Direct.
MR. VALLEJO: Your Honor, we're talking about apportionment issues in general. Certainly Professor Swain talked a lot about apportionment and about all of these rules, including cost-to-performance and including "all or nothing" under Section 17 and proportionality under other statutes. This just goes to that point.
THE COURT: I don't remember him testifying a lot

Page 516

about 17. He kind of avoided that one.
MR. VALLEJO: Well, he discussed it. And what Professor Pomp is attempting to do is just put this into context for you to understand the evidence that was provided by Professor Swain.
THE COURT: I'll let him go into it and if he starts going into -- too far afield, I think I might just stop you, Professor --
THE WITNESS: Okay.
THE COURT: -- but ...
THE WITNESS: My last point.
THE COURT: Okay.
THE WITNESS: And the hook was the economic incentive, why it's important to have destination when you have single factor, and here is -- here is where South Carolina is different.
Let's say you are in a traditional "all or nothing" state and you happen to be the four percent state. And you're looking to attract a major service provider. Come here to South Carolina. You're a multi-state service provider. We'd like you to use South Carolina as one of your major centers. And you're going to have four percent of your cost of doing

Page 517

business here.
Under Section 17, the "all or nothing" approach, this would be a disincentive. The "all or nothing" Section 17 would be a disincentive to get that service provider to come to South Carolina because this is where the plurality of its costs would be. And under Section 17, all of the gross receipts would be assigned to South Carolina. Well, that's not great incentive. But under your "to the extent that," only four percent of the gross receipts would be assigned to South Carolina.
So I said, you know, I thought the South Carolina Legislature really got it right and was ahead of the curve with the "to the extent that." It makes the economic incentives look very different. And that, perhaps, is a reason why the Legislature hasn't gone to market. I don't know why it hasn't, but that may be a reason.
In an "all or nothing" state, you really have to worry that you're going to hammer someone who doesn't have that much going on here but more than anywhere else. So it's not as critical here in South Carolina to be

Page 518

destination.
Q: One final question for you, Professor. We've heard from several witnesses today from the State that the State's position is that you source receipts based on customer location. Mr. King said that; Mr. Donovan said that, well; Mr. Swearinger (sic) said that, as well; so did Mr. Harrison. And Professor Swain testified that the Department's position is good tax policy.
In your view, from a tax policy perspective, can you apply a customer-based sourcing methodology based on an income-producing activity statute?
A: I don't think you can, Your Honor. You notice the way they try to get there is to say there's only one income-producing activity and takes place in South Carolina. That's a way to distort the statute, but it ignores everything else that makes the signal valuable, makes a consumer want to pay for it, so; in other words, everything that takes place outside of South Carolina.
MR. VALLEJO: Thank you. I have no further questions.

Page 519

MR. CONDON: Thank you, Your Honor.
DR. POMP - CROSS-EXAMINATION BY MR. CONDON:
Q: Professor Pomp, just to make clear about something. South Carolina's not an "all or nothing" state, is it?
A: Exactly right, that was the -- that was why I took this example. It's a "to the extent," a proportionate state.
Q: Right. So if a service provider moved to South Carolina and sells in various states, he's not going to be taxed just in South Carolina, is he?
A: (No response.)
Q: Or in South Carolina, he's not going to be taxed on all of his revenue, correct?
A: That is correct.
Q: You mentioned Heller Western and you mentioned something about its regulations to make a differentiation. But isn't it true in the Heller Western case in Arizona that one of the applicable statutes included both income-producing activity and cost-to-performance language?
A: You'll have to show me the statute.
THE COURT: Show you the statute or the case?

Page 520

THE WITNESS: Well, he asked me a question about the statute and --
THE COURT: Okay. Is it within the case?
MR. CONDON: Yes.
(Off the Record)
Q: I'll give you a moment to read that, sir.
A: (Reading.) Okay. Let's try it.
Q: Okay. So isn't it true that in Heller Western that the statute for apportioning net income for services included both income-producing and cost-to-performance language?
A: Okay. I see where you're going. They have a regulation that --
Q: Could you answer the question first?
A: Yeah, I -- the part you directed my attention to a minute ago when we were putting our heads together is a regulation. That's what you pointed to.
Q: Correct.
A: So I'm just saying that what you pointed to was a regulation and that regulation seems to track Section 17 of UDITPA. Looking at it, it looks like it tracks Section 17 of UDITPA. Now, that's one regulation that they have. There are other regulations, so.

Page 521

Q: Okay. So that means the statute does include income-producing activity and cost-to-performance language, correct?
A: I assume if the regulation is consistent with the statute, yes.
Q: Okay. Now, you also talked about nexus earlier in conjunction with Lockwood Greene. Nexus was a much -- was much more in doubt -- or states having nexus against out-of-state corporations was much more in doubt in 1987 than it is now, right?
A: Well, not with respect to people or property. The expansion is what we call "economic presence," economic nexus, what I call "metaphysical presence." If I'm getting income from a state without being physically present in that state, can that state tax the income? That's the development in the law. But certainly people, property, that was I think understood to be nexus creating at the time of Lockwood Greene.
Q: When you described the three-factor -- the three factors in the -- I think you had it up there on the chart. You described the three-factors in the three-factor test. You

Page 522

said that property and payroll were origin-based and that sales was destination-based, right?
A: Yes.
Q: Do you know that South Carolina's legislative changed to adopt -- go to the -- move to the single-sales factor for tangible personal property and its change to add Section 12-6-2295(A), (5) the income-producing statute, were both enacted in 2007?
A: I don't know the chronology, so.
Q: Okay.
A: All I know, during the audit period, we had a single factor for service providers, so.
MR. CONDON: May I have a moment? No further questions, Your Honor.
THE COURT: Redirect?
MR. VALLEJO: I have no further questions, Your Honor.
THE COURT: I got just a few, I think; maybe not even a few. Is when looking at the -- and hearing about the whole time income-producing activity approach, from your testimony, I think is -- a factual analysis is they didn't adopt the cost of -- what is it -- cost of

Page 523

production...
THE WITNESS: Performance.
THE COURT: Performance. I can consider cost-to-performance --
THE WITNESS: Absolutely.
THE COURT: -- and -- but I could also consider market sales, as a component of that, too, could I not?
THE WITNESS: See, I don't think so.
THE COURT: Well, that's what I want to understand. Why not?
THE WITNESS: I don't think so because -- you could consider -- I guess it depends on what you mean. If there was a sales office distribution activities, those would be income-generating activities that you could take into account; if that's what you mean, yes.
THE COURT: All right. So --
THE WITNESS: I'll agree with that. What you couldn't do would be to say because a sale occurred in South Carolina, that's a South Carolina gross receipt.
THE COURT: Well, yeah, I wasn't talking about adopting that theory, but considering the components of that theory

Page 524

THE WITNESS: Yeah.
THE COURT: -- under the -- an umbra of deciding income-producing activities.
THE WITNESS: If there were a call center here in South Carolina, that would be an income-generating activity in South Carolina. If there was a sales office, a marketing office, I would view all those as income-generating activities that could be taken into account, because they help to generate the income of DIRECTV.
THE COURT: All right. I've got more to think about, but ...
THE WITNESS: There's a lot to think about.
THE COURT: Any follow-up questions?
MR. VALLEJO: I have no further questions. Thank you, Your Honor.
MR. CONDON: No further questions for Professor Pomp, but we would like to --
THE COURT: You don't get to cross-examine me, I'm sorry.
MR. CONDON: I'm too tired to do that. But we would like to have the opportunity to do a surrebuttal with Professor Swain, briefly.
THE COURT: That is -- okay. Professor, you can

Page 525

step down.
THE WITNESS: Thank you.
(Witness excused.)
THE COURT: The rule of law on that is, it's very rare. You don't have to teach me on this.
MR. VALLEJO: Thank you, Your Honor.
THE COURT: And it's only allowed if Professor Pomp in responding to Professor Swain raised something new that could not have been offered in your case-in-chief. So think about that. If you can nail that, we'll proceed down that path.
MR. CONDON: May we take three to five minutes to talk?
THE COURT: Three to five? How about -- yeah, three.
MR. CONDON: Three?
THE COURT: Yeah.
(Off the record from 4:15 p.m. to 4:18 p.m.)
MR. CONDON: Your Honor, we have no surrebuttal questions.
THE COURT: All right. With that said, then, we can have closing arguments now or I can let y'all address that in your proposed orders, which I'm going to ask for. So I'll give y'all the

Page 526

choice. If anyone says they want closing arguments, it's probably going to end up is we're going to be getting closing arguments, so, either one of you.
MR. VALLEJO: We would like to do a closing argument, Your Honor.
THE COURT: Okay. Are you ready?
MR. VALLEJO: I'm ready.
CLOSING ARGUMENT BY MR. VALLEJO:
MR. VALLEJO: Well, Your Honor, after two days of intense testimony, I'm going to try to summarize things for you as best I can. First, I'd like to start with the three-step process that you heard Professor Pomp go through as to how we calculate corporate income tax in South Carolina. You start by determining the tax base, which is net income.
In very general terms, that means you take gross revenue minus costs and you get net income, that then you have to go to step two and apportion it.
In South Carolina, the Legislature has chosen a single gross receipts factor to apportion net income to the state. Then you go to step three, which is trying to figure out: What's

Page 527

the numerator of that fraction? Everybody agrees on the denominator; that's gross receipts everywhere.
The issue in this case is that numerator. That is what's been giving us all the trouble these last two days.
And here is our view of it. 12-6-2295 very clearly states that you take an income-producing activity approach to that question, where is the income-producing activity located, and then to the extent that it's located inside of the state, you put that in the numerator; to the extent it's outside, you do not. So it's a proportional approach as Professor Pomp has described, as well.
As Professor Pomp testified, and we believe the record is clear on, an income-producing activity approach is the antithesis to a market-based approach. One is based on the origin of the activities, where things are being performed. The other is based on a destination principle.
You heard from Professor Swain talk about tangible personal property. There you've got a very explicit destination rule. They are

Page 528

mutually exclusive concepts.
The State in this case admittedly, and it's crystal clear in this case, has taken a market-based approach based on customer location.
You don't have to take my word for it. The audit report says the apportionment ratio is determined on a market-based sourcing of South Carolina customer receipts. That's a market-based approach based on customer receipts; that is, based on customer location.
You heard Mr. King say that it was based on customer location. You heard Mr. Donovan say that it was based on customer location. You heard Mr. Swearingen say that it was based on customer location.
Professor Swain in his deposition said that -- to a question, "Has South Carolina adopted a market-based approach to interpreting statutes?" Answer: "In this case it has."
Professor Harrison said to a question, "Do you consider -- what do you consider to be the relevant income-producing activities?" Answer: "Turning on the box and watching the TV and paying the bill." That is a market-based

Page 529

approach based on customer location.
Now, the State is trying to repackage that argument because they put themselves in a box. You can't do a market-state approach based on customer location with an income-producing activity statute that applies in this case. That's contradictory to the statute.
So now what they're trying to say is, "Well, no, what we're saying is not a market-based approach based on customer location. What we're actually saying is that the income-producing activity all happens here within South Carolina."
And to quote from their pretrial brief, so I don't put words in their mouth, they say, "Pursuant to this income-producing activity language, the Department determined that DIRECTV's income-producing activity is the delivery of the signal."
Well, that can't be their position. That's just what they're telling you their position is. And the reason why I know this is because Professor -- Dr. Harrison very clearly told us that the signal cannot be an income-producing activity. Why? Because it is a cost-producing

Page 530

activity. Anything that generates a cost cannot be an income-producing activity according to their expert economist.
Which means, very simply, that every single step in the process that DIRECTV engages in cannot be an income-producing activity. Everything is a cost to DIRECTV. Delivering the signal is a cost, so it's not an income-producing activity.
Now, I will give Dr. Harrison credit for one thing. His theory, his economic theory, is perfectly in line with a market-based approach. Why? Because there you don't need to determine an income-producing activity. In that case, all you need to know is -- in this case, for example, is where is your customer located.
So the fact that his approach leads to the logical conclusion that there is no income-producing activity from DIRECTV's perspective is perfectly fine if what you're doing is a market-based approach based on customer location. But you cannot have an income-producing activity approach that doesn't have an income-producing activity. It's completely illogical, Your Honor.

Page 531

And, moreover, if you're looking at it from the customer's perspective, if you think that the income-producing activity is the customer paying the bill -- or as Dr. Harrison put it, turning on the TV and turning on the box, which he testified today is an activity of the customer -- well, we're not trying to tax the customer. What we're trying to get at is the activities of DIRECTV, which is the taxpayer in this case. The one who has to pay the income tax to South Carolina is DIRECTV; it's not the customer. And that's a very important distinction.
So, ultimately, the State is saying, "We are applying a market-based approach, admittedly, based on customer location." How do they get there? From a legal perspective, they have to run away from case law that at least informs the issues in this case.
They also rely on these ethereal guidelines that nobody has seen in writing before, nobody was able to tell us what they said in depositions, and even their own auditors are not aware of these guidelines. You heard testimony about that today.

Page 532

THE COURT: Well, if they're ethereal, they probably wouldn't be.
MR. VALLEJO: Fair enough. That's the legal approach, essentially. As I told you, it can't be the legal approach that the income-producing activity is the signal, because their economist disagrees with that position. And I believe that they think their economist is correct.
So their only legal theory here is: Here are these guidelines that are long-standing that nobody really knows where they're at. Our auditors don't understand them and don't -- some of them don't even know about them. That's their legal theory.
From an economic perspective, we've got the very, very simple economic principle: Activities that generate cost cannot be income-producing activities. Fair enough. No income-producing activities, therefore you can't do an analysis under an income-producing activity statute.
From a policy perspective, we heard Professor Swain testify today that he would like a destination approach in all circumstances. Okay. That's fair enough, too. I believe that

Page 533

that's what he believes from a tax policy perspective. But that doesn't mean that we can ignore the statutory language which says "income-producing activity."
It doesn't say customer location. It doesn't say a market-based approach based on customer location. Plenty of states that do that. Some use customer location. Some use place of delivery. Some use benefit received. There's a number of different ways of doing it, but they're all destination based. They're not origin based.
Now, DIRECTV's perspective. From a legal perspective, we believe we're following the statutory language, income-producing activity. We believe that our interpretation of that statute is consistent with the relevant case law in South Carolina.
From an economic perspective, we're taking into account all of the activities that generate the income for DIRECTV. We're being very conservative in doing so.
As you heard Dr. Cody testify, he did not include, for example, the intangible assets, the vast majority of which, if not all of

Page 534

which, would have been outside of South Carolina. He did not do an aggregate approach to all of the corporations in the family of companies. Only DIRECTV, the taxpayer itself, because all of those activities and assets and payroll also would have been outside of the state and that would have been a much lower proportion to South Carolina.
What he also does in his economic approach is he takes into account the income-producing activities here in the state. He takes into account the local collection facilities. He takes into account set-top boxes. So he's taking into -- that into account. And that is directly in line with what the statute calls for, which is a proportional approach to sourcing these receipts.
And, finally, from a policy perspective, we're interpreting the statute in a way that we feel is consistent with the policy of the statute.
As you heard Professor Pomp say, he likes the statute from a policy perspective. You're not bound to cost-to-performance, which often can be too narrow. Sometimes you have to look at direct costs versus indirect costs and what

Page 535

exactly does that mean in this context or that context and sometimes it doesn't reach the best results.
Is it difficult to apply a cost-to-performance analysis? It is. Do we have case law that is all over the place to some extent on that issue? We do.
Well, South Carolina took that out of the statute. They also took out the "all or nothing," which Professor Pomp explained to you why that's not a good idea, either. And the way that we are interpreting the statute is consistent with that policy, that policy of trying to get to the right answer, that policy of providing some flexibility to try and deal with certain situations that may be slightly different.
What it doesn't do is it does not give you the flexibility to interpret it as a destination sourcing rule, because it simply isn't a destination sourcing rule.
If the Department wants a destination market-based sourcing rule, it can do that by going to the Legislature and asking the Legislature to change the statute. But until

Page 536

then, we remain a country of laws and under the law, this is not a market-based statute. Thank you, Your Honor. That's all I have.
THE COURT: Who's going to give closing?
MR. CONDON: I will.
CLOSING ARGUMENT BY MR. CONDON:
MR. CONDON: May it please the Court. The Petitioner here, DIRECTV, is a commoditized -- is offering a commoditized service and that service is the delivery of television into the homes and onto the television screens of customers all over the United States, including right here in South Carolina.
And, Your Honor, we all know you've heard a lot about their operations and the diversity of them, both geographically and in other ways, and the costs that they incur. But what the Department wants to make clear is we have followed the applicable statutes.
In 12-6-2290, we are using a gross receipts factor, and so are they, but gross receipts means receipts. That's the focus, receipts. That's what we're trying to get to.
So -- and then -- and when one thinks about receipts, as was testified here,

Page 537

Mr. Swearingen, one doesn't think about cost of production. Again, receipts means receipts. In the ancillary statute, 12-6-2295(A)(5), it basically requires three things: Identify the income-producing activity, locate it, and then determine -- quantify the numerator for the sourcing state, here South Carolina. And when you add the gross receipts factor in the first statute, South Carolina has done every one. Used gross receipts factor. We have identified the income-producing activity as being the delivery of the service. Regardless of what anybody else says, that's what the Department Determination says. ID'd the location of the income-producing activity, in living rooms throughout this country. And for South Carolina customers, it's in their living rooms right here in South Carolina. And then we quantified the numerator. Again, we quantified the receipts numerator based on those receipts that were paid because the service came into living rooms in South Carolina. Now, there was a question about: Are we advocating market-based sourcing? No. No, we

Page 538

have a statute that says income-producing activity. Doesn't say cost-to-performance, but it says income-producing activity and then allocate it to the extent that -- allocate the gross receipts to the extent of the income-producing activity in each state. So we're not advocating market-based. We're applying the statute we're applying. I mean -- but -- so when there's confusion about language, yes, we admit in an audit report we used market-based sourcing language. Well, prior to that audit report, I believe that DIRECTV had used that same language in their amended returns and they said they were -- that's the method they were using. Now, one reason the language gets mixed up is, as Professor Swain talked about, the result -- at least in this case; I can't speak for every case -- but in this case, the result market-based sourcing and application of the income-producing statute and the gross receipts factor is very similar. So let's talk about Lockwood Greene for a moment, you know, the --

THE COURT: Before you start down that path, I'm

Page 539

going to ask about something you said. Because you said we're considering gross receipts and the operative term is "receipt." And that sounded good, but my problem with that is, it is gross receipts and what is received, but gross receipts is defined as "to the extent the income-producing activity is performed within this state." So that's the definition of "receipts," is it not?

MR. CONDON: It is -- it is --

THE COURT: That's what I'm trying to -- I want to make sure I'm not missing something.

MR. CONDON: It is one item that's included in --

THE COURT: I'm talking 2295 --

MR. CONDON: Yes. Twenty --

THE COURT: -- (A)(5).

MR. CONDON: Yes, (A)(5) is one item that's included in gross receipts in this -- in this case for --

THE COURT: Yeah --

MR. CONDON: -- for services. It's really the only item --

THE COURT: Okay.

MR. CONDON: -- yes, at issue. But we followed that, Your Honor. We have identified the

Page 540

income-producing activity. We then located it in living rooms all over the country, and for South Carolina customers, it's located in South Carolina. And then we've quantified it, by adding up those gross receipts. So we believe we've followed that -- that definition of what's included in gross receipts. So regarding Lockwood Greene, you know, the Petitioners, you know, using that as a justification for moving to cost-to-performance approach, as it said in its amended returns. But Lockwood did not impose a place of activity test on all service providers and does not impose a cost-to-performance approach on all -- for sourcing gross receipts. There, as there was some testimony by Mr. Swearingen, it's very logical and proper that Lockwood -- the Department used -- the case says the Department used the payroll factor during an audit. Well, the Department clearly wouldn't have had all of Lockwood's records. As Mr. Swearingen said, Lockwood theoretically has all of its records, could just add up the billings that they had, just like DIRECTV has done in this case. They've

Page 541

added up all of their subscription revenues. So no cost-to-performance would even have been needed in that case if we weren't doing a quick and dirty estimate.
However, we believe -- the Department believes that Lockwood is consistent with our Department Determination in at least three ways. First, Lockwood Green -- in Lockwood, the gross receipts were sourced to the location, the income-producing language, just as we are doing here.
Or the -- I said "language." Income-producing location.
There it was the time -- where the experience and the time when the engineering put in his experience and time in his office, generally, for the most part, that's the location. That's what -- that was identified as the income-producing activity; although, the court, granted, did not use that phrase, but that's where -- determined that the income was earned by the engineering firm.
Two, in Lockwood, the Department used the payroll factor as a proxy, which I've just talked about. So it -- you know, that -- it

Page 542

could have just added up gross receipts and not even -- we wouldn't even be here arguing whether Lockwood used the cost-to-performance factor or mandated it.
And, three, in Lockwood, the court recognized the department sourced gross receipts differently on different industries. It is clear in the text of the Lockwood case -- forget about the guidelines -- that the Lockwood court said Lockwood is not comparable to a media broadcaster or a finance company. There is no reason why the Lockwood court would have differentiated companies or industries if it was about to lay down one rule for everybody.
Regarding the income-producing activity, you know, what the department and the court did in Lockwood Greene was, as I said, to determine the income-producing activity based on that experience and time.
This is the exact same thing we've done in this case, as I went through that -- the four steps; gross receipts, identified the income-producing activity, located it and then quantified the numerator. That's exactly what was done in

Page 543

Lockwood.
Now, using a cost-based factor, I've already talked about that, you know, why it was just a proxy and it could have been done a different way, which really negates the whole cost-factor usage in Lockwood.
Now, regarding the long-standing policy of the Department. You know, it is clear that after this nexus issue or about the same time -- it was probably done in conjunction as things were working out -- the Department was considering, as there was testimony about, that you had to start -- taxing agencies had to start looking at how they were going to source revenues from different companies if they now had nexus.
So these types of -- and that's being in the service industry, of course, so -- so that had to be analyzed and that's what the Department did; that's what created the guidelines, whether written or not written.
There was testimony by Mr. Swearingen that the three-member South Carolina Tax Commission looked at these guidelines at one point, so there were guidelines.
THE COURT: I will tell you, I find that

Page 544

frustrating, though, because one of the things that I've really always enjoyed about the Department of Revenue is, when it comes to deference, it's been so straight-forward to consider deference because I just go to your Revenue Rulings, you know, things that are laid out and I can find out your policy considerations and I give them their appropriate deference.
But in this case, we've got a policy that you wish to have -- well, I don't know, maybe you are -- you're seeking deference with it or not, but I assume you are if you're bringing it up.
But it's a policy that is extremely difficult to find and you've got even auditors who don't even recognize its existence.
MR. CONDON: Well, of course, the policy we can admit, you know, certainly hasn't been updated in a long time. So as these types of cases were -- after nexus was granted or resolved and we started getting some --
THE COURT: Yeah, that brings a question, when you say "updated"?
MR. CONDON: Yes.
THE COURT: Updated by whom? In the mind of whom?

Page 545

The policy exists -- see, a policy that exists in someone's mind is not necessarily a policy of the Department, unless it's adopted by the entirety of the Department.
MR. CONDON: I hope I -- I meant to say, if I didn't --
THE COURT: No, I --
MR. CONDON: -- it was not updated.
THE COURT: Yeah.
MR. CONDON: Yeah.
THE COURT: You said it was not updated.
MR. CONDON: Yes, so --
THE COURT: But I was trying to figure how you could update something that exists in someone's mind without -- because you need to let the rest of the public know, I assume, if it's a policy because the whole purpose of a policy is to put people on notice of the existence of the policy --
MR. CONDON: Well --
THE COURT: -- at least from a deferential standpoint. And maybe you're not going down that path. That's what I've been trying to figure out as I've been listening to y'all.
MR. CONDON: Well, clearly, the guidelines appear to

Page 546

be the thoughts of the Commission, because they looked at them, and people there as they were developing these new audits of service companies after they got nexus. As cases got brought, resolved one way or the other, clearly service companies all over the State that were audited became aware of policies or -- or --
THE COURT: They became aware of --
MR. CONDON: -- just filed in accordance with them.
THE COURT: Well, they sort of became aware of the results, but I don't know if I could take judicial notice they became aware of the policy. Because just by --
MR. CONDON: Right.
THE COURT: -- making the statement that the result of the policy -- or the policy was used and brought about a result, does that mean that the individual knows the policy? It just means they got a taste of the result and they are very aware of how it was interpreted in their case. But does it tell me that they knew as a result -- or after getting the result that there was a long-standing policy?
MR. CONDON: In that history, I can't really answer --

Page 547

THE COURT: Well --
MR. CONDON: -- when taxpayers knew about it.
THE COURT: Yeah.
MR. CONDON: Yeah.
THE COURT: So that's my struggle.
MR. CONDON: Yes, I understand. So ...
THE COURT: And I'm sorry, I threw you off.
MR. CONDON: Yeah, let me find out where I was here, sir.
THE COURT: You were transitioning.
MR. CONDON: Yeah, the other thing about, you know, the long-standing policy and/or the guidelines which are part of it, where different industries may be sourced a little bit differently -- well, maybe a lot differently -- between engineering companies and finance companies, you know, even Professor Pomp said yesterday that industry-specific approaches are a good thing.
So it does sound reasonable that if they're a good thing and the Tax Commission knew about them and the Lockwood court knew about them -- and also the Lockwood court made a comment in footnote one that they didn't see any constitutional problem with them, so. Although

Page 548

they weren't specific -- weren't a hundred percent specific there. But my interpretation is they were talking about with the disparate treatment between different industries.
But, again, Professor Pomp said industry-specific rules may be a good thing because they're more specific.
Now, going back to the statutes themselves. What DIRECTV is trying to do is use that income-producing language in 2295(A)(5) to really back-door cost-to-performance elements, you know, into a state here in South Carolina where the language was deleted.
We all know 2295(A)(5) is very, very similar to Section 17 of UDITPA except the General Assembly took out "based on cost-to-performance."
So trying to force in cost-to-performance when the language is not there and when our statutory scheme has already clearly moved away from payroll and property elements. And there we're talking about the three-factor test for tangible personal property manufacturing.
The same time we're putting in this income-producing language, the General Assembly

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Page 549

took out "payroll and property." It was phrased out over a couple of years, but they essentially took out "payroll and property" and made the taxation of the sourcing for tangible personal property manufacturing a single-sales factor.
And that's what Professor Swain says is good tax policy. Treat Netflix, who's given you a movie -- a tangible product of a movie one way through -- and taxing them on sales in this statute, but when DIRECTV gives you a movie over here, taxing them the same way because they're really giving the same product.
You know, codifying the place of activity test in 2007 would just not have made -- also would just not have made sense in this new digital age we have. You know, at times when economic development in competition among states is intense and South Carolina is trying to attract businesses, services, and non services, it's just not realistic that the General Assembly would adopt a rule that essentially restricts the State's ability to raise revenue when, as Professor Swain says, a single-sales factor has been found legal starting with maybe the

Page 550

Moorman case in Iowa many years ago.
So there's nothing wrong with the single-sales factor, so -- and the State clearly moved to an intangible personal property, why wouldn't they have moved to it in services, as well? So -- and why would you limit the economic development there?
Although misstated at times, the Department has shown through its formal Department directive that the income-producing activity is the delivery of that signal into that homes and onto the screens and that's good tax policy.
You've heard from Professor Swain that the whole purpose of the gross receipts factor is to recognize the contribution of the market state. And, again, you get back to gross receipts. What's a receipt? That's more revenue than it is production. That's more delivery than it is costs.
So, you know, the whole purpose of a single gross receipts factor is to recognize the market. That doesn't mean market-based sourcing, but you still recognize the market.
Also -- and I talked about it earlier, so I won't repeat it except to mention it here --

Page 551

treating tangible personal property and services the same; that's good policy.
Also, what's not good policy is having this flexible rule with too many alternatives, as Professor Pomp suggests. But, also, what seems to be a very burdensome, unwieldy, maybe even totally unfeasible set of cost-to-performance calculations every year for every tax return.
The Department's Determination is supported by case law, Mercury Motor, which said incidental transactions are not income-producing activities. And it considered a whole wide range of hauling activities, but everything except driving on the -- down the highway, the actual hauling. Everything else, although important the court said, was incidental activities and not income-producing.
Heller Western, a California bank who borrowed money or made -- or acquired money, which had a cost in California, but then lent to Arizona customers. And so the income was coming from Arizona from the loans it made.
Although -- and you heard Professor Pomp acknowledge that the statute included -- was very -- was basically Section 17 UDITPA,

Page 552

including income-producing activities and cost-to-performance language. Yet the court said even though that language existed, the court said the income-producing activity is the sales activity in Arizona.
And so the revenues -- although the cost and such and the company was located in Los Angeles, California -- their income from those loans was taxed in Arizona.
Similar, Ameritech Publishing, a Wisconsin case in 2010, sales of a Wisconsin phone directory, when most, if not all, of the work was done out of Wisconsin, gathering advertising, printing, whatever, binding, you know, there the statute -- a Wisconsin statute also included income-producing activity and cost-to-performance.
Where did the court find the income-producing activity? In Wisconsin because the income-producing activity was reaching the Wisconsin audience with that telephone directory, because it was advertisers in there that wanted to reach that Wisconsin audience. It wasn't the Wisconsin audience necessarily receiving it, but it was giving -- getting that

Page 553

publication into Wisconsin for those Wisconsin customers to look at.
And then, finally, a case we cited in the administrative case, we cited in the Department directive, very similar. It was another direct broadcast satellite operation, case Anonymous Taxpayer in Texas from the Comptroller of Public Accounts there. And in there -- that court found that the income-producing activity was the -- when the set-top boxes, the receivers in the set-top boxes, descrambled the signal and made it available for watching.
And there, I would like to read just one statement in that opinion of the Comptroller of Public Accounts on -- and this is West Law page 16, 2013 West Law 349, 0605, and it's page 11. Quote: "Services performed within Texas are units of service sold, the performance of which occurs within Texas. The focus should be on the specific end product acts for which the customer contracts and pays to receive, not on nonreceipt-producing, albeit essential support activities. Looking at property and payroll based on the theory -- on that -- on the theory that no activity of a corporation generating

Page 554

receipts is any more important than another is misguided."
Your Honor, one thing you did mention the other day was --

MR. VALLEJO: I'm sorry, Your Honor, I don't mean to cut you off, but I understood that we had 15 minutes for closing. We're approaching 25. My closing was ten minutes.

THE COURT: I'll let him go a little while longer.

MR. VALLEJO: Okay. Thank you.

MR. CONDON: I'll close quickly. Your Honor, we do have -- you talked about some statutory construction language about the admission of cost-to-performance. And in town of Mount Pleasant v. Roberts, 393 S.C. 332, you know, there's -- it says, "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used." Our position is that that would also mean the language omitted. And what I think supports that -- and I won't read it, but there are -- for time sake -- but there are two other -- two cases we found, United States Bankruptcy Court, Northern District Iowa, 509 B.R. 901, that

Page 555

talks about items omitted are considered in statutory construction.

THE COURT: Yeah, I would -- look, I agree with you on that.

MR. CONDON: Yeah, okay.

THE COURT: Although, on the other hand, I could look at their side and say, well, from the standpoint of, if the other two statutes are amended to take the for destination approach and they hadn't done it in this statute, then there could be a construable element that that is specifically what the Legislature meant in this instance, that we do not do a destination approach. So, I mean, you know, there's some vagaries in this case.

MR. CONDON: Your Honor, these South Carolina subscription -- receipts from South Carolina customers, you know, should be taxed right here in South Carolina. And I've explained why the Department believes it's following the law with those four steps, the following 2290 and 2295. So, you know, we believe based on the applicable statutory case law and what you've heard here that the Department's position is correct and the Petitioner hasn't met any

Page 556

burden to change that.
Therefore, the Department asks that you find that a hundred percent of the subscription receipts from South Carolina customers be included in the numerator of the gross receipts factor.

THE COURT: All right.

MR. CONDON: Thank you.

MR. VALLEJO: I have a very short rebuttal, Your Honor.

THE COURT: All right. Don't know if I need it, but I'll hear it.

MR. VALLEJO: It's very short.

REPLY STATEMENT BY MR. VALLEJO:

MR. VALLEJO: You heard again that they have identified the income-producing activity as I quote "the delivery of the signal." Once again, that is not their position. That is a cost-producing activity, according to their own expert. Delivering the signal, DIRECTV has to incur a cost; therefore, it cannot be an income-producing activity under their own theory. The fact that they look at --

THE COURT: Well, that's under that person's theory.

MR. VALLEJO: Fair enough, under Dr. Harrison's

Page 557

theory.
THE COURT: Yeah.
MR. VALLEJO: Okay. So if you accept Dr. Harrison's testimony, then you can't say delivery of the signal is the income-producing activity. Pointing at an elephant and calling it a tiger doesn't make it a tiger. It's just semantics. And I just want to make sure that's clear.
Number two, cost-to-performance. He said we're applying a cost-to-performance approach. Now, you've heard testimony that we don't believe cost-to-performance is prohibited. It's just that the statute doesn't tie the state down and taxpayers down to a cost-to-performance approach.
So, even if we had used a cost-to-performance approach, we think that that's not prohibited by the statute. But, in fact, we did not use a cost-to-performance approach. The net value of assets, which is one of the factors that we use, one of the proxies that we used, would not be allowed under cost-to-performance. It's not cost-to-performance. It's the net value of an asset. So we're not, in fact, applying a cost-to-performance approach.

Page 558

This case really does come down to a fairly simple concept, which is despite their protestations, they are applying a market-based destination approach based on customer location to an income-producing activity statute that is an origin-based approach to sourcing receipts.
THE COURT: Why is it origin based? It just says "to the extent the income-producing activity is performed in this state." Why would it be origin based?
MR. VALLEJO: Well, because the way that the -- that the statute --
THE COURT: It's factual based, is it not?
MR. VALLEJO: Yes, it's factually -- I agree with that. It's factual in the sense that we have to determine what the income-producing activities are. And then the question is, let's assume for the moment -- I think this is a good question, Your Honor. Let's assume for the moment --
THE COURT: I try to do that.
MR. VALLEJO: -- that their position is, in fact, delivery of the signal, that that's the income-producing activity, right? Well, they have presented no evidence, at least

Page 559

not that I've heard, as to why all of the other activities are not income-producing activities. Their economic theory is inconsistent with saying that delivery of the signal is income-producing activity. And without that, there is no evidence in the record as to why it is that all of the other income-producing activities need to be ignored.
We're not ignoring delivery of the signal; that's part of the approach that our economist took. So if you want to look at it from a factual perspective in that sense, then I agree with you.
But then their economist's testimony is completely irrelevant or, at the very least, completely contradictory to the position that the income-producing activity is the signal. And what we've said is, look, yes, the delivery of the signal is one of the income-producing activities and there are other income-producing activities that happen here within South Carolina, including the local collection facilities, but there are numerous income-producing activities that go on outside of the state.

Page 560

There's no guiding principle for defining that and cutting it off at the delivery of the signal, other than the fact that it's in South Carolina. That's not a guiding principle. Their economist tried to give a guiding principle that is inconsistent with their very theory, because his guiding principle is: If it produces a cost, it cannot be an income-producing activity. Fair enough. Then delivery of a signal is not an income-producing activity.
THE COURT: All right.
MR. VALLEJO: Thank you, Your Honor.
THE COURT: Thank y'all. I want proposed orders. I normally do it 30 days from the day of the hearing -- no, 45 days from the date of the hearing or 30 days from the date the transcript is made available to you if you request one. Oh, and when I say made available, I mean it arrives to you. Because, I mean, I recognize that my court reporter could call you and tell you it's available and not give it to you for a month.
MS. GEER: Your Honor, if it's suitable to you, we would like to have the deadline be 30 days from

Page 561

receipts of the transcript.
THE COURT: Okay. All right. With that said, I'll tell y'all -- I normally don't do this, probably a mistake -- but in the way I'm looking at this case right now is -- and I haven't read the case law, especially when the Department says there is cases of various states took the approach that a single factor receipt of descrambling the signal could be sufficient, so ...
But the -- just off the cuff, that single factor, just receipt of the signal sounds fairly simplistic when I'm supposed to examine the extent of the income-producing activity.
But on the other hand, I think that the failure in DIRECTV's case is that you picked just two factors; although, they were -- what were they -- begins with a "P." Prox or -- that's not the word I'm looking for, but ...
MR. CONDON: Payroll and property?
THE COURT: Proxy. There you go, proxy. Those are just simply insufficient proxies because those proxies don't evaluate the value of the income-producing activity to determine whether that income-producing activity should be given

Page 562

weight or not.
And -- because I think to determine the extent of the income-producing activity, you've got to determine the extent the income-producing activity is of any value to produce income; at least that's my off-the-cuff thought.
So I got problems with both sides, but I say that to y'all if it helps you in preparing your proposed orders. That's the struggle I've got, off the cuff. I got a lot more, but I'll stop at that.
Thank y'all for your time.
(There being nothing further, the hearing concluded at 5:03 p.m.)

1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

CERTIFICATE

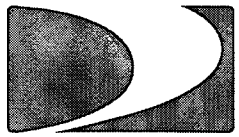
This is to certify that the within hearing consisting of five hundred sixty-two (562) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on February 4, 2015.

Cassandra E. Vance
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 26, 2018



DIRECTV®

CUSTOMER AGREEMENT

Effective as of May 1, 2006, until replaced

THIS DOCUMENT DESCRIBES THE TERMS AND CONDITIONS OF YOUR RECEIPT AND PAYMENT OF DIRECTV® SERVICE AND IS SUBJECT TO ARBITRATION (SECTION 9). IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE. IF YOU INSTEAD DECIDE TO RECEIVE OUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THEY WILL BE LEGALLY BINDING. TO VIEW THIS AGREEMENT IN SPANISH VISIT DIRECTV.COM/ACUERDO OR CALL 1-888-388-6622 TO REQUEST A PRINTED COPY. (VISITE A DIRECTV.COM/ACUERDO O LLAME AL 1-888-388-6622 PARA SOLICITAR ESTE DOCUMENTO.)

CONTACTING DIRECTV:

You may contact us 24 hours a day, any day of the year, by calling **1-800-531-5000** or by writing to:

DIRECTV, Inc.
Customer Service
P.O. Box 29079
Glendale, CA 91209-9079

You can also visit our website at DIRECTV.com.

If your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information provided on your bill for any questions about your DIRECTV Service.

Thank you for choosing DIRECTV. DIRECTV provides digital satellite entertainment programming and services (referred to collectively as "Service") to residents of the United States. We do not provide Service to addresses outside of the United States.

CUSTOMER AGREEMENT

1. OUR SERVICE

These are the terms on which we will provide you Service and other services:

(a) Program Choices. You must subscribe to a base package in order to receive additional Services such as premium movie services or sports subscriptions. All programming selections have their own rates, terms and conditions. Information about programming is at DIRECTV.com.

(b) Ordering Pay Per View. You may order pay per view Services by using your on-screen guide and remote control, at DIRECTV.com or by calling us. If you call to order or order online, a fee may apply (described in Section 2). To use your remote control to order, your receiver must be continuously connected to a land-based telephone line. Your order is transmitted via the telephone line and during the short transmission period you may not be able to use the line for other purposes. Repeated cancellation of previously ordered pay per view Services may result in cancellation of your account, restrictions on your ability to order pay per view Services, or imposition of additional fees for pay per view Services.

(c) Your Programming Changes. You may change your programming selection by notifying us. A fee may apply to such changes (described in Sections 2 & 5(b)). Some programming may be purchased in minimum blocks of one month or multiples of one month.

(d) Our Programming Changes. Many changing considerations affect the availability, cost and quality of programming and customer demand for it. Accordingly, we must reserve the unrestricted right to change, rearrange, add or delete our programming packages, the selections in those packages, our prices, and any other Service we offer, at any time. We will endeavor to notify you of any change that is within our reasonable control and its effective date. In most cases, this notice will be about one month in advance. You always have the right to cancel your Service, in whole or in part, if you do not accept the change (see Section 5). If you cancel your Service, a deactivation fee (described in Sections 2 & 5(b)) or other charges may apply. Credits, if any, to your account will be posted as described in Section 5. If you do not cancel, your continued receipt of our Service will constitute acceptance.

(e) Access Card. You have received a conditional access card (referred to as the "Access Card") and a License Agreement governing your use of the Access Card while you are receiving our Service. Access Cards are nontransferable and are the exclusive property of DIRECTV. If you tell us that the original Access Card was lost, damaged, defective or stolen, we will replace it, as long as there is no evidence of unauthorized tampering with or modification of the Access Card and your account is in good standing. A replacement fee may apply (described in Section 2). Tampering with or other unauthorized modification of the Access Card is strictly prohibited and may result in criminal or civil action. Tampering with or inserting any device into your receiver other than an authorized unmodified Access Card is prohibited. DIRECTV reserves the right to cancel or replace the Access Card. Upon request, the card must be returned to DIRECTV. If you do not return the Access Card to DIRECTV when you cancel your Service, you may be charged a fee as described in Section 2. Requesting Access Cards on behalf of other persons or for purposes other than lawful viewing of DIRECTV Service is prohibited.

(f) Additional TVs. If you add separate Service on additional TVs, you may purchase a separate subscription for each TV. Or, if all your receivers are continuously connected to the same land-based phone line, we can "mirror" the programming to your additional TVs and charge you only the fee amount described in Section 2. Pay per view programming ordered by remote control cannot be mirrored and can be viewed only on the TV for which it is purchased. You agree to provide true and accurate information about the location of your receivers.

(g) Phone Connections. Your receiver must always be directly connected to a land-based telephone line to receive certain Service, such as sports subscriptions and your local regional sports services network, and to be authorized to order with your remote control. If it is not so connected, or if it is connected to a line other than the one you tell us, or if the line is not performing according to our requirements, we may deactivate the applicable Service. If we do, you will still be responsible for all Services purchased through the date of deactivation. Your receivers must also be connected to the same land-based telephone line in order to be eligible to pay the additional TV fee (see 1(f)) rather than purchase a separate subscription for each additional TV.

(h) Mobile Units. We provide Service to Receiving Equipment installed in mobile units such as campers, boats and other recreational vehicles. However, without a permanent land-based phone connection, this Receiving Equipment is not eligible for the additional TV authorization discount described in 1(f), ordering with the remote control, or certain sports programming described in 1(g).

(i) Private Viewing. We provide Service only for your private non-commercial use, enjoyment and home viewing. The programming may not be viewed in areas open to the public or in commercial establishments. You may not rebroadcast, transmit or perform the programming, charge admission for its viewing or transmit or distribute running accounts of it. You may not use any of our trademarks. Notwithstanding the provisions of Section 9, we or any programming provider may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the Federal Communications Commission and other applicable laws.

(j) Blackouts. Certain programming, including sports events, may be blacked out in your local reception area. Blackout restrictions are decided by the sports leagues and the other entities that own the local broadcast rights. You may visit DIRECTV.com for more blackout information. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action.

(k) Loss of Receiving Equipment. You should notify us immediately if your receiver, remote control or receiving antenna dish (referred to collectively as "Receiving Equipment") is lost or stolen. If you notify us within 5 days, we will not charge you for unauthorized use. In any case, we will not charge you for unauthorized use occurring after we receive your notice. For leased Receiving Equipment, non-return fees as specified in the Equipment Lease Addendum will apply.

(l) Transfer of Receiving Equipment. We consider you to be responsible for, and the recipient of programming on, any Receiving Equipment you own. You are liable for charges incurred in the use of your Receiving Equipment by others until you notify us of a transfer. Leased Receiving Equipment may not be transferred.

(m) Your Viewing Restrictions. It is your responsibility to impose any viewing restrictions on other family members or guests, as you think appropriate. We are not responsible to you or anyone else based on the content of our programming. Please visit DIRECTV.com for information on parental controls, locks and limits and password protection on your account.

(n) Change of Address. You must notify us immediately of any change in your name, mailing address, residence address or telephone number.

2. PAYMENT

In return for receiving our Service, you promise to pay us as follows:

(a) Programming. You will pay in advance, at our rates in effect at the time, for all Service ordered by you or anyone who uses your Receiving Equipment, with or without your permission, until the Service is canceled. The outstanding balance is due in full each month. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us. We may reduce your service to a minimum service level, at our rates in effect at the time, or deactivate your Service if you do not pay your statements on time, after any applicable grace period.

(b) Taxes. You will pay all taxes or other governmental fees and charges, if any, which are assessed.

(c) Administrative Fees. In order to control the basic charges, which apply to all customers, we charge fees that arise in specific circumstances only to those customers responsible for them. This list is not exclusive, and DIRECTV reserves the right to modify these fees or charge additional fees. Accordingly, you will pay the following fees when they are applicable:

(1) *Account Activation Fee:* We may charge you a fee of: (i) **up to $50.00**; or (ii) the maximum amount permitted under applicable law prior to or upon activation of your Service account, whichever is less.

(2) *Access Card Replacement Fee:* If you do not return the Access Card when requested to do so, or if we have to replace the Access Card, we may charge you a replacement fee of **up to $300.00**. If you return the old Access

Card to us, you may receive partial credit to your account. If you request overnight delivery of the replacement Access Card, you must pay a shipping and handling fee of **up to $16.50**.

(3) *Additional TV Authorization Fee:* If you meet the qualifications described in Section 1(f), we may charge you a monthly fee of **up to $4.99** for separate Services on each additional TV, rather than a full subscription fee for Services on each additional TV. This reduced rate is available only if all receivers are located at your residence and are continuously connected to the same land-based telephone line. If not, you will be responsible for the full amount of our programming charges for each TV.

(4) *Administrative Late Fee:* **If we do not receive your payment by the due date on your bill, we may charge you an administrative late fee of the lesser of (i) up to $5.00; or (ii) the maximum amount permitted under and subject to applicable law per month or partial month until the delinquent amount is paid in full.** This late fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature. You acknowledge that this fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.

(5) *Change of Service Fee:* If you change your Service package to a lower-priced package, we may charge you a fee the lesser of (i) **up to $10.00**; or (ii) the maximum amount permitted by applicable law.

(6) *Phone Payment Fee:* If you elect to pay any outstanding balance over the telephone we may charge you the lesser of (i) **up to $5.50**; or (ii) the maximum amount permitted by applicable law.

(7) *Deposits:* We may require that you provide a deposit prior to or after activation of your Service, which we may apply against any unpaid amounts at any time. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.

(8) *Order-Assistance Fee:* If you order a pay per view Service by calling us or online, we may charge you a fee of **up to $5.00** for each separate movie, event or other program so ordered, even if it is later canceled.

(9) *Deactivation Fee:* If you cancel your Service or we deactivate your Service because of your failure to pay or for some other breach on your part, we may charge you a fee the lesser of (i) **up to $15.00**; or (ii) the maximum amount permitted by applicable law.

(10) *Duplicate Statement Fee:* If you request a duplicate statement, we may charge you a fee the lesser of (i) **up to $1.75**; or (ii) the maximum amount permitted by applicable law for each statement copy.

(11) *Ledger Request Fee:* If you request a payment ledger itemizing past payments on your account, we may charge you a fee the lesser of (i) **up to $2.75**; or (ii) the maximum amount permitted by applicable law.

(12) *Returned Payment Fee:* If any bank or other financial institution refuses to honor any payment, draft or instrument submitted for payment to your account, we may charge you a fee the lesser of (i) **up to $20.00**; or (ii) the maximum amount permitted by applicable law. You acknowledge that this fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.

(d) Billing Statements. We will send you a statement for each billing cycle (usually once every 30 days) unless you have a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle. Statements will show: (1) payments, credits, purchases and any other charges to your account (2) the amount you owe us and (3) the payment due date. If you elect to make automatic credit or debit card payments, you will not receive monthly statements unless you request that they be sent.

(e) Questions About Your Statement. If you think your statement is incorrect or if you need more information about it, contact us immediately. We will try to resolve any complaints you have as promptly as we can.

Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible reduction or deactivation of Service.

Remember, if your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information on your bill.

(f) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness (subject to Section 6), by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies. Due to the subjective nature of creditworthiness, we reserve the right to require prepayment for any Service via cashier's check, money order or credit card, notwithstanding your credit rating, past history or practice.

(g) Collection Costs. To the extent permitted by law, you will pay us any costs and fees we reasonably incur to collect amounts you owe us.

3. CUSTOMER INFORMATION

(a) Representations. You represent that you are at least 18 years of age and a resident of the United States.

(b) Contact Information. You agree to provide true, accurate, current and complete contact information about yourself, and maintain and promptly update your contact information to keep it true, accurate and complete.

(c) Online Access. You are responsible for maintaining the confidentiality of the password and account username used for online billing and account maintenance at DIRECTV.com, and are fully responsible for all activities that occur under your password and account. You agree to: (i) keep your username and password confidential and not share them with anyone else; (ii) immediately notify DIRECTV of any unauthorized use of your password and account or other breach of security and (iii) use only your username and password to log into DIRECTV.com.

4. CHANGES IN CONTRACT TERMS

We reserve the right to change the terms and conditions on which we offer Service. If we make any such changes, we will send you a copy of your new Customer Agreement containing its effective date. You always have the right to cancel your Service, in whole or in part at any time, and you may do so if you do not accept any such changed terms or conditions. If you do cancel, you may be charged an early cancellation fee if you entered into a separate programming commitment or a deactivation fee. You will be issued a credit, if any, in accordance with Section 5. If you elect not to cancel your Service after receiving a new Customer Agreement, your continued receipt of Service from us will constitute acceptance of the changed terms and conditions. If you notify us that you do not accept such terms and conditions, then we may cancel your Service as provided in Section 5, as we cannot offer Service to different customers on different terms.

5. CANCELLATION

(a) Term. The term of this Agreement is indefinite and Service will continue until canceled as provided herein. UNLESS YOU NOTIFY US THAT YOU WISH TO CANCEL IT, WE WILL AUTOMATICALLY RENEW SERVICE THAT YOU SUBSCRIBE TO ON A PERIODIC BASIS, INCLUDING ANY MONTHLY OR ANNUAL SUBSCRIPTIONS AND SEASONAL SPORTS SUBSCRIPTIONS, AS LONG AS WE CONTINUE TO CARRY THE SERVICE.

(b) Your Cancellation. You may cancel Service by notifying us. You may be charged a deactivation fee as described in Section 2 and issued a credit as described below. Your notice is effective on the day we receive it. You will still be responsible for payment of all outstanding balances accrued through that effective date. In addition to any deactivation or change of service fees provided in Section 2, if you cancel Service or change your Service package, you may be subject to an early cancellation fee if you entered into a separate programming commitment with DIRECTV in connection with obtaining Receiving Equipment, and have failed to maintain the required programming package for the required period of time.

For Services sold only in blocks of one month or multiples of one month, if you cancel such Service, we will credit you only for full months not used. For example, if you subscribe for a year of such Service from January through December but cancel on March 10, we will credit you for the subscription fees for April through December. However, we will not credit any fees for January through March. Additionally, we will not credit seasonal sports subscriptions after the season starts.

(c) Our Cancellation. We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach any other material provision of this Agreement, or act abusively toward our staff. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date, including the deactivation fee described in Section 2. In addition, we may cancel your Service if you elect not to accept any changed terms described to you, as provided in Section 4.

(d) Credit Balances. If you have a credit balance after the close of your account and issuance of the final bill, we will automatically issue you a refund. However, if your credit balance is less than $1.00, we will not issue you a refund unless you make a written request for the refund. If you do not make such a written request for the refund within one year of the close of your account, you forfeit any credit balance remaining on your account and your account balance will be reset to zero.

6. PERSONAL DATA

We collect Personally Identifiable Information about our customers ("Personal Data"). The use and disclosure of this Personal Data is governed by our Privacy Policy and, to the extent not inconsistent with the Privacy Policy, by this Agreement. A copy of our Privacy Policy is available at DIRECTV.com. We will also send you a copy if you send your written request to this address: DIRECTV Privacy Policy, P.O. Box 29079, Glendale, CA 91209-9079.

7. DIRECTV® DVR SERVICE

DIRECTV DVR Service is a separately sold service, at our rates in effect at the time, available to customers with DVR-enabled Receiving Equipment. DIRECTV DVR Service gives you the ability to see and record televised programs ("Third Party Content"). You understand that DIRECTV does not guarantee the access to or recording of any particular program, or the length of time any particular recorded program may remain available for your viewing. You also understand that Third Party Content is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten or redistributed without the written permission of the third party that supplied it, except to the extent allowed under the "fair use" provisions of the U.S. copyright laws or comparable provisions of foreign laws. You agree that DIRECTV will have no liability to you, or anyone else who uses your DIRECTV DVR Service, with regard to any Third Party Content. DIRECTV may, at its discretion, from time to time change, add or remove features of the DIRECTV DVR Service, or change the service fee for DIRECTV DVR Service.

We generally use local telephone calls to provide the DIRECTV DVR Service. You are responsible for such telephone charges and acknowledge and agree that you shall be solely responsible for all disputes with any telephone company related to the same.

If you paid a "lifetime service fee," you will not be charged a fee for your DIRECTV DVR Service as long as you maintain television programming service from DIRECTV on the same account. If you disconnect your DIRECTV television programming service and later reconnect on the same account, your DIRECTV DVR Service will be reconnected and you will not be charged a fee for DIRECTV DVR Service.

By receiving the DIRECTV DVR Service, you agree to the following license. The term "Software" shall include any updates, modified versions, additions and copies of certain software for the DIRECTV DVR Service (or your Receiving Equipment) that may be provided by DIRECTV from time to time. The term "End User Documentation" shall mean the documentation and related explanatory written materials provided to you in connection with licensing by you of any Software. DIRECTV grants to you a non-exclusive license to use the Software, provided that you agree to the following:

(a) License Grant. You may use the Software solely in executable code form and solely in conjunction with the use of your Receiving Equipment.

(b) Restrictions. You may not copy, modify, transfer, disseminate or publish the Software, or any copy thereof, in whole or in part. You may not reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent allowed under any applicable law. Any attempt to transfer any of the rights, duties or obligations of this license agreement is void. You may not rent, lease, load, resell for profit or distribute the Software, or any part thereof.

(c) Ownership. The Software is licensed, not sold, to you solely for your use under the terms of this license agreement, and DIRECTV and its suppliers reserve all rights not expressly granted to you. You shall own the media, if any, on which Software or End User Documentation is recorded, but DIRECTV and its suppliers retain ownership of all copies of the Software itself.

(d) Reservation of Rights. Except as stated above, this license agreement does not grant to you any intellectual property rights in the Software.

(e) Term. If you breach any term or condition of this license agreement, this license agreement will terminate immediately upon notice to you.

(f) Warranty Disclaimer. NEITHER DIRECTV NOR ANY OF ITS REPRESENTATIVES MAKES OR PASSES ON TO YOU OR OTHER THIRD PARTIES ANY WARRANTY OR REPRESENTATION ON BEHALF OF DIRECTV OR ITS SUPPLIERS (INCLUDING TIVO) WITH RESPECT TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(g) Limitation of Liability. IN NO EVENT WILL DIRECTV OR ITS SUPPLIERS BE LIABLE TO YOU WITH RESPECT TO THE SOFTWARE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING LOST PROFITS OR LOST SAVINGS, EVEN IF DIRECTV OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to you.

(h) Third-Party Beneficiary. DIRECTV and you expressly acknowledge and agree that TiVo, Inc., a Delaware corporation with its principal place of business at 2160 Gold Street, Alviso, CA 95002, is an intended third-party beneficiary of this license agreement as it relates to TiVo software that may be contained in the Receiving Equipment. These license provisions are made expressly for the benefit of TiVo and are enforceable by TiVo in addition to DIRECTV.

8. LIMITS ON OUR RESPONSIBILITY

(a) Service Interruptions. Service may be interrupted from time to time for a variety of reasons. We are not responsible for any interruptions of Service that occur due to acts of God, power failure or any other cause beyond our reasonable control. However, because we value our customers, for an interruption of a significant length of time that is within our reasonable control, upon your request we will provide what we reasonably determine to be a fair and equitable adjustment to your account to make up for such Service interruption. THIS WILL BE YOUR SOLE REMEDY AND OUR SOLE DUTY IN SUCH CASES.

(b) Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ANY SERVICE OR YOUR RECEIVING EQUIPMENT. ALL SUCH WARRANTIES OR REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE DISCLAIMED.

(c) Limitations of Liability. WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE RECEIVING EQUIPMENT OR ANY SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. REGARDLESS OF THE CAUSE, OUR TOTAL LIABILITY FOR DAMAGES OR LOSSES TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE, WILL IN NO EVENT EXCEED THE AMOUNT THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. You may have greater rights than described above under your state's laws. You should consult them.

(d) Warranty Services. You agree that this Agreement does not provide for, and the Service does not include, any warranty services or other services that we might provide separately, including, without limitation, any fee-based or other warranty programs.

9. RESOLVING DISPUTES

In order to expedite and control the cost of disputes, you and we agree that any legal or equitable claim relating to this Agreement, any addendum, or your Service (referred to as a "Claim") will be resolved as follows:

(a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(d) below) for at least 60 days after one of us notifies the other of a Claim in writing. You will send your notice to the address on the first page of this Agreement, and we will send our notice to your billing address.

(b) Formal Resolution. Except as provided in Section 9(d), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the "JAMS Rules") and under the rules set forth in this Agreement. If there is a conflict between JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern. **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL.** You may, in arbitration, seek any and all remedies otherwise available to you pursuant to your state's law. If you decide to initiate arbitration, you agree to tell us in writing the amount that you would pay to file a lawsuit against us in the appropriate court of law in your state. Unless we agree to pay your fee for you, you only need to pay an arbitration initiation fee equal to such court filing fee, not to exceed $125; we agree to pay any additional fee or deposit required by JAMS to initiate your arbitration. We also agree to pay the costs of the arbitration proceeding. Other fees, such as attorney's fees and expenses of travel to the arbitration will be paid in accordance with JAMS Rules. The arbitration will be held at a location in your hometown area unless you and we both agree to another location or telephonic arbitration. To start an arbitration, you or we must do the following things:

(1) Write a Demand for Arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at jamsadr.com.

(2) Send three copies of the Demand for Arbitration, plus the appropriate filing fee to:

JAMS
500 North State College Blvd., Suite 600
Orange, CA 92868
1-800-352-5267

(3) Send one copy of the demand for arbitration to the other party.

(c) Special Rules. (i) In the arbitration proceeding, the arbitrator has no authority to make errors of law, and any award may be challenged if the arbitrator does so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. (ii) Neither you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. If, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable.

(d) Exceptions. Notwithstanding the foregoing: (i) any Claim based on Section 1(i) above, and (ii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. § 605, the Digital Millennium Copyright Act, 17 U.S.C. § 1201, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 or any other statement or law governing theft of service, may be decided only by a court of competent jurisdiction.

10. MISCELLANEOUS

(a) Notice. Notices to you will be deemed given when personally delivered, addressed to you at your last known address and deposited in the U.S. Mail (which may include inclusion in your billing statement), or sent via Internet to the e-mail address you provided us or sent via satellite to your receiver or delivered when a voice message is left at the telephone number on your account. Your notices to us will be deemed given when we receive them at the address or telephone number on the first page of this Agreement.

(b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

(c) Assignment of Account. We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including, without limitation, collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

(d) Other. This Agreement and any lease, activation, programming, or other service commitment agreement that you entered into in connection with obtaining Receiving Equipment constitute our entire agreement. No salesperson or other representative is authorized to change it. If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU.

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Date _____



DIRECTV EQUIPMENT LEASE ADDENDUM

Thank you for choosing DIRECTV. By signing this Equipment Lease Addendum, you agree to abide by the following terms and conditions. You wish to lease from DIRECTV, and DIRECTV is willing to lease to you, one or more DIRECTV new or reconditioned receivers, hereinafter collectively referred to as the "equipment," necessary to access DIRECTV's services. **THIS EQUIPMENT LEASE ADDENDUM CONTAINS THE TERMS AND CONDITIONS FOR THE LEASE BY DIRECTV OF THE DIRECTV EQUIPMENT TO YOU, BUT MUST BE READ TOGETHER WITH THE DIRECTV CUSTOMER AGREEMENT (A COPY OF WHICH IS PROVIDED TO YOU WITH YOUR FIRST BILL AND IS AVAILABLE AT WWW.DIRECTV.COM) FOR ALL OF THE TERMS AND CONDITIONS REGARDING THE PROVISION OF THE SERVICES AND YOUR RIGHT TO USE THE DIRECTV EQUIPMENT. YOU UNDERSTAND AND AGREE THAT YOU HAVE NOT PURCHASED THE DIRECTV EQUIPMENT, YOU DO NOT OWN THE DIRECTV EQUIPMENT AND THE DIRECTV EQUIPMENT MUST BE USED AND RETURNED TO DIRECTV STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS EQUIPMENT LEASE ADDENDUM AND THE DIRECTV CUSTOMER AGREEMENT.**

☐ Check here if you are a new DIRECTV customer

☐ Check here if you are a current DIRECTV customer obtaining one or more additional DIRECTV receiver(s)

PROGRAMMING AGREEMENT. Within 30 days of provision of DIRECTV equipment to you, you agree to activate any DIRECTV® TOTAL CHOICE programming package (valued at $44.99 per mo. or above), or any DIRECTV PARA TODOS® programming package (valued at $29.99 per mo. or above); or any qualifying international services bundle, which bundle shall include either the DIRECTV® BASIC programming package (valued at $9.99 per mo.) or the DIRECTV PREFERRED CHOICE™ programming package (valued at $29.99 per mo.) together with any WorldDirect™ international-language service. DVR service activation ($5.99/mo.) required for DVR and HD DVR system purchases. In certain markets, programming and pricing may vary. **DIRECTV PROGRAMMING AND PRICING SUBJECT TO CHANGE AT ANY TIME.**

PROGRAMMING COMMITMENT. The programming package(s) must be maintained for a period of not less than (a) twelve (12) consecutive months (for accounts with only standard receiver(s)), or (b) twenty-four (24) consecutive months (for accounts with advanced product(s)/receiver(s)-digital video recorder (DVR), high definition receiver (HD) or high definition digital video recorder (HD DVR), including additional DIRECTV receiver(s)). After you have fulfilled your agreement to the required programming package(s), you are not obligated to continue your subscription to DIRECTV programming for any specific duration. Current DIRECTV customers may activate additional receivers with their existing DIRECTV programming package. **THIS PROGRAMMING COMMITMENT IS SEPARATE AND DIFFERENT FROM ANY OTHER PROGRAMMING COMMITMENT YOU MAY HAVE MADE WITH DIRECTV AND IS FULLY ENFORCEABLE UNDER THESE TERMS.**

MONTHLY LEASE FEE. For a new DIRECTV customer, you will be charged a monthly lease fee in the amount of $4.99 per 2nd and each additional receiver leased by you in your household. For a current customer, you will be charged a monthly fee in the amount of $4.99 for each receiver leased by you in your household, unless you replace all of your owned-equipment with leased equipment, in which case, the monthly lease fee will be waived for the 1st receiver. Applicable taxes will apply. **LEASE FEE SUBJECT TO CHANGE AT ANY TIME.**

CARE OF EQUIPMENT. You are responsible for the loss of or any damage to the DIRECTV equipment that you have leased from DIRECTV. You shall have no right to sell, give away, transfer, pledge, mortgage, remove, relocate, alter or tamper with the DIRECTV equipment at any time. **DIRECTV PROVIDES YOU THE DIRECTV EQUIPMENT AS IS, AND MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, REGARDING THE DIRECTV EQUIPMENT PROVIDED TO YOU. ALL SUCH WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. DIRECTV IS NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE DIRECTV EQUIPMENT PROVIDED TO YOU.** In the event the DIRECTV equipment you have leased from DIRECTV does not operate, contact DIRECTV at 1-800-531-5000.

CONSEQUENCES OF YOUR FAILURE TO ACTIVATE PROGRAMMING OR SATISFY YOUR PROGRAMMING COMMITMENT. If you fail to activate your DIRECTV equipment within 30 days of DIRECTV's provision of the DIRECTV equipment to you, you agree that DIRECTV or an authorized DIRECTV Retailer may charge you a fee, as liquidated damages, of $150 for each receiver that is not activated. If you fail to maintain your minimum programming commitment, you agree that DIRECTV may charge you a prorated fee of up to $150 for standard receivers and up to $300 for advanced products/receivers (e.g., DVR, HD, HD DVR, etc.).

RETURN OF DIRECTV EQUIPMENT. If you cease to be DIRECTV's customer for any reason (whether voluntarily or involuntarily) or if you decide to disconnect/cancel/terminate your DVR service (if you are leasing a DVR Receiver), you must call DIRECTV within seven (7) days after the termination of your DIRECTV programming services or DVR service, as applicable, to (i) make arrangements for DIRECTV to pick up all of your DIRECTV equipment; or (ii) obtain information from DIRECTV necessary to arrange for a ground or air freight service to pick up and deliver all of your DIRECTV equipment to DIRECTV. You acknowledge that the DIRECTV equipment belongs to DIRECTV and the DIRECTV equipment, including the access card inserted into each receiver, must be returned to DIRECTV in good working order, normal wear and tear excepted. In the event that all of the DIRECTV equipment is not returned to DIRECTV within thirty (30) days of the termination of your DIRECTV programming services or is damaged when it is returned to DIRECTV, you agree to pay DIRECTV the sum of $55 per each DIRECTV standard receiver; $200 for each DIRECTV DVR Receiver; $240 for each DIRECTV HD Receiver; or $470 for each DIRECTV HD DVR Receiver that is not returned to DIRECTV or that is damaged when it is returned to DIRECTV as compensation for a portion of the expenses incurred by DIRECTV in establishing your account and providing you the DIRECTV equipment for your use. Visit DIRECTV.com or call 1-800-531-5000 for details.

ARBITRATION. You and DIRECTV agree that both parties will resolve any dispute arising under this Equipment Lease Addendum, the DIRECTV Customer Agreement or any other addendum thereto, or regarding your DIRECTV programming service, through binding arbitration as fully set forth in the DIRECTV Customer Agreement.

FIRST NAME MI LAST NAME

STREET ADDRESS (NO P.O. BOXES) CITY STATE ZIP CODE

DAYTIME PHONE (☐☐☐) ☐☐☐-☐☐☐☐ EVENING PHONE (☐☐☐) ☐☐☐-☐☐☐☐

BY SIGNING BELOW, I HEREBY AUTHORIZE AND AGREE THAT DIRECTV MAY, AT ITS SOLE OPTION, CHARGE THE FEES DESCRIBED HEREIN TO THE CREDIT CARD DESIGNATED BELOW. I WARRANT THAT I AM 18 YEARS OLD OR OLDER AND THAT ALL INFORMATION SUPPLIED BY OR ABOUT ME IS ACCURATE. I HAVE READ AND AGREE TO THE ABOVE TERMS AND CONDITIONS.

Customer Signature _____ Date _____

NOTE: DO NOT WRITE IN THIS SECTION. TO BE COMPLETED BY DEALER (IN BLUE OR BLACK INK ONLY).

☐ PLEASE CHECK BOX IF DIRECTV SYSTEM IS BEING RETURNED BY CUSTOMER.

MODEL(S)	SERIAL NUMBER(S)	ACCESS CARD NO.(S) (FILL IN ALL 12 DIGITS – INCLUDING ZEROS)

DEALER NAME DIRECTV BILLING NO. NAME OF SALESPERSON

CREDIT CARD NUMBER __ AMEX __ VISA __ MASTERCARD __ DISCOVER EXPIRATION DATE (MM/YYYY) ☐☐/☐☐☐☐

(IF CUSTOMER DOES NOT HAVE A VALID CREDIT CARD, PLEASE COLLECT BOTH SOCIAL SECURITY NUMBER AND DRIVER LICENSE NUMBER BELOW)

SOCIAL SECURITY NUMBER ☐☐☐-☐☐-☐☐☐☐

DRIVER LICENSE NUMBER STATE

PENDING ACCOUNT NUMBER (IF AVAILABLE)

ORIGINAL – DEALER / COPY – CUSTOMER

SKU# ELA-0306

DTV000005



DIRECTV.

CUSTOMER AGREEMENT

Effective as of April 24, 2007, until replaced

THIS DOCUMENT DESCRIBES THE TERMS AND CONDITIONS OF YOUR RECEIPT AND PAYMENT OF DIRECTV® SERVICE AND IS SUBJECT TO ARBITRATION (SECTION 9). IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE. IF YOU INSTEAD DECIDE TO RECEIVE OUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THEY WILL BE LEGALLY BINDING. TO VIEW THIS AGREEMENT IN SPANISH VISIT DIRECTV.COM/ACUERDO OR CALL 1-888-388-6622 TO REQUEST A PRINTED COPY. (VISITE A DIRECTV.COM/ACUERDO O LLAME AL 1-888-388-6622 PARA SOLICITAR ESTE DOCUMENTO.)

CONTACTING DIRECTV:

You may contact us 24 hours a day, any day of the year by sending us an e-mail at directv.com/email or by writing to:

DIRECTV, Inc.
Customer Service
P.O. Box 6550
Greenwood Village, CO 80155-6550

You can also call us at 1-800-531-5000 and speak your request into our Automated Phone System, e.g., for technical issues – say "technical"; for on-screen messages – say the extension or message you see on your TV screen; to pay your bill – say "pay my bill"; for programming questions – say the name of the package or service, etc.

If your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information provided on your bill for any questions about your DIRECTV Service.

Thank you for choosing DIRECTV. DIRECTV provides digital satellite entertainment programming and services (referred to collectively as "Service") to residents of the United States. We do not provide Service to addresses outside of the United States.

CUSTOMER AGREEMENT

1. OUR SERVICE

These are the terms on which we will provide you Service:

(a) Program Choices. You must subscribe to a base package in order to receive additional Services such as premium movie services or sports subscriptions. All programming selections have their own rates, terms and conditions. Information about programming is at directv.com.

(b) Ordering Pay Per View. You may order Pay Per View Services by using your on-screen guide and remote control, by ordering at directv.com, by calling us and speaking the name of your event into our Automated Phone System, or by ordering through an agent. If you call an agent to order, the maximum fee may apply (described in section 2). A reduced fee is available for Pay Per View orders placed at directv.com or through the Automated Phone System. To use your remote control to order, your receiver must be continuously connected to a land-based telephone line. Your order is transmitted via the telephone line, and during the short transmission period, you may not be able to use the line for other purposes. Repeated cancellation of previously ordered Pay Per View Services may result in cancellation of your account, restrictions on your ability to order Pay Per View Services, or imposition of additional fees for Pay Per View Services.

(c) Your Programming Changes. You may change your programming selection by notifying us. A fee may apply to such changes (described in Sections 2 & 5(b)). Some programming may be purchased in minimum blocks of one month or multiples of one month.

(d) Our Programming Changes. Many changing considerations affect the availability, cost and quality of programming and customer demand for it. Accordingly, we must reserve the unrestricted right to change, rearrange, add or delete our programming packages, the selections in those packages, our prices, and any other Service we offer, at any time. We will endeavor to notify you of any change that is within our reasonable control and its effective date. In most cases, this notice will be about one month in advance. You always have the right to cancel your Service, in whole or in part, if you do not accept the change (see Section 5). If you cancel your Service, a deactivation fee (described in Sections 2 & 5(b)) or other charges may apply. Credits, if any, to your account will be posted as described in Section 5. If you do not cancel, your continued receipt of our Service will constitute acceptance.

(e) Access Card. You have received a conditional access card (referred to as the "Access Card") and a License Agreement governing your use of the Access Card while you are receiving our Service. Access Cards are nontransferable and are the exclusive property of DIRECTV. If you tell us that the original Access Card was lost, damaged, defective or stolen, we will replace it, as long as there is no evidence of unauthorized tampering with or modification of the Access Card and your account is in good standing. A replacement fee may apply (described in Section 2). Tampering with or other unauthorized modification of the Access Card is strictly prohibited and may result in criminal or civil action. Tampering with or inserting any device into your receiver other than an authorized unmodified Access Card is prohibited. DIRECTV reserves the right to cancel or replace the Access Card. Upon request, the card must be returned to DIRECTV. If you do not return the Access Card to DIRECTV when you cancel your Service, you may be charged a fee as described in Section 2. Requesting Access Cards on behalf of other persons or for purposes other than lawful viewing of DIRECTV Service is prohibited.

(f) Phone Connections. For optimal performance of your Receiving Equipment, including ordering with your remote control or receiving certain Services, each of your receivers must be directly connected to the same land-based telephone line. If you add Service on additional TVs, you may purchase a separate subscription for each additional TV, or, if all your receivers are continuously connected to the same land-based telephone line, we can "mirror" programming to your additional TVs and charge you only the fee amount described in Section 2. You agree to provide true and accurate information about the location of your receivers. If we detect that any receiver is not regularly connected to a land-based telephone line, we may investigate and, if it is determined that the receiver is not at the location identified on your account, we may disconnect the receiver or charge you the full programming subscription price for the receiver.

(g) Mobile Units. We provide Service to Receiving Equipment installed in mobile units such as campers, boats and other recreational vehicles. However, this Receiving Equipment is not eligible for the additional TV authorization discount described in 1(f).

(h) Private Viewing. We provide Service only for your private non-commercial use, enjoyment and home viewing. The programming may not be viewed in areas open to the public or in commercial establishments. You may not rebroadcast, transmit or perform the programming, charge admission for its viewing or transmit or distribute running accounts of it. You may not use any of our trademarks. Notwithstanding the provisions of Section 9, we or any programming provider may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the Federal Communications Commission and other applicable laws.

(i) Blackouts. Certain programming, including sports events, may be blacked out in your local reception area. Blackout restrictions are decided by the sports leagues and the other entities that own the local broadcast rights. You may visit directv.com for more blackout information. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action.

(j) Loss of Receiving Equipment. You should notify us immediately if your receiver, remote control or receiving antenna dish (referred to collectively as "Receiving Equipment") is lost or stolen. If you notify us within 5 days, we will not charge you for unauthorized use. In any case, we will not charge you for unauthorized use occurring after we receive your notice. For leased Receiving Equipment, non-return fees as specified in the Equipment Lease Addendum will apply.

(k) Transfer of Receiving Equipment. We consider you to be responsible for, and the recipient of programming on, any Receiving Equipment you own. You are liable for charges incurred in the use of your Receiving Equipment by others until you notify us of a transfer. Leased Receiving Equipment may not be transferred.

(l) Your Viewing Restrictions. It is your responsibility to impose any viewing restrictions on other family members or guests, as you think appropriate. We are not responsible to you or anyone else based on the content of our programming. Please visit directv.com for information on parental controls, locks and limits and password protection on your account.

(m) Change of Address. You must notify us immediately of any change in your name, mailing address, residence address or telephone number.

2. PAYMENT

In return for receiving our Service, you promise to pay us as follows:

(a) Programming. You will pay in advance, at our rates in effect at the time, for all Service ordered by you or anyone who uses your Receiving Equipment, with or without your permission, until the Service is canceled. The outstanding balance is due in full each month. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us. We may reduce your service to a minimum service level, at our rates in effect at the time, or deactivate your Service if you do not pay your statements on time, after any applicable grace period.

(b) Taxes. You will pay all taxes or other governmental fees and charges, if any, which are assessed.

(c) Administrative Fees. In order to control the basic charges, which apply to all customers, we charge fees that arise in specific circumstances only to those customers responsible for them. This list is not exclusive, and DIRECTV reserves the right to modify these fees or charge additional fees. Accordingly, you will pay the following fees when they are applicable:

(1) *Account Activation Fee:* We may charge you a fee of: (i) **up to $100.00**; or (ii) the maximum amount permitted under applicable law prior to or upon activation of your Service account, whichever is less.

(2) *Access Card Replacement Fee:* If you do not return the Access Card when requested to do so, or if we have to replace the Access Card, we may charge you a replacement fee of **up to $300.00**. If you return the old Access Card to us, you may receive partial credit to your account. If you request overnight delivery of the replacement Access Card, you must pay a shipping and handling fee of **up to $16.50**.

(3) *Additional TV Authorization Fee:* If you meet the qualifications described in Section 1(f), we may charge you a monthly fee of **up to $4.99** for separate Services on each additional TV, rather than a full subscription fee for Services on each additional TV. This reduced rate is available only if all receivers are located at your residence.

(4) *Administrative Late Fee:* **If we do not receive your payment by the due date on your bill, we may charge you an administrative late fee of (i) $5.00; or (ii) the maximum amount permitted under and subject to applicable law per month or partial month until the delinquent amount is paid in full.** This late fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature. You acknowledge that this fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.

(5) *Change of Service Fee:* If you change your Service package to a lower-priced package, we may charge you a fee the lesser of (i) **up to $10.00**; or (ii) the maximum amount permitted by applicable law.

(6) *Phone Payment Fee:* If you elect to pay any outstanding balance over the telephone with an agent, we may charge you the lesser of (i) **up to $10.00**; or (ii) the maximum amount permitted by applicable law. To avoid this fee, you can pay your bill through our Automated Phone System by saying "Pay my bill," or at directv.com.

(7) *Deposits:* We may require that you provide a deposit prior to or after activation of your Service, which we may apply against any unpaid amounts at any time. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.

(8) *Order Assistance Fee:* If you order a Pay Per View Service by calling and speaking with an agent, we may charge you a fee of **up to $5.00, or up to $1.50** if you order via our Automated Phone System, for each separate movie, event or other program so ordered, even if it is later canceled. There is no order assistance fee for orders placed at directv.com.

(9) *Deactivation Fee:* If you cancel your Service or we deactivate your Service because of your failure to pay or for some other breach on your part, we may charge you a fee the lesser of (i) **up to $15.00**; or (ii) the maximum amount permitted by applicable law.

(10) *Duplicate Statement Fee:* If you request a duplicate statement, we may charge you a fee the lesser of (i) **up to $1.75**; or (ii) the maximum amount permitted by applicable law for each statement copy.

(11) *Ledger Request Fee:* If you request a payment ledger itemizing past payments on your account, we may charge you a fee the lesser of (i) **up to $2.75**; or (ii) the maximum amount permitted by applicable law.

(12) *Returned Payment Fee:* If any bank or other financial institution refuses to honor any payment, draft or instrument submitted for payment to your account, we may charge you a fee the lesser of (i) **up to $20.00**; or (ii) the maximum amount permitted by applicable law. You acknowledge that this fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.

(d) Billing Statements. We will send you a statement for each billing cycle (usually once every 30 days) unless you have a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle. Statements will show: (1) payments, credits, purchases and any other charges to your account (2) the amount you owe us and (3) the payment due date. If you elect to make automatic credit or debit card payments, you will not receive monthly statements unless you request that they be sent.

(e) Questions About Your Statement. If you think your statement is incorrect or if you need more information about it, contact us immediately. We will try to resolve any complaints you have as promptly as we can.

Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible reduction or deactivation of Service.

Remember, if your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information on your bill.

(f) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness (subject to Section 6), by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies. Due to the subjective nature of creditworthiness, we reserve the right to require prepayment for any Service via cashier's check, money order or credit card, notwithstanding your credit rating, past history or practice.

(g) Collection Costs. To the extent permitted by law, you will pay us any costs and fees we reasonably incur to collect amounts you owe us.

3. CUSTOMER INFORMATION

(a) Representations. You represent that you are at least 18 years of age and a resident of the United States.

(b) Contact Information. You agree to provide true, accurate, current and complete contact information about yourself, and maintain and promptly update your contact information to keep it true, accurate and complete.

(c) Online Access. You are responsible for maintaining the confidentiality of the password and account username used for online billing and account maintenance at directv.com, and are fully responsible for all activities that occur under your password and account. You agree to: (i) keep your username and password confidential and not share them with anyone else; (ii) immediately notify DIRECTV of any unauthorized use of your password and account or other breach of security and (iii) use only your username and password to log into directv.com.

4. CHANGES IN CONTRACT TERMS

We reserve the right to change the terms and conditions on which we offer Service. If we make any such changes, we will send you a copy of your new Customer Agreement containing its effective date. You always have the right to cancel your Service, in whole or in part at any time, and you may do so if you do not accept any such changed terms or conditions. If you do cancel, you may be charged an early cancellation fee if you entered into a separate programming commitment or a deactivation fee. You will be issued a credit, if any, in accordance with Section 5. If you elect not to cancel your Service after receiving a new Customer Agreement, your continued receipt of Service from us will constitute acceptance of the changed terms and conditions. If you notify us that you do not accept such terms and conditions, then we may cancel your Service as provided in Section 5, as we cannot offer Service to different customers on different terms, among other reasons.

5. CANCELLATION

(a) Term. The term of this Agreement is indefinite and Service will continue until canceled as provided herein. UNLESS YOU NOTIFY US THAT YOU WISH TO CANCEL IT, WE WILL AUTOMATICALLY RENEW SERVICE THAT YOU SUBSCRIBE TO ON A PERIODIC BASIS, INCLUDING ANY MONTHLY OR ANNUAL SUBSCRIPTIONS AND SEASONAL SPORTS SUBSCRIPTIONS, AS LONG AS WE CONTINUE TO CARRY THE SERVICE.

(b) Your Cancellation. You may cancel Service by notifying us. You may be charged a deactivation fee as described in Section 2 and issued a credit as described below. Your notice is effective on the day we receive it. You will still be responsible for payment of all outstanding balances accrued through that effective date. In addition to any deactivation or change of service fees provided in Section 2, if you cancel Service or change your Service package, you may be subject to an early cancellation fee if you entered into a separate programming commitment with DIRECTV in connection with obtaining Receiving Equipment, and have failed to maintain the required programming package for the required period of time.

For Services sold only in blocks of one month or multiples of one month, if you cancel such Service, we will credit you only for full months not used. For example, if you subscribe for a year of such Service from January through December but cancel on March 10, we will credit you for the subscription fees for April through December. However, we will not credit any fees for January through March. Additionally, we will not credit seasonal sports subscriptions after the season starts.

(c) Our Cancellation. We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach any other material provision of this Agreement, or act abusively toward our staff. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date, including the deactivation fee described in Section 2. In addition, we may cancel your Service if you elect not to accept any changed terms described to you, as provided in Section 4.

(d) Credit Balances. If you have a credit balance after the close of your account and issuance of the final bill, we will automatically issue you a refund. However, if your credit balance is less than $1.00, we will not issue you a refund unless you make a written request for the refund. If you do not make such a written request for the refund within one year of the close of your account, you forfeit any credit balance remaining on your account and your account balance will be reset to zero.

(e) Payment Upon Cancellation. You acknowledge that you have provided your credit or debit card account information to us. You understand that you will incur fees and charges as a result of your receipt and use of Service and/or Receiving Equipment, and may incur early cancellation fees and/or equipment non-return fees (as specified in any lease, programming or other service commitment agreement you entered into in connection with obtaining Receiving Equipment). By giving us your credit or debit card account information, you authorize us to apply this method of payment, in accordance with applicable law, to satisfy any and all amounts due upon cancellation. You further acknowledge that you are required to maintain current credit or debit card information with us and agree to notify us whenever there is a change in such information, such as a change in the card number or the expiration date.

6. PERSONAL DATA

We collect Personally Identifiable Information about our customers ("Personal Data"). The use and disclosure of this Personal Data is governed by our Privacy Policy and, to the extent not inconsistent with the Privacy Policy, by this Agreement. A copy of our Privacy Policy is available at directv.com. We will also send you a copy if you send your written request to this address: DIRECTV Privacy Policy, P.O. Box 29079, Glendale, CA 91209-9079.

7. DIRECTV® DVR SERVICE

DIRECTV DVR Service is a separately sold service, at our rates in effect at the time, available to customers with DVR-enabled Receiving Equipment. DIRECTV DVR Service gives you the ability to see and record televised programs ("Third Party Content"). You understand that DIRECTV does not guarantee the access to or recording of any particular program, or the length of time any particular recorded program may remain available for your viewing. You also understand that Third Party Content is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten or redistributed without the written permission of the third party that supplied it, except to the extent allowed under the "fair use" provisions of the U.S. copyright laws or comparable provisions of foreign laws. You agree that DIRECTV will have no liability to you, or anyone else who uses your DIRECTV DVR Service, with regard to any Third Party Content. DIRECTV may, at its discretion, from time to time change, add or remove features of the DIRECTV DVR Service, or change the service fee for DIRECTV DVR Service.

We generally use local telephone calls to provide the DIRECTV DVR Service. You are responsible for such telephone charges and acknowledge and agree that you shall be solely responsible for all disputes with any telephone company related to the same.

If you paid a "lifetime service fee," you will not be charged a fee for your

DIRECTV DVR Service as long as you maintain television programming service from DIRECTV on the same account. If you disconnect your DIRECTV television programming service and later reconnect on the same account, your DIRECTV DVR Service will be reconnected and you will not be charged a fee for DIRECTV DVR Service.

By receiving the DIRECTV DVR Service, you agree to the following license. The term "Software" shall include any updates, modified versions, additions and copies of certain software for the DIRECTV DVR Service (or your Receiving Equipment) that may be provided by DIRECTV from time to time. The term "End User Documentation" shall mean the documentation and related explanatory written materials provided to you in connection with licensing by you of any Software. DIRECTV grants to you a non-exclusive license to use the Software, provided that you agree to the following:

(a) License Grant. You may use the Software solely in executable code form and solely in conjunction with the use of your Receiving Equipment.

(b) Restrictions. You may not copy, modify, transfer, disseminate or publish the Software, or any copy thereof, in whole or in part. You may not reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent allowed under any applicable law. Any attempt to transfer any of the rights, duties or obligations of this license agreement is void. You may not rent, lease, load, resell for profit or distribute the Software, or any part thereof.

(c) Ownership. The Software is licensed, not sold, to you solely for your use under the terms of this license agreement, and DIRECTV and its suppliers reserve all rights not expressly granted to you. You shall own the media, if any, on which Software or End User Documentation is recorded, but DIRECTV and its suppliers retain ownership of all copies of the Software itself.

(d) Reservation of Rights. Except as stated above, this license agreement does not grant to you any intellectual property rights in the Software.

(e) Term. If you breach any term or condition of this license agreement, this license agreement will terminate immediately upon notice to you.

(f) Warranty Disclaimer. NEITHER DIRECTV NOR ANY OF ITS REPRESENTATIVES MAKES OR PASSES ON TO YOU OR OTHER THIRD PARTIES ANY WARRANTY OR REPRESENTATION ON BEHALF OF DIRECTV OR ITS SUPPLIERS (INCLUDING TIVO) WITH RESPECT TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(g) Limitation of Liability. IN NO EVENT WILL DIRECTV OR ITS SUPPLIERS BE LIABLE TO YOU WITH RESPECT TO THE SOFTWARE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING LOST PROFITS OR LOST SAVINGS, EVEN IF DIRECTV OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to you.

(h) Third-Party Beneficiary. DIRECTV and you expressly acknowledge and agree that TiVo, Inc., a Delaware corporation with its principal place of business at 2160 Gold Street, Alviso, CA 95002, is an intended third-party beneficiary of this license agreement as it relates to TiVo software that may be contained in the Receiving Equipment. These license provisions are made expressly for the benefit of TiVo and are enforceable by TiVo in addition to DIRECTV.

8. LIMITS ON OUR RESPONSIBILITY

(a) Service Interruptions. Service may be interrupted from time to time for a variety of reasons. We are not responsible for any interruptions of Service that occur due to acts of God, power failure or any other cause beyond our reasonable control. However, because we value our customers, for an interruption of a significant length of time that is within our reasonable control, upon your request we will provide what we reasonably determine to be a fair and equitable adjustment to your account to make up for such Service interruption. THIS WILL BE YOUR SOLE REMEDY AND OUR SOLE DUTY IN SUCH CASES.

(b) Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ANY SERVICE OR YOUR RECEIVING EQUIPMENT. ALL SUCH WARRANTIES OR REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE DISCLAIMED.

(c) Limitations of Liability. WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE RECEIVING EQUIPMENT OR ANY SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. REGARDLESS OF THE CAUSE, OUR TOTAL LIABILITY FOR DAMAGES OR LOSSES TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE, WILL IN NO EVENT EXCEED THE AMOUNT THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. You may have greater rights than described above under your state's laws. You should consult them.

(d) Warranty Services. You agree that this Agreement does not provide for, and the Service does not include, any warranty services or other services that we might provide separately, including, without limitation, any fee-based or other warranty programs.

9. RESOLVING DISPUTES

In order to expedite and control the cost of disputes, you and we agree that any legal or equitable claim relating to this Agreement, any addendum, or your Service (referred to as a "Claim") will be resolved as follows:

(a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(d) below) for at least 60 days after one of us notifies the other of a Claim in writing. You will send your notice to the address on the first page of this Agreement, and we will send our notice to your billing address.

(b) Formal Resolution. Except as provided in Section 9(d), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the "JAMS Rules") and under the rules set forth in this Agreement. If there is a conflict between JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern. **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL.** You may, in arbitration, seek any and all remedies otherwise available to you pursuant to your state's law. If you decide to initiate arbitration, you agree to tell us in writing the amount that you would pay to file a lawsuit against us in the appropriate court of law in your state. Unless we agree to pay your fee for you, you only need to pay an arbitration initiation fee equal to such court filing fee, not to exceed $125; we agree to pay any additional fee or deposit required by JAMS to initiate your arbitration. We also agree to pay the costs of the arbitration proceeding. Other fees, such as attorney's fees and expenses of travel to the arbitration will be paid in accordance with JAMS Rules. The arbitration will be held at a location in your hometown area unless you and we both agree to another location or telephonic arbitration. To start an arbitration, you or we must do the following things:

(1) Write a Demand for Arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at jamsadr.com.

(2) Send three copies of the Demand for Arbitration, plus the appropriate filing fee to:

JAMS
500 North State College Blvd., Suite 600
Orange, CA 92868
1-800-352-5267

(3) Send one copy of the demand for arbitration to the other party.

(c) Special Rules. (i) In the arbitration proceeding, the arbitrator has no authority to make errors of law, and any award may be challenged if the arbitrator does so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. (ii) Neither you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. If, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable.

(d) Exceptions. Notwithstanding the foregoing: (i) any Claim based on Section 1(i) above, and (ii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. § 605, the Digital Millennium Copyright Act, 17 U.S.C. § 1201, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 or any other statement or law governing theft of service, may be decided only by a court of competent jurisdiction.

10. MISCELLANEOUS

(a) Notice. Notices to you will be deemed given when personally delivered, addressed to you at your last known address and deposited in the U.S. Mail (which may include inclusion in your billing statement), or sent via Internet to the e-mail address you provided us or sent via satellite to your receiver or delivered when a voice message is left at the telephone number on your account. Your notices to us will be deemed given when we receive them at the address or telephone number on the first page of this Agreement.

(b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

(c) Assignment of Account. We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including, without limitation, collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

(d) Other. This Agreement and any lease, activation, programming, or other service commitment agreement that you entered into in connection with obtaining Receiving Equipment constitute our entire agreement. No salesperson or other representative is authorized to change it. If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU.

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Date _____

DIRECTV.

DIRECTV EQUIPMENT LEASE ADDENDUM

Thank you for choosing DIRECTV. By signing this Equipment Lease Addendum, you agree to abide by the following terms and conditions. You wish to lease from DIRECTV, and DIRECTV is willing to lease to you, one or more DIRECTV new or reconditioned receivers, hereinafter collectively referred to as the "equipment," necessary to access DIRECTV's services. **THIS EQUIPMENT LEASE ADDENDUM CONTAINS THE TERMS AND CONDITIONS FOR THE LEASE BY DIRECTV OF THE DIRECTV EQUIPMENT TO YOU, BUT MUST BE READ TOGETHER WITH THE DIRECTV CUSTOMER AGREEMENT (A COPY OF WHICH IS PROVIDED TO YOU WITH YOUR FIRST BILL AND IS AVAILABLE AT WWW.DIRECTV.COM) FOR ALL OF THE TERMS AND CONDITIONS REGARDING THE PROVISION OF THE SERVICES AND YOUR RIGHT TO USE THE DIRECTV EQUIPMENT. YOU UNDERSTAND AND AGREE THAT YOU HAVE NOT PURCHASED THE DIRECTV EQUIPMENT, YOU DO NOT OWN THE DIRECTV EQUIPMENT AND THE DIRECTV EQUIPMENT MUST BE USED AND RETURNED TO DIRECTV STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS EQUIPMENT LEASE ADDENDUM AND THE DIRECTV CUSTOMER AGREEMENT.**

☐ Check here if you are a new DIRECTV customer

☐ Check here if you are a current DIRECTV customer obtaining one or more additional DIRECTV receiver(s)

PROGRAMMING AGREEMENT: Within 30 days of provision of DIRECTV equipment to you, or on the date that the professional installer has installed or is prepared to install your DIRECTV equipment, whichever is sooner, you agree to activate each and every DIRECTV Receiver ordered by you or provided to you with any DIRECTV® base programming package (valued at $29.99 per mo. or above); Jadeworld; or, any qualifying international service bundle, which bundle shall include either the DIRECTV® BASIC programming package (valued at $9.99 per mo.) or the DIRECTV PREFERRED CHOICE™ programming package (valued at $29.99 per mo.) together with any WorldDirect™ international-language service. DVR service activation ($5.99/mo.) required for DVR leases; HD Access fee ($9.99/mo.) required for HD Receiver leases; and, both DVR service and HD Access fee payment required for HD DVR leases. In certain markets, programming and pricing may vary. **DIRECTV PROGRAMMING AND PRICING SUBJECT TO CHANGE AT ANY TIME.**

PROGRAMMING COMMITMENT. The programming package(s) must be maintained for a period of not less than (a) twelve (12) consecutive months (for accounts with only standard receiver(s)), or (b) twenty-four (24) consecutive months (for accounts with advanced product(s)/receiver(s) digital video recorder (DVR), high definition receiver (HD) or high definition digital video recorder (HD DVR), including additional DIRECTV receiver(s)). After you have fulfilled your agreement to the required programming package(s), you are not obligated to continue your subscription to DIRECTV programming for any specific duration. Current DIRECTV customers may activate additional receivers with their existing DIRECTV programming package. **THIS PROGRAMMING COMMITMENT IS SEPARATE AND DIFFERENT FROM ANY OTHER PROGRAMMING COMMITMENT YOU MAY HAVE MADE WITH DIRECTV AND IS FULLY ENFORCEABLE UNDER THESE TERMS.**

MONTHLY LEASE FEE. For a new DIRECTV customer, you will be charged a monthly lease fee in the amount of $4.99 per 2nd and each additional receiver leased by you in your household. For a current customer, you will be charged a monthly fee in the amount of $4.99 for each receiver leased by you in your household, unless you replace all of your owned-equipment with leased equipment, in which case, the monthly lease fee will be waived for the 1st receiver. Applicable taxes will apply. **LEASE FEE SUBJECT TO CHANGE AT ANY TIME.**

CARE OF EQUIPMENT. You are responsible for the loss of or any damage to the DIRECTV equipment that you have leased from DIRECTV. You shall have no right to sell, give away, transfer, pledge, mortgage, remove, relocate, alter or tamper with the DIRECTV equipment at any time. **DIRECTV PROVIDES YOU THE DIRECTV EQUIPMENT AS IS, AND MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, REGARDING THE DIRECTV EQUIPMENT PROVIDED TO YOU. ALL SUCH WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. DIRECTV IS NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE DIRECTV EQUIPMENT PROVIDED TO YOU.** In the event the DIRECTV equipment you have leased from DIRECTV does not operate, contact DIRECTV at 1-800-531-5000.

CONSEQUENCES OF YOUR FAILURE TO ACTIVATE PROGRAMMING OR SATISFY YOUR PROGRAMMING COMMITMENT. If you fail to activate all of your DIRECTV equipment in accordance with this Equipment Lease Addendum, you agree that DIRECTV or an authorized DIRECTV Retailer may charge you a fee, as liquidated damages, of $150 for each receiver that is not activated. If you fail to maintain your minimum programming commitment, you agree that DIRECTV may charge you a prorated fee of up to $150 for standard receivers and up to $300 for advanced products/receivers (e.g., DVR, HD, HD DVR, etc.).

RETURN OF DIRECTV EQUIPMENT. If you disconnect/cancel/terminate service on some or all of your leased DIRECTV equipment for any reason (to replace or upgrade equipment, or to cease being a DIRECTV customer either voluntarily or involuntarily), or if you decide to disconnect/cancel/terminate your DVR service or HD Access (if you are leasing DVR and/or HD equipment), you must call DIRECTV within seven (7) days of such disconnection/cancellation/termination to obtain information from DIRECTV necessary to arrange for a ground or air freight service to pick up and deliver your disconnected DIRECTV equipment to DIRECTV. You acknowledge that the DIRECTV equipment belongs to DIRECTV and the DIRECTV equipment, including the access card inserted into each receiver, must be returned to DIRECTV in good working order, normal wear and tear excepted. You agree that DIRECTV will assess the following fees, that you are responsible for paying, in the event you fail to return leased equipment or return equipment in a damaged condition: $55 per each DIRECTV standard receiver; $200 for each DIRECTV DVR Receiver; $240 for each DIRECTV HD Receiver; or $470 for each DIRECTV HD DVR Receiver as compensation for a portion of the expenses incurred by DIRECTV in establishing your account and providing you the DIRECTV equipment for your use. You may avoid paying such fees by returning the leased equipment, in good working order, within 21 days of disconnection/cancellation/termination of applicable service (including DVR service and HD Access fee).

CREDIT CARD PAYMENT UPON CANCELLATION. You are required to provide and maintain a valid credit card in your name. You understand that you will incur fees and charges as a result of your receipt and use of Service and/or Receiving Equipment, and may incur early cancellation fees, equipment non-return fees and/or non-activation fees (as specified herein). By giving us your credit card account information, you agree and authorize DIRECTV to apply payments against your credit card in accordance with applicable law, to satisfy any and all amounts due upon cancellation of your Service. You are required to maintain current and valid credit card information and agree to notify and update whenever there is a change in such information, such as a change in the card number or the expiration date. You agree and acknowledge that DIRECTV may charge a fee in the maximum amount permitted under applicable laws in the event you fail to maintain valid card information with DIRECTV.

ARBITRATION. You and DIRECTV agree that both parties will resolve any dispute arising under this Equipment Lease Addendum, the DIRECTV Customer Agreement or any other addendum thereto, or regarding your DIRECTV programming service, through binding arbitration as fully set forth in the DIRECTV Customer Agreement.

FIRST NAME _____ MI _____ LAST NAME _____

STREET ADDRESS (NO P.O. BOXES) _____ CITY _____ STATE _____ ZIP CODE _____

DAYTIME PHONE (☐☐☐) ☐☐☐-☐☐☐☐ EVENING PHONE (☐☐☐) ☐☐☐-☐☐☐☐

BY SIGNING BELOW, I HEREBY AUTHORIZE AND AGREE THAT DIRECTV MAY, AT ITS SOLE OPTION, CHARGE THE FEES DESCRIBED HEREIN TO THE CREDIT CARD DESIGNATED BELOW. I WARRANT THAT I AM 18 YEARS OLD OR OLDER AND THAT ALL INFORMATION SUPPLIED BY OR ABOUT ME IS ACCURATE. I HAVE READ AND AGREE TO THE ABOVE TERMS AND CONDITIONS.

Customer Signature _____ Date _____

NOTE: DO NOT WRITE IN THIS SECTION. TO BE COMPLETED BY DEALER (IN BLUE OR BLACK INK ONLY).

☐ PLEASE CHECK BOX IF DIRECTV SYSTEM IS BEING RETURNED BY CUSTOMER.

MODEL(S)	SERIAL NUMBER(S)	ACCESS CARD NO.(S) (FILL IN ALL 12 DIGITS – INCLUDING ZEROS)

DEALER NAME _____ DIRECTV BILLING NO. ☐☐☐☐☐☐☐☐☐☐ NAME OF SALESPERSON _____

CREDIT CARD NUMBER __ AMEX __ VISA __ MASTERCARD __ DISCOVER ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ EXPIRATION DATE (MM/YYYY) ☐☐/☐☐☐☐

(IF CUSTOMER DOES NOT HAVE A VALID CREDIT CARD, PLEASE COLLECT BOTH SOCIAL SECURITY NUMBER AND DRIVER LICENSE NUMBER BELOW)

SOCIAL SECURITY NUMBER ☐☐☐-☐☐-☐☐☐☐

DRIVER LICENSE NUMBER ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ STATE ☐☐

PENDING ACCOUNT NUMBER (IF AVAILABLE) ☐☐☐☐☐☐☐☐☐

ORIGINAL – DEALER / COPY – CUSTOMER

SKU# ELA-0507

DTV000010

DIRECTV.

CUSTOMER AGREEMENT

Effective as of April 24, 2009, until replaced

THIS DESCRIBES THE TERMS AND CONDITIONS OF YOUR RECEIPT AND PAYMENT OF DIRECTV® SERVICE AND IS SUBJECT TO ARBITRATION (SECTION 9). IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE. IF YOU INSTEAD DECIDE TO RECEIVE OUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THEY WILL BE LEGALLY BINDING. IF YOU OBTAINED RECEIVING EQUIPMENT DURING OR AFTER MARCH 2006, THE EQUIPMENT LEASE ADDENDUM, AVAILABLE AT DIRECTV.COM, GOVERNS YOUR RECEIPT, USE, AND RETURN OF EQUIPMENT. TO VIEW BOTH AGREEMENTS IN SPANISH, VISIT DIRECTV.COM/ACUERDO OR CALL 1-888-388-6622 TO REQUEST A PRINTED COPY. (VISITE A DIRECTV.COM/ACUERDO O LLAME AL 1-888-388-6622 PARA SOLICITAR ESTE DOCUMENTO.)

CONTACTING DIRECTV:

You may contact us 24 hours a day, any day of the year, by sending us an e-mail at directv.com/email or by writing to:

DIRECTV, Inc.
Customer Service
P.O. Box 6550
Greenwood Village, CO 80155-6550

You can also call us at 1-800-531-5000 and speak your request into our Automated Phone System, e.g., for technical issues – say "technical"; for on-screen messages – say the extension or message you see on your TV screen; to pay your bill – say "pay my bill"; for programming questions – say the name of the package or service, etc. For bill inquires, call hours are 8am - 8pm (your local time) Sun - Fri and 8am - 12:30am ET on Sat.

If your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information provided on your bill for any questions about your DIRECTV Service.

Thank you for choosing DIRECTV. DIRECTV provides digital satellite entertainment programming and services (referred to collectively as "Service") to residents of the United States. We do not provide Service to addresses outside of the United States.

CUSTOMER AGREEMENT

1. OUR SERVICE

These are the terms on which we will provide you Service:

(a) Program Choices. You must subscribe to a base package in order to receive additional Services such as premium movie services or sports subscriptions. All programming selections have their own rates, terms and conditions. Information about programming is at directv.com.

(b) Ordering Pay Per View. You may order Pay Per View Services by using your on-screen guide and remote control, by ordering at directv.com, by calling us and speaking the name of your event into our Automated Phone System, or by ordering through an agent. Programs recorded to a DVR may automatically delete after 24 hours. If you call an agent to order, the maximum fee may apply (described in Section 2). A reduced fee is available for Pay Per View orders placed at directv.com or through the Automated Phone System. To use your remote control to order, your receiver must be continuously connected to a land-based telephone line. Your order is transmitted via the telephone line, and during the short transmission period, you may not be able to use the line for other purposes. Repeated cancellation of previously ordered Pay Per View Services may result in cancellation of your account, restrictions on your ability to order Pay Per View Services, or imposition of additional fees for Pay Per View Services.

(c) Your Programming Changes. You may change your programming selection by notifying us. A fee may apply to such changes (described in Sections 2 & 5(b)). Some programming may be purchased in minimum blocks of one month or multiples of one month.

(d) Our Programming Changes. Many factors affect the availability, cost and quality of programming and may influence the decision to raise prices and the amount of any increase. These include, among others, programming and other costs, consumer demand, market and shareholder expectations, and changing business conditions. Accordingly, we must reserve the unrestricted right to change, rearrange, add or delete our programming packages, the selections in those packages, our prices, and any other Service we offer, at any time. We will endeavor to notify you of any change that is within our reasonable control and its effective date. In most cases, this notice will be about one month in advance. You always have the right to cancel your Service, in whole or in part, if you do not accept the change (see Section 5). If you cancel your Service, a deactivation fee (described in Sections 2 & 5(b)) or other charges may apply. Credits, if any, to your account will be posted as described in Section 5. If you do not cancel, your continued receipt of our Service will constitute acceptance.

(e) Access Card. You have received a conditional access card (referred to as the "Access Card") and a License Agreement governing your use of the Access Card while you are receiving our Service. Access Cards are nontransferable and are the exclusive property of DIRECTV. If you tell us that the original Access Card was lost, damaged, defective or stolen, we will replace it, as long as there is no evidence of unauthorized tampering with or modification of the Access Card and your account is in good standing. A replacement fee may apply (described in Section 2). Tampering with or other unauthorized modification of the Access Card is strictly prohibited and may result in criminal or civil action. Tampering with or inserting any device into your receiver other than an authorized unmodified Access Card is prohibited. DIRECTV reserves the right to cancel or replace the Access Card. Upon request, the card must be returned to DIRECTV. If you do not return the Access Card to DIRECTV when you cancel your Service, you may be charged a fee as described in Section 2. Requesting Access Cards on behalf of other persons or for purposes other than lawful viewing of DIRECTV Service is prohibited.

(f) Phone Connections. For optimal performance of your Receiving Equipment, including ordering with your remote control or receiving certain Services, each of your receivers must be directly connected to the same land-based telephone line. If you add Service on additional TVs, you may purchase a separate subscription for each additional TV, or, if all your receivers are continuously connected to the same land-based telephone line, we can "mirror" programming to your additional TVs and charge you only the fee amount described in Section 2. You agree to provide true and accurate information about the location of your receivers. If we detect that any receiver is not regularly connected to a land-based telephone line, we may investigate and, if it is determined that the receiver is not at the location identified on your account, we may disconnect the receiver or charge you the full programming subscription price for the receiver.

(g) Mobile Units. We provide Service to Receiving Equipment installed in mobile units such as campers, boats and other recreational vehicles. However, this Receiving Equipment is not eligible for the additional TV authorization discount described in Section 1(f).

(h) Private Viewing. We provide Service only for your private non-commercial use, enjoyment and home viewing. The programming may not be viewed in areas open to the public or in commercial establishments. You may not rebroadcast, transmit or perform the programming, charge admission for its viewing or transmit or distribute running accounts of it. You may not use any of our trademarks. Notwithstanding the provisions of Section 9, we or any programming provider may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the Federal Communications Commission and other applicable laws.

(i) Blackouts. Certain programming, including sports events, may be blacked out in your local reception area. Blackout restrictions are decided by the sports leagues and the other entities that own the local broadcast rights. You may visit directv.com for more blackout information. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action.

(j) Loss of Receiving Equipment. You should notify us immediately if your receiver, remote control or receiving antenna dish (referred to collectively as "Receiving Equipment") is lost or stolen. If you notify us within 5 days, we will not charge you for unauthorized use. In any case, we will not charge you for unauthorized use occurring after we receive your notice. For leased Receiving Equipment, non-return fees as specified in the Equipment Lease Addendum will apply.

(k) Transfer of Receiving Equipment. We consider you to be responsible for, and the recipient of programming on, any Receiving Equipment you own. You are liable for charges incurred in the use of your Receiving Equipment by others until you notify us of a transfer. Leased Receiving Equipment may not be transferred.

(l) Your Viewing Restrictions. It is your responsibility to impose any viewing restrictions on other family members or guests, as you think appropriate. We are not responsible to you or anyone else based on the content of our programming. Please visit directv.com for information on parental controls, locks and limits and password protection on your account.

(m) Change of Address. You must notify us immediately of any change in your name, mailing address, residence address or telephone number.

2. PAYMENT

In return for receiving our Service, you promise to pay us as follows:

(a) Programming. You will pay in advance, at our rates in effect at the time, for all Service ordered by you or anyone who uses your Receiving Equipment, with or without your permission, until the Service is canceled. The outstanding balance is due in full each month. To establish service, you were required to provide a credit card. You may use this or another credit or debit card to establish recurring payments. See Section 5(e) regarding payment upon cancellation. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us. We may reduce your Service to a minimum service level, at our rates in effect at the time, or deactivate your Service if you do not pay your statements on time, after any applicable grace period.

(b) Taxes. You will pay all state and local taxes or other governmental fees and charges, if any, which are assessed.

(c) Administrative Fees. To control the basic charges which apply to all customers, we may charge fees that arise in specific circumstances only to those customers responsible for them. The list below is not exclusive, and DIRECTV reserves the right to modify these fees or charge additional fees. **In each case, we will charge you the lesser of the fee listed or the maximum amount permitted under applicable law:**

(1) *Up to $100 Account Activation Fee,* upon activation of your Service account.

(2) *Up to $300 Access Card Replacement Fee* if you lose or fail to

return your Access Card (a partial credit may be posted to your account if the Access Card is later returned). If you request overnight delivery of a replacement Access Card, a shipping and handling fee of up to $16.50 applies.

(3) *Up to $5.00 Additional TV Authorization Fee* in connection with obtaining Service on each additional TV connected to Receiving Equipment you own, provided you meet the qualifications specified in Section 1(f) and the Receiving Equipment is located at your residence. Customers with leased Receiving Equipment do not pay this fee, but pay the Lease Fee specified in the Equipment Lease Addendum.

(4) ***Up to $5.00 Late Fee:*** **If we do not receive your payment by the due date on your bill, we may charge you an administrative late fee of (i) $5.00; or (ii) the maximum amount permitted under and subject to applicable law per month or partial month until the delinquent amount is paid in full.** This late fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature. You acknowledge that this fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations as set forth by the law in your state.

(5) *Up to $10.00 Change of Service Fee,* if you change your Service package to a lower-priced package. See also Section 5(b).

(6) *Up to $10.00 Phone Payment Fee,* if you elect to pay any outstanding balance over the telephone with an agent. To avoid this fee, you can pay your bill through our Automated Phone System by saying "Pay my bill," or at directv.com.

(7) *Deposits:* We may require that you provide a deposit prior to or after activation of your Service, which we may apply against any unpaid amount at any time. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.

(8) *Up to $5.00 Order Assistance Fee,* if you order a Pay Per View Service by calling and speaking with an agent. A fee of up to $1.50 may apply if you order via our Automated Phone System. Fees are per movie, event or program so ordered, even if later canceled. There is no order assistance fee for orders placed at directv.com.

(9) *Up to $15.00 Deactivation Fee* if you cancel your Service or we deactivate your Service because of your failure to pay or for some other breach on your part.

(10) *Up to $1.75 Duplicate Statement Fee* for each statement request.

(11) *Up to $2.75 Ledger Request Fee* for ledger itemizing past payments on your account.

(12) *Up to $20.00 Returned Payment Fee,* if any bank or other financial institution refuses to honor any payment, draft or instrument submitted for payment on your account. You acknowledge that this fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.

(d) Billing Statements. We will send you a statement for each billing cycle (usually once every 30 days) unless you have a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle. Statements will show: (1) payments, credits, purchases and any other charges to your account, (2) the amount you owe us and (3) the payment due date. If you elect to make automatic credit or debit card payments, you will not receive monthly statements unless you request that they be sent.

(e) Questions About Your Statement. If you think your statement is incorrect or if you need more information about it, contact us immediately. We will try to resolve any complaints you have as promptly as we can.

You must contact us within 60 days of receiving the statement in question. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible reduction or deactivation of Service.

Remember, if your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information on your bill.

(f) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness (subject to Section 6), by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies. Due to the subjective nature of creditworthiness, we reserve the right to require prepayment for any Service via cashier's check, money order or credit card, notwithstanding your credit rating, past history or practice.

(g) Collection Costs. To the extent permitted by law, you will pay us any costs and fees we reasonably incur to collect amounts you owe us.

3. CUSTOMER INFORMATION

(a) Representations. You represent that you are at least 18 years of age and a resident of the United States.

(b) Contact Information. You agree to provide true, accurate, current and complete contact information about yourself, and maintain and promptly update your contact information to keep it true, accurate and complete.

(c) Online Access. You are responsible for maintaining the confidentiality of the password and account e-mail address used for online billing and account maintenance at directv.com, and are fully responsible for all activities that occur under your password and account. You agree to: (i) keep your e-mail address and password confidential and not share them with anyone else; (ii) immediately notify DIRECTV of any unauthorized use of your password and account or other breach of security and (iii) use only your e-mail address and password to log into directv.com.

4. CHANGES IN CONTRACT TERMS

We reserve the right to change the terms and conditions on which we offer Service. If we make any such changes, we will send you a copy of your new Customer Agreement containing its effective date. You always have the right to cancel your Service, in whole or in part, at any time, and you may do so if you do not accept any such changed terms or conditions. See Sections 5(b), (d) and (e) below. If you elect not to cancel your Service after receiving a new Customer Agreement, your continued receipt of Service constitutes acceptance of the changed terms and conditions. If you notify us that you do not accept such terms and conditions, then we may cancel your Service as provided in Section 5, as we cannot offer Service to different customers on different terms, among other reasons.

5. CANCELLATION

(a) Term. The term of this Agreement is indefinite and Service will continue until canceled as provided herein. UNLESS YOU NOTIFY US THAT YOU WISH TO CANCEL IT, WE WILL AUTOMATICALLY RENEW SERVICE THAT YOU SUBSCRIBE TO ON A PERIODIC BASIS, INCLUDING ANY MONTHLY OR ANNUAL SUBSCRIPTIONS AND SEASONAL SPORTS SUBSCRIPTIONS, AS LONG AS WE CONTINUE TO CARRY THE SERVICE.

(b) Your Cancellation. You may cancel Service by notifying us. You may be charged a deactivation fee as described in Section 2 and issued a credit as described below. Your notice is effective on the day we receive it. You will still be responsible for payment of all outstanding balances accrued through that effective date. In addition to any deactivation or change of service fees provided in Section 2, if you cancel Service or change your Service package, you may be subject to an early cancellation fee if you entered into a programming commitment with DIRECTV in connection with the Equipment Lease Addendum, and have failed to maintain the required programming package for the required period of time.

For Services sold only in blocks of one month or multiples of one month, if you cancel such Service, we will credit you only for full months not used. For example, if you subscribe for a year of such Service from January through December but cancel on March 10, we will credit you for the subscription fees for April through December. However, we will not credit any fees for January through March. Additionally, we will not credit seasonal sports subscriptions after the season starts.

(c) Our Cancellation. We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach any other material provision of this Agreement, or act abusively toward our staff. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date, including the deactivation fee described in Section 2. In addition, we may cancel your Service if you elect not to accept any changed terms described to you, as provided in Section 4.

(d) Credit Balances. When your account is closed, we will review your account and refund any excess monetary payments. Unused portions of retention or similar credits will not be refunded. If your credit balance is less than $1.00 we will not issue you a refund unless you make a written request for the refund. If you do not make such a written request for the refund within one year of the close of your account, you forfeit any credit balance remaining on your account and your account balance will be reset to zero.

(e) Payment Upon Cancellation. You acknowledge that you have provided your credit or debit card account information to us. You understand that you will incur fees and charges as a result of your receipt and use of Service and/or Receiving Equipment, and may incur early cancellation fees and/or equipment non-return fees (as specified in any lease, programming or other service commitment agreement you entered into in connection with obtaining Receiving Equipment). By giving us your credit or debit card account information, you authorize us to apply this method of payment, in accordance with applicable law, to satisfy any and all amounts due upon cancellation. You further acknowledge that you are required to maintain current credit or debit card information with us and agree to notify us whenever there is a change in such information, such as a change in the card number or the expiration date.

6. PERSONAL DATA

We collect Personally Identifiable Information about our customers ("Personal Data"). The use and disclosure of this Personal Data is governed by our Privacy Policy and, to the extent not inconsistent with the Privacy Policy, by this Agreement. A copy of our Privacy Policy is available at directv.com. We will also send you a copy if you send your written request to this address: DIRECTV Privacy Policy, P.O. Box 6550, Greenwood Village, CO 80155-6550.

7. DIRECTV® DVR SERVICE

DIRECTV DVR Service is a separately sold service, at our rates in effect at the time, available to customers with DVR-enabled Receiving Equipment. DIRECTV DVR Service gives you the ability to see and record televised programs ("Third Party Content"). You understand that DIRECTV does not guarantee the access to or recording of any particular program, or the length of time any particular recorded program may remain available for your viewing. You also understand that Third Party Content is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten or redistributed without the written permission of the third party that supplied it, except to the extent allowed under the "fair use" provisions of the U.S. copyright laws or comparable provisions of foreign laws. You agree that DIRECTV will have no liability to you, or anyone else who uses your DIRECTV DVR Service, with regard to any Third Party Content. DIRECTV may, at its discretion, from time to time change, add or remove features of the DIRECTV DVR Service, or change the service fee for DIRECTV DVR Service.

We generally use local telephone calls to provide the DIRECTV DVR Service. You are responsible for such telephone charges and acknowledge and agree that you shall be solely responsible for all disputes with any telephone company related to the same.

If you paid a "lifetime service fee," you will not be charged a fee for your

DIRECTV DVR Service as long as you maintain television programming service from DIRECTV on the same account. If you disconnect your DIRECTV television programming service and later reconnect on the same account, your DIRECTV DVR Service will be reconnected and you will not be charged a fee for DIRECTV DVR Service.

By receiving the DIRECTV DVR Service, you agree to the following license. The term "Software" shall include any updates, modified versions, additions and copies of certain software for the DIRECTV DVR Service (or your Receiving Equipment) that may be provided by DIRECTV from time to time. The term "End User Documentation" shall mean the documentation and related explanatory written materials provided to you in connection with licensing by you of any Software. DIRECTV grants to you a non-exclusive license to use the Software, provided that you agree to the following:

(a) License Grant. You may use the Software solely in executable code form and solely in conjunction with the use of your Receiving Equipment.

(b) Restrictions. You may not copy, modify, transfer, disseminate or publish the Software, or any copy thereof, in whole or in part. You may not reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent allowed under any applicable law. Any attempt to transfer any of the rights, duties or obligations of this license agreement is void. You may not rent, lease, load, resell for profit or distribute the Software, or any part thereof.

(c) Ownership. The Software is licensed, not sold, to you solely for your use under the terms of this license agreement, and DIRECTV and its suppliers reserve all rights not expressly granted to you. You shall own the media, if any, on which Software or End User Documentation is recorded, but DIRECTV and its suppliers retain ownership of all copies of the Software itself.

(d) Reservation of Rights. Except as stated above, this license agreement does not grant to you any intellectual property rights in the Software.

(e) Term. If you breach any term or condition of this license agreement, this license agreement will terminate immediately upon notice to you.

(f) Warranty Disclaimer. NEITHER DIRECTV NOR ANY OF ITS REPRESENTATIVES MAKES OR PASSES ON TO YOU OR OTHER THIRD PARTIES ANY WARRANTY OR REPRESENTATION ON BEHALF OF DIRECTV OR ITS SUPPLIERS (INCLUDING TIVO) WITH RESPECT TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(g) Limitation of Liability. IN NO EVENT WILL DIRECTV OR ITS SUPPLIERS BE LIABLE TO YOU WITH RESPECT TO THE SOFTWARE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING LOST PROFITS OR LOST SAVINGS, EVEN IF DIRECTV OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to you.

(h) Third-Party Beneficiary. DIRECTV and you expressly acknowledge and agree that TiVo, Inc., a Delaware corporation with its principal place of business at 2160 Gold Street, Alviso, CA 95002, is an intended third-party beneficiary of this license agreement as it relates to TiVo software that may be contained in the Receiving Equipment. These license provisions are made expressly for the benefit of TiVo and are enforceable by TiVo in addition to DIRECTV.

8. LIMITS ON OUR RESPONSIBILITY

(a) Service Interruptions. Service may be interrupted from time to time for a variety of reasons. We are not responsible for any interruptions of Service that occur due to acts of God, power failure or any other cause beyond our reasonable control. However, because we value our customers, for an interruption of a significant length of time that is within our reasonable control, upon your request we will provide what we reasonably determine to be a fair and equitable adjustment to your account to make up for such Service interruption. THIS WILL BE YOUR SOLE REMEDY AND OUR SOLE DUTY IN SUCH CASES.

(b) Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ANY SERVICE OR YOUR RECEIVING EQUIPMENT. ALL SUCH WARRANTIES OR REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE DISCLAIMED.

(c) Limitations of Liability. WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE RECEIVING EQUIPMENT OR ANY SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. REGARDLESS OF THE CAUSE, OUR TOTAL LIABILITY FOR DAMAGES OR LOSSES TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE WILL IN NO EVENT EXCEED THE AMOUNT THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. You may have greater rights than described above under your state's laws. You should consult them.

(d) Warranty Services. You agree that this Agreement does not provide for, and the Service does not include, any warranty services or other services that we might provide separately, including, without limitation, any fee-based or other warranty programs.

9. RESOLVING DISPUTES

In order to expedite and control the cost of disputes, you and we agree that any legal or equitable claim relating to this Agreement, any addendum, or your Service (referred to as a "Claim") will be resolved as follows:

(a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(d) below) for at least 60 days after one of us notifies the other of a Claim in writing. You will send your notice to the address on the first page of this Agreement, and we will send our notice to your billing address.

(b) Formal Resolution. Except as provided in Section 9(d), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the "JAMS Rules") and under the rules set forth in this Agreement. If there is a conflict between JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern. **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL.** You may, in arbitration, seek any and all remedies otherwise available to you pursuant to your state's law. If you decide to initiate arbitration, you agree to tell us in writing the amount that you would pay to file a lawsuit against us in the appropriate court of law in your state. Unless we agree to pay your fee for you, you only need to pay an arbitration initiation fee equal to such court filing fee, not to exceed $125; we agree to pay any additional fee or deposit required by JAMS to initiate your arbitration. We also agree to pay the costs of the arbitration proceeding. Other fees, such as attorney's fees and expenses of travel to the arbitration, will be paid in accordance with JAMS Rules. The arbitration will be held at a location in your hometown area unless you and we both agree to another location or telephonic arbitration. To start an arbitration, you or we must do the following things:

(1) Write a Demand for Arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at jamsadr.com.

(2) Send three copies of the Demand for Arbitration, plus the appropriate filing fee, to:

JAMS
500 North State College Blvd., Suite 600
Orange, CA 92868
1-800-352-5267

(3) Send one copy of the demand for arbitration to the other party.

(c) Special Rules. (i) In the arbitration proceeding, the arbitrator has no authority to make errors of law, and any award may be challenged if the arbitrator does so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. (ii) Neither you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. If, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable.

(d) Exceptions. Notwithstanding the foregoing: (i) any Claim based on Section 1(h) above, and (ii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. § 605, the Digital Millennium Copyright Act, 17 U.S.C. § 1201, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 or any other statement or law governing theft of service, may be decided only by a court of competent jurisdiction.

10. MISCELLANEOUS

(a) Notice. Notices to you will be deemed given when personally delivered, addressed to you at your last known address and deposited in the U.S. Mail (which may include inclusion in your billing statement), or sent via Internet to the e-mail address you provided us or sent via satellite to your receiver or delivered when a voice message is left at the telephone number on your account. Your notices to us will be deemed given when we receive them at the address or telephone number on the first page of this Agreement.

(b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

(c) Assignment of Account. We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including, without limitation, collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

(d) Other. This Agreement and any lease, activation, programming, or other service commitment agreement that you entered into in connection with obtaining Receiving Equipment constitute our entire agreement. No salesperson or other representative is authorized to change it. If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU.

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DIRECTV EQUIPMENT LEASE ADDENDUM

☐ Check here if you are a new DIRECTV customer

☐ Check here if you are a current DIRECTV customer obtaining one or more additional DIRECTV receiver(s)

DIRECTV

Thank you for choosing DIRECTV. By signing this Equipment Lease Addendum, you agree to abide by the following terms and conditions. You wish to lease from DIRECTV, and DIRECTV is willing to lease to you, one or more DIRECTV new or reconditioned receivers, hereinafter collectively referred to as the "equipment," necessary to access DIRECTV's services. The term "equipment" does not include the dish and cabling. **THIS EQUIPMENT LEASE ADDENDUM CONTAINS THE TERMS AND CONDITIONS FOR THE LEASE BY DIRECTV OF THE DIRECTV EQUIPMENT TO YOU, BUT MUST BE READ TOGETHER WITH THE DIRECTV CUSTOMER AGREEMENT (A COPY OF WHICH IS PROVIDED TO YOU WITH YOUR FIRST BILL AND IS AVAILABLE AT WWW.DIRECTV.COM /LEGAL) FOR ALL OF THE TERMS AND CONDITIONS REGARDING THE PROVISION OF THE SERVICES AND YOUR RIGHT TO USE THE DIRECTV EQUIPMENT. YOU UNDERSTAND AND AGREE THAT YOU HAVE NOT PURCHASED THE DIRECTV EQUIPMENT, YOU DO NOT OWN THE DIRECTV EQUIPMENT AND THE DIRECTV EQUIPMENT MUST BE USED AND RETURNED TO DIRECTV STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS EQUIPMENT LEASE ADDENDUM AND THE DIRECTV CUSTOMER AGREEMENT.**

PROGRAMMING AGREEMENT. Within 30 days of provision of DIRECTV equipment to you, or on the date that the professional installer has installed or is prepared to install your DIRECTV equipment, whichever is sooner, you agree to activate each and every DIRECTV Receiver ordered by you or provided to you with any DIRECTV® base programming package (valued at $29.99 per mo. or above); Jadeworld; or any qualifying international service bundle, which bundle shall include either the DIRECTV® BASIC programming package (valued at $12.99 per mo.) or the DIRECTV PREFERRED CHOICE™ programming package (valued at $35.99 per mo.) together with any WorldDirect™ international-language service. DVR service activation ($6/mo.) required for DVR leases; HD Access fee ($10/mo.) required for HD receiver leases; and, both DVR service and HD Access fee payment required for HD DVR leases.

PROGRAMMING TERM. For a new DIRECTV customer, the programming package(s) must be maintained for a period of not less than twenty-four (24) consecutive months. For a current DIRECTV customer, the programming package(s) must be maintained for a period of not less than (a) twelve (12) consecutive months for accounts with only standard receiver(s), or (b) twenty-four (24) consecutive months for accounts with advanced product(s)/receiver(s) (DVR, HD, or HD DVR, including additional DIRECTV receiver(s)). After you have fulfilled your agreement to the required programming package(s), you are not obligated to continue your subscription to DIRECTV programming for any specific duration. Current DIRECTV customers may activate additional receivers with their existing DIRECTV programming package. **THIS AGREEMENT TO MAINTAIN PROGRAMMING IS SEPARATE AND DIFFERENT FROM ANY OTHER YOU MAY HAVE MADE WITH DIRECTV AND IS FULLY ENFORCEABLE UNDER THESE TERMS.**

MONTHLY LEASE FEE. For a new DIRECTV customer, you will be charged a monthly lease fee in the amount of $5 per 2nd and each additional receiver leased by you in your household. For a current customer, you will be charged a monthly fee in the amount of $5 for each receiver leased by you in your household, unless you replace all of your owned-equipment with leased equipment, in which case, the monthly lease fee will be waived for the 1st receiver. Applicable taxes will apply. **LEASE FEE SUBJECT TO CHANGE AT ANY TIME.**

CARE OF EQUIPMENT. You are responsible for the loss of or any damage to the DIRECTV equipment that you have leased from DIRECTV. You shall have no right to sell, give away, transfer, pledge, mortgage, remove, relocate, alter or tamper with the DIRECTV equipment at any time. **DIRECTV PROVIDES YOU THE DIRECTV EQUIPMENT AS IS, AND MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, REGARDING THE DIRECTV EQUIPMENT PROVIDED TO YOU. ALL SUCH WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. DIRECTV IS NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE DIRECTV EQUIPMENT PROVIDED TO YOU.** In the event the DIRECTV equipment you have leased from DIRECTV does not operate, contact DIRECTV at 1-800-531-5000.

CONSEQUENCES OF YOUR FAILURE TO ACTIVATE PROGRAMMING OR MAINTAIN YOUR PROGRAMMING. If you fail to activate all of your DIRECTV equipment in accordance with this Equipment Lease Addendum, you agree that DIRECTV or an authorized DIRECTV Retailer may charge you a fee, as liquidated damages, of $150 for each receiver that is not activated. For a new DIRECTV customer, if you fail to maintain your minimum programming of 24 months, you agree that DIRECTV may charge you a prorated fee of $480. For a current DIRECTV customer, if you fail to maintain your minimum programming of 12 months for standard receivers and 24 months for advanced receivers, you agree that DIRECTV may charge you a prorated fee of $240 for standard receivers and $480 for advanced products/receivers (e.g., DVR, HD, HD DVR, etc.).

RETURN OF DIRECTV EQUIPMENT. If you cease to be DIRECTV's customer for any reason (whether voluntarily or involuntarily) or if you decide to disconnect/cancel/terminate your DVR service or HD Access fee (if you are leasing a DVR or HD Receiver, respectively), you must call DIRECTV within seven (7) days after the termination of your DIRECTV programming services, DVR service or HD Access fee, as applicable, to obtain information from DIRECTV necessary to arrange for a ground or air freight service to pick up and deliver all of your DIRECTV equipment to DIRECTV. You acknowledge that the DIRECTV equipment belongs to DIRECTV and the DIRECTV equipment, including the access card inserted into each receiver, must be returned to DIRECTV in good working order, normal wear and tear excepted. In the event that all of the DIRECTV equipment is not returned to DIRECTV within twenty-one (21) days of the termination of your DIRECTV programming services or is damaged when it is returned to DIRECTV, you agree to pay DIRECTV the sum of $45 per each DIRECTV standard receiver; $175 for each DIRECTV DVR Receiver; $125 for each DIRECTV HD Receiver; or $250 for each DIRECTV HD DVR Receiver that is not returned to DIRECTV or that is damaged when it is returned to DIRECTV as compensation for a portion of the expenses incurred by DIRECTV in establishing your account and providing you the DIRECTV equipment for your use. Visit DIRECTV.com or call 1-800-531-5000 for details.

ARBITRATION. You and DIRECTV agree that both parties will resolve any dispute arising under this Equipment Lease Addendum, the DIRECTV Customer Agreement or any other addendum thereto, or regarding your DIRECTV programming service, through binding arbitration as fully set forth in the DIRECTV Customer Agreement.

BY SIGNING BELOW, I HEREBY AUTHORIZE AND AGREE THAT DIRECTV MAY, AT ITS SOLE OPTION, CHARGE THE FEES DESCRIBED HEREIN. I WARRANT THAT I AM 18 YEARS OLD OR OLDER AND THAT ALL INFORMATION SUPPLIED BY OR ABOUT ME IS ACCURATE. I HAVE READ AND AGREE TO THE ABOVE TERMS AND CONDITIONS.

Customer Signature _____ Print Name _____ Date _____

White copy: HSP Office Yellow copy: Customer
CIA (10/09)

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(c) Special Rules. (i) In the arbitration proceeding, the arbitrator has no authority to make errors of law, and any award may be challenged if the arbitrator does so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. (ii) Neither you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. If, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable

(d) Exceptions Notwithstanding the foregoing: (i) any Claim based on Section 1(h) above, and (ii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. § 605, the Digital Millennium Copyright Act, 17 U.S.C. § 1201, the Electronic Communications Privacy Act, 18 U.S.C §§ 2510-2521 or any other statement or law governing theft of service, may be decided only by a court of competent jurisdiction

10. MISCELLANEOUS

(a) Notice. Notices to you will be deemed given when personally delivered, addressed to you at your last known address and deposited in the U.S. Mail (which may include inclusion in your billing statement), or sent via Internet to the e-mail address you provided us or sent via satellite to your receiver or delivered when a voice message is left at the telephone number on your account. Your notices to us will be deemed given when we receive them at the address or telephone number on the first page of this Agreement.

(b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

(c) Assignment of Account We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including, without limitation, collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

(d) Other. This Agreement and any lease, activation, programming, or other service commitment agreement that you entered into in connection with obtaining Receiving Equipment constitute our entire agreement. No salesperson or other representative is authorized to change it If any provision is declared by a competent authority to be invalid that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed

THANK YOU.

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DIRECTV.

CUSTOMER AGREEMENT

Effective as of April 24, 2010, until replaced

THIS DESCRIBES THE TERMS AND CONDITIONS OF YOUR RECEIPT AND PAYMENT OF DIRECTV® SERVICE AND IS SUBJECT TO ARBITRATION (SECTION 9) AND DISCLAIMER OF WARRANTIES (SECTION 8). IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE. IF YOU INSTEAD DECIDE TO RECEIVE OUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THEY WILL BE LEGALLY BINDING. IF YOU OBTAINED RECEIVING EQUIPMENT DURING OR AFTER MARCH 2006, THE EQUIPMENT LEASE ADDENDUM, AVAILABLE AT DIRECTV.COM, GOVERNS YOUR RECEIPT, USE, AND RETURN OF EQUIPMENT. TO VIEW BOTH AGREEMENTS IN SPANISH, VISIT DIRECTV.COM/ACUERDO OR CALL 1-888-388-6622 TO REQUEST A PRINTED COPY. (VISITE A DIRECTV.COM/ACUERDO O LLAME AL 1-888-388-6622 PARA SOLICITAR ESTE DOCUMENTO.)

CONTACTING DIRECTV:

You may contact us 24 hours a day, any day of the year, by sending us an e-mail at directv.com/email or by writing to

DIRECTV, Inc.
Customer Service
P.O. Box 6550
Greenwood Village, CO 80155-6550

You can also call us at 1-800-531-5000 and speak your request into our Automated Phone System, e.g., for technical issues – say "technical"; for on-screen messages – say the extension or message you see on your TV screen; to pay your bill – say "pay my bill"; for programming questions – say the name of the package or service, etc. For bill inquires, call hours are 8am - 8pm (your local time) Sun - Fri and 8am - 12 30am ET on Sat.

If your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information provided on your bill for any questions about your DIRECTV Service

Thank you for choosing DIRECTV DIRECTV provides digital satellite entertainment programming and services (referred to collectively as "Service") to residents of the United States We do not provide Service to addresses outside of the United States

CUSTOMER AGREEMENT

1. OUR SERVICE

These are the terms on which we will provide you Service:

(a) Program Choices You must subscribe to a base package in order to receive additional Services such as premium movie services or sports subscriptions. All programming selections have their own rates, terms and conditions. Information about programming is at directv com.

(b) Ordering Pay Per View. You may order Pay Per View Services by using your on-screen guide and remote control, by ordering at directv com, by calling us and speaking the name of your event into our Automated Phone System, or by ordering through an agent Programs recorded to a DVR may automatically delete after 24 hours If you call an agent to order, the maximum fee may apply (described in Section 2). A reduced fee is available for Pay Per View orders placed at directv.com or through the Automated Phone System. To use your remote control to order, your receiver must be continuously connected to a land-based telephone line Your order is transmitted via the telephone line, and during the short transmission period, you may not be able to use the line for other purposes Repeated cancellation of previously ordered Pay Per View Services may result in cancellation of your account, restrictions on your ability to order Pay Per View Services, or imposition of additional fees for Pay Per View Services.

(c) Your Programming Changes. You may change your programming selection by notifying us. A fee may apply to such changes (described in Sections 2 & 5(b)) Some programming may be purchased in minimum blocks of one month or multiples of one month.

(d) Our Programming Changes Many factors affect the availability, cost and quality of programming and may influence the decision to raise prices and the amount of any increase These include, among others, programming and other costs, consumer demand, market and shareholder expectations, and changing business conditions. Accordingly, we must reserve the unrestricted right to change, rearrange, add or delete our programming packages, the selections in those packages, our prices, and any other Service we offer, at any time We will endeavor to notify you of any change that is within our reasonable control and its effective date. In most cases this notice will be about one month in advance You always have the right to cancel your Service, in whole or in part, if you do not accept the change (see Section 5). If you cancel your Service, a deactivation fee (described in Sections 2 & 5(b)) or other charges may apply. Credits, if any, to your account will be posted as described in Section 5. If you do not cancel, your continued receipt of our Service will constitute acceptance.

(e) Access Card. You have received a conditional access card (referred to as the "Access Card") and a License Agreement governing your use of the Access Card while you are receiving our Service Access Cards are nontransferable and are the exclusive property of DIRECTV. If you tell us that the original Access Card was lost, damaged, defective or stolen, we will replace it, as long as there is no evidence of unauthorized tampering with or modification of the Access Card and your account is in good standing A replacement fee may apply (described in Section 2). Tampering with or other unauthorized modification of the Access Card is strictly prohibited and may result in criminal or civil action Tampering with or inserting any device into your receiver other than an authorized unmodified Access Card is prohibited. DIRECTV reserves the right to cancel or replace the Access Card. Upon request, the card must be returned to DIRECTV. If you do not return the Access Card to DIRECTV when you cancel your Service, you may be charged a fee as described in Section 2. Requesting Access Cards on behalf of other persons or for purposes other than lawful viewing of DIRECTV Service is prohibited.

(f) Phone Connections. For optimal performance of your Receiving Equipment, including ordering with your remote control or receiving certain Services, each of your receivers must be directly connected to the same land-based telephone line. If you add Service on additional TVs, you may purchase a separate subscription for each additional TV, or, if all your receivers are continuously connected to the same land-based telephone line, we can "mirror" programming to your additional TVs and charge you only the fee amount described in Section 2. You agree to provide true and accurate information about the location of your receivers If we detect that any receiver is not regularly connected to a land-based telephone line, we may investigate and, if it is determined that the receiver is not at the location identified on your account, we may disconnect the receiver or charge you the full programming subscription price for the receiver.

(g) Mobile Units. We provide Service to Receiving Equipment installed in mobile units such as campers, boats and other recreational vehicles. However, this Receiving Equipment is not eligible for the additional TV authorization discount described in Section 1(f).

(h) Private Viewing. We provide Service only for your private non-commercial use, enjoyment and home viewing. The programming may not be viewed in areas open to the public or in commercial establishments. You may not rebroadcast, transmit or perform the programming, charge admission for its viewing or transmit or distribute running accounts of it. You may not use any of our trademarks Notwithstanding the provisions of Section 9, we or any programming provider may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the Federal Communications Commission and other applicable laws.

(i) Blackouts. Certain programming, including sports events, may be blacked out in your local reception area. Blackout restrictions are decided by the sports leagues and the other entities that own the local broadcast rights. You may visit directv.com for more blackout information. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action.

(j) Loss of Receiving Equipment. You should notify us immediately if your receiver, remote control or receiving antenna dish (referred to collectively as "Receiving Equipment") is lost or stolen If you notify us within 5 days, we will not charge you for unauthorized use. In any case, we will not charge you for unauthorized use occurring after we receive your notice. For leased Receiving Equipment, non-return fees as specified in the Equipment Lease Addendum will apply.

(k) Transfer of Receiving Equipment We consider you to be responsible for, and the recipient of programming on, any Receiving Equipment you own. You are liable for charges incurred in the use of your Receiving Equipment by others until you notify us of a transfer. Leased Receiving Equipment may not be transferred.

(l) Your Viewing Restrictions It is your responsibility to impose any viewing restrictions on other family members or guests, as you think appropriate. We are not responsible to you or anyone else based on the content of our programming. Please visit directv.com for information on parental controls, locks and limits and password protection on your account.

(m) Change of Address. You must notify us immediately of any change in your name, mailing address, residence address or telephone number.

2. PAYMENT

In return for receiving our Service, you promise to pay us as follows:

(a) Programming. You will pay in advance, at our rates in effect at the time for all Service ordered by you or anyone who uses your Receiving Equipment, with or without your permission, until the Service is canceled. The outstanding balance is due in full each month. To establish service, you were required to provide a credit card You may use this or another credit or debit card to establish recurring payments See Section 5(e) regarding payment upon cancellation We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us. We may reduce your Service to a minimum service level, at our rates in effect at the time, or deactivate your Service if you do not pay your statements on time, after any applicable grace period.

(b) Taxes. You will pay all state and local taxes or other governmental fees and charges, if any, which are assessed.

(c) Administrative Fees. To control the basic charges which apply to all customers, we may charge fees that arise in specific circumstances only to those customers responsible for them. The list below is not exclusive, and DIRECTV reserves the right to modify these fees or charge additional fees. **In each case, we will charge you the lesser of the fee listed or the maximum amount permitted under applicable law:**

(1) *Up to $100 Account Activation Fee,* upon activation of your Service account

(2) *Up to $300 Access Card Replacement Fee,* if you lose or fail to return your Access Card (a partial credit may be posted to your account if the Access Card is later returned). If you request overnight delivery of a replacement Access Card, a shipping and handling fee of up to $16.50 applies.

(3) *Up to $5.00 Additional TV Authorization Fee* in connection with obtaining Service on each additional TV connected to Receiving Equipment you own, provided you meet the qualifications specified in Section 1(f) and the Receiving Equipment is located at your residence. Customers with leased Receiving Equipment do not pay this fee, but pay the Lease Fee specified in the Equipment Lease Addendum.

(4) ***Up to $5.00 Late Fee:*** **If we do not receive your payment by the due date on your bill, we may charge you an administrative late fee of (i) $5.00; or (ii) the maximum amount permitted under and subject to applicable law per month or partial month until the delinquent amount is paid in full.** This late fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature You acknowledge that this fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations as set forth by the law in your state.

(5) *Up to $10.00 Change of Service Fee,* if you change your Service package to a lower-priced package See also Section 5(b).

(6) *Up to $10.00 Phone Payment Fee,* if you elect to pay any outstanding balance over the telephone with an agent. To avoid this fee, you can pay your bill through our Automated Phone System by saying "Pay my bill," or at directv.com.

(7) *Deposits:* We may require that you provide a deposit prior to or after activation of your Service, which we may apply against any unpaid amount at any time Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest

(8) *Up to $5 00 Order Assistance Fee,* if you order a Pay Per View Service by calling and speaking with an agent A fee of up to $1 50 may apply if you order via our Automated Phone System Fees are per movie, event or program so ordered, even if later canceled There is no order assistance fee for orders placed at directv.com.

(9) *Up to $15.00 Deactivation Fee* if you cancel your Service or we deactivate your Service because of your failure to pay or for some other breach on your part.

(10) *Up to $1.75 Duplicate Statement Fee* for each statement request.

(11) *Up to $2 75 Ledger Request Fee* for ledger itemizing past payments on your account.

(12) *Up to $20.00 Returned Payment Fee,* if any bank or other financial institution refuses to honor any payment, draft or instrument submitted for payment on your account You acknowledge that this fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment

(d) Billing Statements. We will send you a statement for each billing cycle (usually once every 30 days) unless you have a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle. Statements will show, (1) payments, credits, purchases and any other charges to your account, (2) the amount you owe us and (3) the payment due date. If you elect to make automatic credit or debit card payments, you will not receive monthly statements unless you request that they be sent.

(e) Questions About Your Statement. If you think your statement is incorrect or if you need more information about it, contact us immediately. We will try to resolve any complaints you have as promptly as we can.

You must contact us within 60 days of receiving the statement in question. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible reduction or deactivation of Service.

Remember, if your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information on your bill

(f) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness (subject to Section 6), by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies Due to the subjective nature of creditworthiness, we reserve the right to require prepayment for any Service via cashier's check, money order or credit card, notwithstanding your credit rating, past history or practice.

(g) Collection Costs To the extent permitted by law, you will pay us any costs and fees we reasonably incur to collect amounts you owe us

3. CUSTOMER INFORMATION

(a) Representations You represent that you are at least 18 years of age and a resident of the United States.

(b) Contact Information. You agree to provide true, accurate, current and complete contact information about yourself, and maintain and promptly update your contact information to keep it true, accurate and complete.

(c) Online Access. You are responsible for maintaining the confidentiality of the password and account e-mail address used for online billing and account maintenance at directv.com, and are fully responsible for all activities that occur under your password and account You agree to, (i) keep your e-mail address and password confidential and not share them with anyone else; (ii) immediately notify DIRECTV of any unauthorized use of your password and account or other breach of security and (iii) use only your e-mail address and password to log in to directv.com.

4. CHANGES IN CONTRACT TERMS

We reserve the right to change the terms and conditions on which we offer Service. If we make any such changes, we will send you a copy of your new Customer Agreement containing its effective date. You always have the right to cancel your Service, in whole or in part, at any time, and you may do so if you do not accept any such changed terms or conditions See Sections 5(b), (d) and (e) below. If you elect not to cancel your Service after receiving a new Customer Agreement, your continued receipt of Service constitutes acceptance of the changed terms and conditions. If you notify us that you do not accept such terms and conditions, then we may cancel your Service as provided in Section 5, as we cannot offer Service to different customers on different terms, among other reasons

5. CANCELLATION

(a) Term. The term of this Agreement is indefinite and Service will continue until canceled as provided herein. UNLESS YOU NOTIFY US THAT YOU WISH TO CANCEL IT, WE WILL AUTOMATICALLY RENEW SERVICE THAT YOU SUBSCRIBE TO ON A PERIODIC BASIS, INCLUDING ANY MONTHLY OR ANNUAL SUBSCRIPTIONS AND SEASONAL SPORTS SUBSCRIPTIONS, AS LONG AS WE CONTINUE TO CARRY THE SERVICE.

(b) Your Cancellation. You may cancel Service by notifying us. You may be charged a deactivation fee as described in Section 2 and issued a credit as described below Your notice is effective on the day we receive it You will still be responsible for payment of all outstanding balances accrued through that effective date In addition to any deactivation or change of service fees provided in Section 2, if you cancel Service or change your Service package, you may be subject to an early cancellation fee if you entered into a programming commitment with DIRECTV in connection with the Equipment Lease Addendum, and have failed to maintain the required programming package for the required period of time For Services sold only in blocks of one month or multiples of one month, if you cancel such Service, we will credit you only for full months not used. For example, if you subscribe for a year of such Service from January through December but cancel on March 10, we will credit you for the subscription fees for April through December. However, we will not credit any fees for January through March. Additionally, we will not credit seasonal sports subscriptions after the season starts.

(c) Our Cancellation We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach any other material provision of this Agreement, or act abusively toward our staff. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date, including the deactivation fee described in Section 2. In addition, we may cancel your Service if you elect not to accept any changed terms described to you, as provided in Section 4.

(d) Credit Balances When your account is closed, we will review your account and refund any excess monetary payments. Unused portions of retention or similar credits will not be refunded. If your credit balance is less than $1 00 we will not issue you a refund unless you make a written request for the refund If you do not make such a written request for the refund within one year of the close of your account, you forfeit any credit balance remaining on your account and your account balance will be reset to zero.

(e) Payment Upon Cancellation. You acknowledge that you have provided your credit or debit card account information to us You understand that you will incur fees and charges as a result of your receipt and use of Service and/or Receiving Equipment, and may incur early cancellation fees and/or equipment non-return fees (as specified in any lease, programming or other service commitment agreement you entered into in connection with obtaining Receiving Equipment). By giving us your credit or debit card account information, you authorize us to apply this method of payment, in accordance with applicable law, to satisfy any and all amounts due upon cancellation. You further acknowledge that you are required to maintain current credit or debit card information with us and agree to notify us whenever there is a change in such information, such as a change in the card number or the expiration date

6. PERSONAL DATA

We collect Personally Identifiable Information about our customers ("Personal Data") The use and disclosure of this Personal Data is governed by our Privacy Policy and, to the extent not inconsistent with the Privacy Policy, by this Agreement. A copy of our Privacy Policy is available at directv.com. We will also send you a copy if you send your written request to this address: DIRECTV Privacy Policy, P.O Box 6550, Greenwood Village, CO 80155-6550.

7. DIRECTV® DVR SERVICE AND SOFTWARE LICENSE

DIRECTV DVR Service is a separately sold service, at our rates in effect at the time, available to customers with DVR-enabled Receiving Equipment. DIRECTV DVR Service gives you the ability to see and record televised programs ("Third Party Content"). You understand that DIRECTV does not guarantee the access to or recording of any particular program, or the length of time any particular recorded program may remain available for your viewing. You also understand that Third Party Content is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten or redistributed without the written permission of the third party that supplied it, except to the extent allowed under the "fair use" provisions of the U.S. copyright laws or comparable provisions of foreign laws. You agree that DIRECTV will have no liability to you, or anyone else who uses your DIRECTV DVR Service, with regard to any Third Party Content DIRECTV may, at its discretion, from time to time change, add or remove features of the DIRECTV DVR Service, or change the service fee for DIRECTV DVR Service.

We generally use local telephone calls to provide the DIRECTV DVR Service You are responsible for such telephone charges and acknowledge and agree that you shall be solely responsible for all disputes with any telephone company related to the same.

If you paid a "lifetime service fee," you will not be charged a fee for your DIRECTV DVR Service as long as you maintain television programming service from DIRECTV on the same account. If you disconnect your DIRECTV television programming service and later reconnect on the same account, your DIRECTV DVR Service will be reconnected and you will not be charged a fee for DIRECTV DVR Service.

The DIRECTV Receiving Equipment incorporates Software which is owned by DIRECTV or its third party licensors Before using the Receiving Equipment or activating the DIRECTV DVR Service, please read the terms and conditions for use of the Software If you do not agree to these terms you may not use the Receiving Equipment and may not activate the DIRECTV DVR Service and should immediately return the Receiving Equipment to DIRECTV or your supplier These terms also apply to any modifications, updates or supplements to the Software provided to you. Below is a summary of the terms of the Software license. A complete text of the terms and conditions for use of the Software is located in the user manual and at directv.com

(a) License Grant and Conditions. DIRECTV grants you a non-exclusive, non-transferable, limited license to use the Software solely in executable code form and solely as integrated with, incorporated into, and in conjunction with the Receiving Equipment. Certain third party Software used in connection with the Receiving Equipment may be made directly available to you by the providers thereof. DIRECTV reserves the right to modify, supplement, update and otherwise alter the Software via software download or other modification procedures, and these terms will apply to such Software as modified, supplemented, updated, and otherwise altered.

(b) License Restrictions You may not copy, modify or transfer the Software, or any copy thereof, in whole or in part You may not reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent allowed under any applicable law. The Software may include some components that are covered by "free software" licenses, open source software, and other similar license use rights which require such components to be used, modified and/or distributed only under the terms of such licenses

(c) Ownership of Software and Reservation of Rights. The Software is licensed, not sold, to you for use only under the terms of this license agreement. DIRECTV is NOT transferring title or any ownership rights in the Software to you and DIRECTV and its suppliers reserve all rights not expressly granted to you. Except as stated above, this license agreement does not grant to you any intellectual property rights in the Software.

(d) Termination These terms are effective until terminated. You may terminate these terms by returning the Receiving Equipment to DIRECTV or your supplier. These terms will terminate automatically without notice if you fail to comply with these terms or any other agreement between you and DIRECTV. Upon termination you must return the Receiving Equipment to DIRECTV or your supplier.

(e) Disclaimer. THE SOFTWARE IS TO THE EXTENT PERMITTED BY LAW SUPPLIED "AS IS". NEITHER DIRECTV NOR ANY OF ITS LICENSORS EXPRESSLY MAKES OR PASSES ON TO YOU ANY WARRANTY OR REPRESENTATION ON BEHALF OF DIRECTV OR ITS LICENSORS WITH RESPECT TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(f) Limitation of Liability. IN NO EVENT WILL DIRECTV OR ITS LICENSORS BE LIABLE TO YOU WITH RESPECT TO THE SOFTWARE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGE (INCLUDING LOSS OF PROFITS, LOST SAVINGS, LOSS OF DATA OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES) ARISING OUT OF THE USE OR THE INABILITY TO USE THE SOFTWARE, EVEN IF DIRECTV OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY A THIRD PARTY. Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to you

(g) Additional Information. DIRECTV's licensors and suppliers shall be third party beneficiaries of these license terms, as applicable. Certain additional terms and information for the Software and certain third party software (including the text of licenses applicable to any free, open source and other similar software that may be included in the Software), may be found in the DIRECTV website located at directv.com, and the GNU website located at www gnu org.

(h) Third-Party Beneficiary. DIRECTV and you expressly acknowledge and agree that TiVo, Inc., a Delaware corporation with its principal place of business at 2160 Gold Street, Alviso, CA 95002, is an intended third-party beneficiary of this license agreement as it relates to TiVo software that may be contained in the Receiving Equipment These license provisions are made expressly for the benefit of TiVo and are enforceable by TiVo in addition to DIRECTV.

8. LIMITS ON OUR RESPONSIBILITY

(a) Service Interruptions. Service may be interrupted from time to time for a variety of reasons We are not responsible for any interruptions of Service that occur due to acts of God, power failure or any other cause beyond our reasonable control. However, because we value our customers, for an interruption of a significant length of time that is within our reasonable control, upon your request we will provide what we reasonably determine to be a fair and equitable adjustment to your account to make up for such Service interruption THIS WILL BE YOUR SOLE REMEDY AND OUR SOLE DUTY IN SUCH CASES

(b) Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ANY SERVICE OR YOUR RECEIVING EQUIPMENT, WHICH IS PROVIDED TO YOU AS IS ALL SUCH WARRANTIES OR REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE DISCLAIMED YOU ARE RESPONSIBLE FOR THE LOSS OF OR ANY DAMAGE TO THE RECEIVING EQUIPMENT

(c) Limitations of Liability. WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE RECEIVING EQUIPMENT OR ANY SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE. REGARDLESS OF THE CAUSE, OUR TOTAL LIABILITY FOR DAMAGES OR LOSSES TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE WILL IN NO EVENT EXCEED THE AMOUNT THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. You may have greater rights than described above under your state's laws. You should consult them.

(d) Warranty Services You agree that this Agreement does not provide for, and the Service does not include, any warranty services or other services that we might provide separately, including, without limitation, any fee based or other warranty programs

9. RESOLVING DISPUTES

In order to expedite and control the cost of disputes, you and we agree that any legal or equitable claim relating to this Agreement, any addendum, or your Service (referred to as a "Claim") will be resolved as follows:

(a) Informal Resolution. We will first try to resolve any Claim informally Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(d) below) for at least 60 days after one of us notifies the other of a Claim in writing. You will send your notice to the address on the first page of this Agreement, and we will send our notice to your billing address

(b) Formal Resolution Except as provided in Section 9(d), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the "JAMS Rules") and under the rules set forth in this Agreement. If there is a conflict between JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL.** You may, in arbitration, seek any and all remedies otherwise available to you pursuant to your state's law. If you decide to initiate arbitration, you agree to tell us in writing the amount that you would pay to file a lawsuit against us in the appropriate court of law in your state Unless we agree to pay your fee for you, you only need to pay an arbitration initiation fee equal to such court filing fee, not to exceed $125; we agree to pay any additional fee or deposit required by JAMS to initiate your arbitration We also agree to pay the costs of the arbitration proceeding Other fees, such as attorney's fees and expenses of travel to the arbitration, will be paid in accordance with JAMS Rules The arbitration will be held at a location in your hometown area unless you and we both agree to another location or telephonic arbitration. To start an arbitration, you or we must do the following things:

(1) Write a Demand for Arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at jamsadr.com.

(2) Send three copies of the Demand for Arbitration, plus the appropriate filing fee, to:

JAMS
500 North State College Blvd., Suite 600
Orange, CA 92868
1-800-352-5267

V000016

(3) Send one copy of the demand for arbitration to the other party

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The SRC Group, Inc 7138917

DIRECTV EQUIPMENT LEASE ADDENDUM

☐ Check here if you are a new DIRECTV customer

☐ Check here if you are a current DIRECTV customer obtaining one or more additional DIRECTV receiver(s)

Thank you for choosing DIRECTV. By signing this Equipment Lease Addendum, you agree to abide by the following terms and conditions. You wish to lease from DIRECTV, and DIRECTV is willing to lease to you, one or more DIRECTV new or reconditioned receivers, hereinafter collectively referred to as the "equipment," necessary to access DIRECTV's services. The term "equipment" does not include the dish and cabling. **THIS EQUIPMENT LEASE ADDENDUM CONTAINS THE TERMS AND CONDITIONS FOR THE LEASE BY DIRECTV OF THE DIRECTV EQUIPMENT TO YOU, BUT MUST BE READ TOGETHER WITH THE DIRECTV CUSTOMER AGREEMENT (A COPY OF WHICH IS PROVIDED TO YOU WITH YOUR FIRST BILL AND IS AVAILABLE AT WWW.DIRECTV.COM /LEGAL) FOR ALL OF THE TERMS AND CONDITIONS REGARDING THE PROVISION OF THE SERVICES AND YOUR RIGHT TO USE THE DIRECTV EQUIPMENT. YOU UNDERSTAND AND AGREE THAT YOU HAVE NOT PURCHASED THE DIRECTV EQUIPMENT, YOU DO NOT OWN THE DIRECTV EQUIPMENT AND THE DIRECTV EQUIPMENT MUST BE USED AND RETURNED TO DIRECTV STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS EQUIPMENT LEASE ADDENDUM AND THE DIRECTV CUSTOMER AGREEMENT.**

PROGRAMMING AGREEMENT. Within 30 days of provision of DIRECTV equipment to you, or on the date that the professional installer has installed or is prepared to install your DIRECTV equipment, whichever is sooner, you agree to activate each and every DIRECTV Receiver ordered by you or provided to you with any DIRECTV® base programming package (valued at $29.99 per mo. or above); Jadeworld; or any qualifying international service bundle, which bundle shall include either the BASIC CHOICE programming package (valued at $19.99 per mo.) or the PREFERRED CHOICE™ programming package (valued at $38.99 per mo.) together with any WorldDirect™ international-language service. DVR service activation ($7/mo.) required for DVR leases; HD Access fee ($10/mo.) required for HD receiver leases; and, both DVR service and HD Access fee payment required for HD DVR leases.

PROGRAMMING TERM. For a new DIRECTV customer, the programming package(s) must be maintained for a period of not less than twenty-four (24) consecutive months. For a current DIRECTV customer, the programming package(s) must be maintained for a period of not less than (a) twelve (12) consecutive months for accounts with only standard receiver(s), or (b) twenty-four (24) consecutive months for accounts with advanced product(s)/receiver(s) (DVR, HD, or HD DVR, including additional DIRECTV receiver(s)). After you have fulfilled your agreement to the required programming package(s), you are not obligated to continue your subscription to DIRECTV programming for any specific duration. Current DIRECTV customers may activate additional receivers with their existing DIRECTV programming package. **THIS AGREEMENT TO MAINTAIN PROGRAMMING IS SEPARATE AND DIFFERENT FROM ANY OTHER YOU MAY HAVE MADE WITH DIRECTV AND IS FULLY ENFORCEABLE UNDER THESE TERMS.**

MONTHLY LEASE FEE. For a new DIRECTV customer, you will be charged a monthly lease fee in the amount of $5 per 2nd and each additional receiver leased by you in your household. For a current customer, you will be charged a monthly fee in the amount of $5 for each receiver leased by you in your household, unless you replace all of your owned-equipment with leased equipment, in which case, the monthly lease fee will be waived for the 1st receiver. Applicable taxes will apply. **LEASE FEE SUBJECT TO CHANGE AT ANY TIME.**

WARRANTY DISCLAIMER. You are responsible for the loss of, damage to or the entire cost of any necessary service or repair of the DIRECTV equipment that you have leased from DIRECTV. You shall have no right to sell, give away, transfer, pledge, mortgage, remove, relocated alter or tamper with the DIRECTV equipment at any time. **DIRECTV PROVIDES YOU THE DIRECTV EQUIPMENT AS IS AND WITH ALL FAULTS. YOU BEAR THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE DIRECTV EQUIPMENT. DIRECTV MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE DIRECTV EQUIPMENT PROVIDED TO YOU. ALL SUCH WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTIABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. DIRECTV IS NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE DIRECTV EQUIPMENT PROVIDED TO YOU.**

CUSTOMER SERVICE. In the event the DIRECTV equipment you have leased from DIRECTV does not operate, contact DIRECTV at 1-800-531-5000.

CONSEQUENCES OF YOUR FAILURE TO ACTIVATE PROGRAMMING OR MAINTAIN YOUR PROGRAMMING. If you fail to activate all of your DIRECTV equipment in accordance with this Equipment Lease Addendum, you agree that DIRECTV or an authorized DIRECTV Retailer may charge you a fee, as liquidated damages, of $150 for each receiver that is not activated. For a new DIRECTV customer, if you fail to maintain your minimum programming of 24 months, you agree that DIRECTV may charge you a prorated fee of $480. For a current DIRECTV customer, if you fail to maintain your minimum programming of 12 months for standard receivers and 24 months for advanced receivers, you agree that DIRECTV may charge you a prorated fee of $240 for standard receivers and $480 for advanced products/receivers (e.g., DVR, HD, HD DVR, etc.).

RETURN OF DIRECTV EQUIPMENT. If you cease to be DIRECTV's customer for any reason (whether voluntarily or involuntarily) or if you decide to disconnect/cancel/terminate your DVR service or HD Access fee (if you are leasing a DVR or HD Receiver, respectively), you must call DIRECTV within seven (7) days after the termination of your DIRECTV programming services, DVR service or HD Access fee, as applicable, to obtain information from DIRECTV necessary to arrange for a ground or air freight service to pick up and deliver all of your DIRECTV equipment to DIRECTV. You acknowledge that the DIRECTV equipment belongs to DIRECTV and the DIRECTV equipment, including the access card inserted into each receiver, must be returned to DIRECTV in good working order, normal wear and tear excepted. In the event that all of the DIRECTV equipment is not returned to DIRECTV within twenty-one (21) days of the termination of your DIRECTV programming services or is damaged when it is returned to DIRECTV, you agree to pay DIRECTV the sum of $45 per each DIRECTV standard receiver; $175 for each DIRECTV DVR Receiver; $125 for each DIRECTV HD Receiver; or $250 for each DIRECTV HD DVR Receiver that is not returned to DIRECTV or that is damaged when it is returned to DIRECTV as compensation for a portion of the expenses incurred by DIRECTV in establishing your account and providing you the DIRECTV equipment for your use. Visit DIRECTV.com or call 1-800-531-5000 for details.

ARBITRATION. You and DIRECTV agree that both parties will resolve any dispute arising under this Equipment Lease Addendum, the DIRECTV Customer Agreement or any other addendum thereto, or regarding your DIRECTV programming service, through binding arbitration as fully set forth in the DIRECTV Customer Agreement.

BY SIGNING BELOW, I HEREBY AUTHORIZE AND AGREE THAT DIRECTV MAY, AT ITS SOLE OPTION, CHARGE THE FEES DESCRIBED HEREIN. I WARRANT THAT I AM 18 YEARS OLD OR OLDER AND THAT ALL INFORMATION SUPPLIED BY OR ABOUT ME IS ACCURATE. I HAVE READ AND AGREE TO THE ABOVE TERMS AND CONDITIONS.

Customer Signature _____ Print Name _____ Date _____

White copy: HSP Office Yellow copy: Customer

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2010 DIRECTV, Inc.

PROOF # 1

ivey performance marketing
13464 Beach Ave
Marina del Rey, CA 90292
(310) 822-0100

File Name: 109917M01
Customer: DirecTV
Description: Q2 Lease Addendums – Lease Forms

Black

File Name: 109917M01.p1.pdf
Device: Low
Screen: –
Black

Date: Mar-17-2010
Time: 13 33 04
Operator: jdimas

DTV000017

(3) Send one copy of the demand for arbitration to the other party.

(c) Special Rules. (i) In the arbitration proceeding, the arbitrator has no authority to make errors of law, and any award may be challenged if the arbitrator does so Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction (ii) Neither you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. If, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable.

(d) Exceptions. Notwithstanding the foregoing: (i) any Claim based on Section 1(h) above, and (ii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. § 605, the Digital Millennium Copyright Act, 17 U.S.C. § 1201, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 or any other statement or law governing theft of service, may be decided only by a court of competent jurisdiction. You may also assert an individual action in small claims court in lieu of arbitration.

10. MISCELLANEOUS

(a) Notice. Notices to you will be deemed given when personally delivered, addressed to you at your last known address and deposited in the U.S. Mail (which may include inclusion in your billing statement), or sent via Internet to the e-mail address you provided us or sent via satellite to your receiver or delivered when a voice message is left at the telephone number on your account. Your notices to us will be deemed given when we receive them at the address or telephone number on the first page of this Agreement.

(b) Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

(c) Assignment of Account. We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party without notice for any purpose, including, without limitation, collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

(d) Other. This Agreement and any lease, activation, programming, or other service commitment agreement that you entered into in connection with obtaining Receiving Equipment constitute our entire agreement. No salesperson or other representative is authorized to change it. If any provision is declared by a competent authority to be invalid that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU.

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DIRECTV.
CUSTOMER AGREEMENT

Effective as of April 24, 2011, until replaced

THIS DESCRIBES THE TERMS AND CONDITIONS OF YOUR RECEIPT AND PAYMENT OF DIRECTV® SERVICE AND IS SUBJECT TO ARBITRATION (SECTION 9) AND DISCLAIMER OF WARRANTIES (SECTION 8). IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR ORDER OR SERVICE. IF YOU INSTEAD DECIDE TO RECEIVE OUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THEY WILL BE LEGALLY BINDING. IF YOU OBTAINED RECEIVING EQUIPMENT DURING OR AFTER MARCH 2006, THE EQUIPMENT LEASE AGREEMENT, AVAILABLE AT DIRECTV.COM, GOVERNS YOUR RECEIPT, USE, AND RETURN OF EQUIPMENT. TO VIEW BOTH AGREEMENTS IN SPANISH, VISIT DIRECTV.COM/ACUERDO OR CALL 1-888-388-6622 TO REQUEST A PRINTED COPY. (VISITE A DIRECTV.COM/ACUERDO O LLAME AL 1-888-388-6622 PARA SOLICITAR ESTE DOCUMENTO.)

CONTACTING DIRECTV:

You may contact us 24 hours a day, any day of the year, by sending us an e-mail at directv com/email or by writing to:

DIRECTV, Inc.
Customer Service
P.O. Box 6550
Greenwood Village, CO 80155-6550

You can also call us at 1-800-531-5000 and speak your request into our Automated Phone System, e g , for technical issues – say "technical", for on-screen messages – say the extension or message you see on your TV screen; to pay your bill – say "pay my bill"; for programming questions – say the name of the package or service, etc For bill inquires, call hours are 8am - 8pm (your local time) Sun - Fri and 8am - 12:30am ET on Sat.

If your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information provided on your bill for any questions about your DIRECTV Service.

Thank you for choosing DIRECTV DIRECTV provides digital satellite entertainment programming and services (referred to collectively as "Service") to residents of the United States. We do not provide Service to addresses outside of the United States.

CUSTOMER AGREEMENT

1. OUR SERVICE

These are the terms on which we will provide you Service:

(a) Program Choices. You must subscribe to a base package in order to receive additional Services such as premium movie services or sports subscriptions All programming selections have their own rates, terms and conditions. Information about programming is at directv.com

(b) Ordering Pay Per View. You may order Pay Per View Services by using your on-screen guide and remote control, by ordering at directv com, by calling us and speaking the name of your event into our Automated Phone System, or by ordering through an agent. Programs recorded to a DVR may automatically delete after 24 hours If you call an agent to order, the maximum fee may apply (described in Section 2) A reduced fee is available for Pay Per View orders placed at directv com or through the Automated Phone System. To use your remote control to order, your receiver must be continuously connected to a land-based telephone line. Your order is transmitted via the telephone line, and during the short transmission period, you may not be able to use the line for other purposes. Repeated cancellation of previously ordered Pay Per View Services may result in cancellation of your account, restrictions on your ability to order Pay Per View Services, or imposition of additional fees for Pay Per View Services.

(c) Your Programming Changes You may change your programming selection by notifying us. A fee may apply to such changes (described in Sections 2 & 5(b)). Some programming may be purchased in minimum blocks of one month or multiples of one month.

(d) Our Programming Changes Many factors affect the availability, cost and quality of programming and may influence the decision to raise prices and the amount of any increase. These include, among others, programming and other costs, consumer demand, market and shareholder expectations, and changing business conditions. Accordingly, we must reserve the unrestricted right to change, rearrange, add or delete our programming packages, the selections in those packages, our prices, and any other Service we offer, at any time. We will endeavor to notify you of any change that is within our reasonable control and its effective date In most cases this notice will be about one month in advance. You always have the right to cancel your Service, in whole or in part, if you do not accept the change (see Section 5). If you cancel your Service, a deactivation fee (described in Sections 2 & 5(b)) or other charges may apply. Credits, if any, to your account will be posted as described in Section 5. If you do not cancel, your continued receipt of our Service will constitute acceptance.

(e) Access Card. You have received a conditional access card (referred to as the "Access Card") and a License Agreement governing your use of the Access Card while you are receiving our Service Access Cards are nontransferable and are the exclusive property of DIRECTV. If you tell us that the original Access Card was lost, damaged, defective or stolen, we will replace it, as long as there is no evidence of unauthorized tampering with or modification of the Access Card and your account is in good standing. A replacement fee may apply (described in Section 2). Tampering with or other unauthorized modification of the Access Card is strictly prohibited and may result in criminal or civil action. Tampering with or inserting any device into your receiver other than an authorized unmodified Access Card is prohibited DIRECTV reserves the right to cancel or replace the Access Card. Upon request, the card must be returned to DIRECTV. If you do not return the Access Card to DIRECTV when you cancel your Service, you may be charged a fee as described in Section 2 Requesting Access Cards on behalf of other persons or for purposes other than lawful viewing of DIRECTV Service is prohibited.

(f) Phone Connections. For optimal performance of your Receiving Equipment, including ordering with your remote control or receiving certain Services, each of your receivers must be directly connected to the same land-based telephone line. If you add Service on additional TVs, you may purchase a separate subscription for each additional TV, or, if all your receivers are continuously connected to the same land-based telephone line, we can "mirror" programming to your additional TVs and charge you only the fee amount described in Section 2. You agree to provide true and accurate information about the location of your receivers. If we detect that any receiver is not regularly connected to a land-based telephone line, we may investigate and, if it is determined that the receiver is not at the location identified on your account, we may disconnect the receiver or charge you the full programming subscription price for the receiver.

(g) Mobile Units We provide Service to Receiving Equipment installed in mobile units such as campers, boats and other recreational vehicles. However, this Receiving Equipment is not eligible for the additional TV authorization discount described in Section 1(f)

(h) Private Viewing. We provide Service only for your private non-commercial use, enjoyment and home viewing The programming may not be viewed in areas open to the public or in commercial establishments. You may not rebroadcast, transmit or perform the programming, charge admission for its viewing or transmit or distribute running accounts of it You may not use any of our trademarks. Notwithstanding the provisions of Section 9, we or any programming provider may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the Federal Communications Commission and other applicable laws

(i) Blackouts. Certain programming, including sports events, may be blacked out in your local reception area. Blackout restrictions are decided by the sports leagues and the other entities that own the local broadcast rights. You may visit directv.com for more blackout information. If you circumvent or attempt to circumvent any of these blackouts, you may be subject to legal action.

(j) Loss of Receiving Equipment You should notify us immediately if your receiver, remote control or receiving antenna dish (referred to collectively as "Receiving Equipment") is lost or stolen. If you notify us within 5 days, we will not charge you for unauthorized use. In any case, we will not charge you for unauthorized use occurring after we receive your notice. For leased Receiving Equipment, non-return fees as specified in the Equipment Lease Agreement will apply.

(k) Transfer of Receiving Equipment. We consider you to be responsible for, and the recipient of programming on, any Receiving Equipment you own You are liable for charges incurred in the use of your Receiving Equipment by others until you notify us of a transfer Leased Receiving Equipment may not be transferred.

(l) Your Viewing Restrictions. It is your responsibility to impose any viewing restrictions on other family members or guests, as you think appropriate. We are not responsible to you or anyone else based on the content of our programming. Please visit directv com for information on parental controls, locks and limits and password protection on your account.

(m) Change of Address. You must notify us immediately of any change in your name, mailing address, residence address or telephone number.

2. PAYMENT

In return for receiving our Service, you promise to pay us as follows:

(a) Programming You will pay in advance, at our rates in effect at the time for all Service ordered by you or anyone who uses your Receiving Equipment, with or without your permission, until the Service is canceled. The outstanding balance is due in full each month. To establish service, you were required to provide a credit card You may use this or another credit or debit card to establish recurring payments. See Section 5(e) regarding payment upon cancellation. We may, in our discretion, accept partial payments, which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us We may reduce your Service to a minimum service level, at our rates in effect at the time, or deactivate your Service if you do not pay your statements on time, after any applicable grace period

(b) Taxes. You will pay all state and local taxes or other governmental fees and charges, if any, which are assessed.

(c) Administrative Fees. To control the basic charges which apply to all customers, we may charge fees that arise in specific circumstances only to those customers responsible for them. The list below is not exclusive, and DIRECTV reserves the right to modify these fees or charge additional fees. **In each case, we will charge you the lesser of the fee listed or the maximum amount permitted under applicable law:**

(1) *Up to $100 Account Activation Fee,* upon activation of your Service account.

(2) *Up to $300 Access Card Replacement Fee,* if you lose or fail to return your Access Card (a partial credit may be posted to your account if the Access Card is later returned). If you request overnight delivery of a replacement Access Card, a shipping and handling fee of up to $16 50 applies.

(3) *Up to $6.00 Additional TV Authorization Fee* in connection with obtaining Service on each additional TV connected to Receiving Equipment you own, provided you meet the qualifications specified in Section 1(f) and the Receiving Equipment is located at your residence. Customers with leased Receiving Equipment do not pay this fee, but pay the Lease Fee specified in the Equipment Lease Agreement

(4) ***Up to $5.00 Late Fee:*** **If we do not receive your payment by the due date on your bill, we may charge you an administrative late fee of (i) $5.00; or (ii) the maximum amount permitted under and subject to applicable law per month or partial month until the delinquent amount is paid in full.** This late fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature. You acknowledge that this fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations as set forth by the law in your state.

(5) *Up to $10 00 Change of Service Fee,* if you change your Service package to a lower-priced package. See also Section 5(b).

(6) *Up to $10.00 Phone Payment Fee,* if you elect to pay any outstanding balance over the telephone with an agent. To avoid this fee, you can pay your bill through our Automated Phone System by saying "Pay my bill," or at directv.com.

(7) *Deposits.* We may require that you provide a deposit prior to or after activation of your Service, which we may apply against any unpaid amount at any time. Deposits will appear on your bills as credits, from which we will deduct our charges Deposits will not earn interest.

(8) *Up to $5.00 Order Assistance Fee,* if you order a Pay Per View Service by calling and speaking with an agent. A fee of up to $1 50 may apply if you order via our Automated Phone System Fees are per movie, event or program so ordered, even if later canceled. There is no order assistance fee for orders placed at directv.com

(9) *Up to $15 00 Deactivation Fee* if you cancel your Service or we deactivate your Service because of your failure to pay or for some other breach on your part

(10) *Up to $1.75 Duplicate Statement Fee* for each statement request

(11) *Up to $2.75 Ledger Request Fee* for ledger itemizing past payments on your account

(12) *Up to $20.00 Returned Payment Fee,* if any bank or other

financial institution refuses to honor any payment, draft or instrument submitted for payment on your account You acknowledge that this fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unsatisfied payment.

(d) Billing Statements. We will send you a statement for each billing cycle (usually once every 30 days) unless you have a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle. Statements will show: (1) payments, credits, purchases and any other charges to your account, (2) the amount you owe us and (3) the payment due date If you elect to make automatic credit or debit card payments, you will not receive monthly statements unless you request that they be sent.

(e) Questions About Your Statement If you think your statement is incorrect or if you need more information about it, contact us immediately We will try to resolve any complaints you have as promptly as we can.

You must contact us within 60 days of receiving the statement in question. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible reduction or deactivation of Service.

Remember, if your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information on your bill

(f) Consents Regarding Credit. In order to establish an account with us, you authorize us to inquire into your creditworthiness (subject to Section 6), by checking with credit reporting agencies If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies. Due to the subjective nature of creditworthiness, we reserve the right to require prepayment for any Service via cashier's check, money order or credit card, notwithstanding your credit rating, past history or practice.

(g) Collection Costs. To the extent permitted by law, you will pay us any costs and fees we reasonably incur to collect amounts you owe us

3. CUSTOMER INFORMATION

(a) Representations. You represent that you are at least 18 years of age and a resident of the United States.

(b) Contact Information. You agree to provide true, accurate, current and complete contact information about yourself, and maintain and promptly update your contact information to keep it true, accurate and complete. If you provide a cellular telephone number, you acknowledge and consent that we may call you on your cellular phone for business purposes, including collections calls

(c) Online Access. You are responsible for maintaining the confidentiality of the password and account e-mail address used for online billing and account maintenance at directv.com, and are fully responsible for all activities that occur under your password and account. You agree to: (i) keep your e-mail address and password confidential and not share them with anyone else; (ii) immediately notify DIRECTV of any unauthorized use of your password and account or other breach of security and (iii) use only your e-mail address and password to log in to directv com.

4. CHANGES IN CONTRACT TERMS

We reserve the right to change the terms and conditions on which we offer Service. If we make any such changes, we will send you a copy of your new Customer Agreement containing its effective date You always have the right to cancel your Service, in whole or in part, at any time, and you may do so if you do not accept any such changed terms or conditions See Sections 5(b), (d) and (e) below. If you elect not to cancel your Service after receiving a new Customer Agreement, your continued receipt of Service constitutes acceptance of the changed terms and conditions. If you notify us that you do not accept such terms and conditions, then we may cancel your Service as provided in Section 5, as we cannot offer Service to different customers on different terms, among other reasons

5. CANCELLATION

(a) Term. The term of this Agreement is indefinite and Service will continue until canceled as provided herein Unless you notify us that you wish to cancel it, we will automatically renew Service that you subscribe to on a periodic basis, including any monthly or annual subscriptions and seasonal sports subscriptions, as long as we continue to carry the Service.

(b) Your Cancellation You may cancel Service by notifying us. You may be charged a deactivation fee as described in Section 2 and issued a credit as described below. Your notice is effective on the day we receive it. You will still be responsible for payment of all outstanding balances accrued through that effective date In addition to any deactivation or change of service fees provided in Section 2, if you cancel Service or change your Service package, you may be subject to an early cancellation fee if you entered into a programming agreement with DIRECTV in connection with the Equipment Lease Agreement, and have failed to maintain the required programming package for the required period of time For Services sold only in blocks of one month or multiples of one month, if you cancel such Service, we will credit you only for full months not used For example, if you subscribe for a year of such Service from January through December but cancel on March 10, we will credit you for the subscription fees for April through December However, we will not credit any fees for January through March. Additionally, we will not credit seasonal sports subscriptions after the season starts.

(c) Our Cancellation We may cancel your Service at any time if you fail to pay amounts owing to us when due, subject to any grace periods, breach any other material provision of this Agreement, or act abusively toward our staff In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date, including the deactivation fee described in Section 2. In addition, we may cancel your Service if you elect not to accept any changed terms described to you, as provided in Section 4.

(d) Credit Balances When your account is closed, we will review your account and refund any excess monetary payments. Unused portions of retention or similar credits will not be refunded If your credit balance is less than $1.00 we will not issue you a refund unless you make a written request for the refund If you do not make such a written request for the refund within one year of the close of your account, you forfeit any credit balance remaining on your account and your account balance will be reset to zero

(e) Payment Upon Cancellation You acknowledge that you have provided your credit or debit card account information to us. You understand that you will incur fees and charges as a result of your receipt and use of Service and/or Receiving Equipment, and may incur early cancellation fees and/or equipment non-return fees (as specified in any lease, programming or other service commitment agreement you entered into in connection with obtaining Receiving Equipment) By giving us your credit or debit card account information at any time, you authorize us to apply this method of payment, in accordance with applicable law, to satisfy any and all amounts due upon cancellation. You further acknowledge that you are required to maintain current credit or debit card information with us and agree to notify us whenever there is a change in such information, such as a change in the card number or the expiration date.

6. PERSONAL DATA

We collect Personally Identifiable Information about our customers ("Personal Data") The use and disclosure of this Personal Data is governed by our Privacy Policy and, to the extent not inconsistent with the Privacy Policy, by this Agreement. A copy of our Privacy Policy is available at directv.com. We will also send you a copy if you send your written request to this address: DIRECTV Privacy Policy, P.O. Box 6550, Greenwood Village, CO 80155-6550.

7. DIRECTV® DVR SERVICE AND SOFTWARE LICENSE

DIRECTV DVR Service is a separately sold service, at our rates in effect at the time, available to customers with DVR-enabled Receiving Equipment. DIRECTV DVR Service gives you the ability to see and record televised programs ("Third Party Content"). You understand that DIRECTV does not guarantee the access to or recording of any particular program, or the length of time any particular recorded program may remain available for your viewing You also understand that Third Party Content is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten or redistributed without the written permission of the third party that supplied it, except to the extent allowed under the "fair use" provisions of the U S copyright laws or comparable provisions of foreign laws. You agree that DIRECTV will have no liability to you, or anyone else who uses your DIRECTV DVR Service, with regard to any Third Party Content. DIRECTV may, at its discretion, from time to time change, add or remove features of the DIRECTV DVR Service, or change the service fee for DIRECTV DVR Service.

We generally use local telephone calls to provide the DIRECTV DVR Service. You are responsible for such telephone charges and acknowledge and agree that you shall be solely responsible for all disputes with any telephone company related to the same.

If you paid a "lifetime service fee," you will not be charged a fee for your DIRECTV DVR Service as long as you maintain television programming service from DIRECTV on the same account If you disconnect your DIRECTV television programming service and later reconnect on the same account, your DIRECTV DVR Service will be reconnected and you will not be charged a fee for DIRECTV DVR Service.

The DIRECTV Receiving Equipment incorporates Software which is owned by DIRECTV or its third party licensors Before using the Receiving Equipment or activating the DIRECTV DVR Service, please read the terms and conditions for use of the Software. If you do not agree to these terms you may not use the Receiving Equipment and may not activate the DIRECTV DVR Service and should immediately return the Receiving Equipment to DIRECTV or your supplier. These terms also apply to any modifications, updates or supplements to the Software provided to you Below is a summary of the terms of the Software license A complete text of the terms and conditions for use of the Software is located in the user manual and at directv com.

(a) License Grant and Conditions DIRECTV grants you a non-exclusive, non-transferable, limited license to use the Software solely in executable code form and solely as integrated with, incorporated into, and in conjunction with the Receiving Equipment. Certain third party Software used in connection with the Receiving Equipment may be made directly available to you by the providers thereof DIRECTV reserves the right to modify, supplement, update and otherwise alter the Software via software download or other modification procedures, and these terms will apply to such Software as modified, supplemented, updated, and otherwise altered

(b) License Restrictions You may not copy, modify or transfer the Software, or any copy thereof, in whole or in part. You may not reverse engineer, disassemble, decompile or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent allowed under any applicable law The Software may include some components that are covered by "free software" licenses, open source software, and other similar license use rights which require such components to be used, modified and/or distributed only under the terms of such licenses.

(c) Ownership of Software and Reservation of Rights. The Software is licensed, not sold, to you for use only under the terms of this license agreement, DIRECTV is NOT transferring title or any ownership rights in the Software to you and DIRECTV and its suppliers reserve all rights not expressly granted to you Except as stated above, this license agreement does not grant to you any intellectual property rights in the Software

(d) Termination These terms are effective until terminated You may terminate these terms by returning the Receiving Equipment to DIRECTV or your supplier. These terms will terminate automatically without notice if you fail to comply with these terms or any other agreement between you and DIRECTV. Upon termination you must return the Receiving Equipment to DIRECTV or your supplier.

(e) Disclaimer THE SOFTWARE IS TO THE EXTENT PERMITTED BY LAW SUPPLIED AS IS AND WITH ALL FAULTS. NEITHER DIRECTV NOR ANY OF ITS LICENSORS EXPRESSLY MAKES OR PASSES ON TO YOU ANY WARRANTY OR REPRESENTATION ON BEHALF OF DIRECTV OR ITS LICENSORS WITH RESPECT TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS

(f) Limitation of Liability. IN NO EVENT WILL DIRECTV OR ITS LICENSORS BE LIABLE TO YOU WITH RESPECT TO THE SOFTWARE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGE (INCLUDING LOSS OF PROFITS, LOST SAVINGS, LOSS OF DATA OR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES) ARISING OUT OF THE USE OR THE INABILITY TO USE THE SOFTWARE, EVEN IF DIRECTV OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY A THIRD PARTY. Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to you

(g) Additional Information. DIRECTV's licensors and suppliers shall be third party beneficiaries of these license terms, as applicable. Certain additional terms and information for the Software and certain third party software (including the text of licenses applicable to any free, open source and other similar software that may be included in the Software), may be found in the DIRECTV website located at www.directv.com, and the GNU website located at www.gnu.org.

(h) Third-Party Beneficiary. DIRECTV and you expressly acknowledge and agree that TiVo, Inc., a Delaware corporation with its principal place of business at 2160 Gold Street, Alviso, CA 95002, is an intended third-party beneficiary of this license agreement as it relates to TiVo software that may be contained in the Receiving Equipment These license provisions are made expressly for the benefit of TiVo and are enforceable by TiVo in addition to DIRECTV

8. LIMITS ON OUR RESPONSIBILITY

(a) Service Interruptions Service may be interrupted from time to time for a variety of reasons. We are not responsible for any interruptions of Service that occur due to acts of God, power failure or any other cause beyond our reasonable control However, because we value our customers, for an interruption of a significant length of time that is within our reasonable control, upon your request we will provide what we reasonably determine to be a fair and equitable adjustment to your account to make up for such Service interruption. THIS WILL BE YOUR SOLE REMEDY AND OUR SOLE DUTY IN SUCH CASES.

(b) WARRANTY DISCLAIMER. EXCEPT AS PROVIDED HEREIN, WE MAKE NO WARRANTY REGARDING ANY SERVICE OR YOUR RECEIVING EQUIPMENT, WHICH IS PROVIDED AS IS. ALL SUCH WARRANTIES, INCLUDING, THE IMPLIED WARRANTIES OF MERCHANTIBILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. YOU BEAR THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE RECEIVING EQUIPMENT AND ARE RESPONSIBLE FOR THE ENTIRE COST OF ANY NECESSARY REPAIR.

(c) Limitations of Liability. WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE RECEIVING EQUIPMENT OR ANY SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE REGARDLESS OF THE CAUSE, OUR TOTAL LIABILITY FOR DAMAGES OR LOSSES TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE WILL IN NO EVENT EXCEED THE AMOUNT THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. You may have greater rights than described above under your state's laws. You should consult them.

(d) Warranty Services. You agree that this Agreement does not provide for, and the Service does not include, any warranty services or other services that we might provide separately, including, without limitation, any fee based or other programs.

9. RESOLVING DISPUTES

In order to expedite and control the cost of disputes, you and we agree that any legal or equitable claim relating to this Agreement, any addendum, or your Service (referred to as a "Claim") will be resolved as follows:

(a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start a formal proceeding (except for Claims described in Section 9(d) below) for at least 60 days after one of us notifies the other of a Claim in writing You will send your notice to the address on the first page of this Agreement, and we will send our notice to your billing address

(b) Formal Resolution Except as provided in Section 9(d), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the "JAMS Rules") and under the rules set forth in this Agreement. If there is a conflict between JAMS Rules and the rules set forth in this Agreement, the rules set forth in this Agreement will govern **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL.** You may, in arbitration, seek any and all remedies otherwise available to you pursuant to your state's law If you decide to initiate arbitration, you agree to tell us in writing the amount that you would pay to file a lawsuit against us in the appropriate court of law in your state. Unless we agree to pay your fee for you, you only need to pay an arbitration initiation fee equal to such court filing fee, not to exceed $125, we agree to pay any additional fee or deposit required by JAMS to initiate your arbitration. We also agree to pay the costs of the arbitration proceeding Other fees, such as attorney's fees and expenses of travel to the arbitration, will be paid in accordance with JAMS Rules We waive any rights we may have under the Rules to seek attorneys fees and costs from you if we prevail in the arbitration The arbitration will be held at a location in your hometown area unless you and we both agree to another location or telephonic arbitration To start an arbitration, you or we must do the following things:

(1) Write a Demand for Arbitration. The demand must include a description of the Claim and the amount of damages sought to be recovered. You can find a copy of a Demand for Arbitration at www. jamsadr.com.

(2) Send three copies of the Demand for Arbitration, plus the appropriate filing fee, to:

JAMS
500 North State College Blvd., Suite 600
Orange, CA 92868
1-800-352-5267

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DIRECTV EQUIPMENT LEASE AGREEMENT

☐ Check here if you are a new DIRECTV customer

☐ Check here if you are current DIRECTV customer upgrading, adding or replacing boxes

Thanks for choosing DIRECTV! This Equipment Lease Agreement (ELA) has important terms and conditions regarding your lease of equipment. By "equipment," we mean the receiver or "box," access card in the box, and remote control (not the dish and/or cabling). You received the DIRECTV Customer Agreement with your DIRECTV Order Confirmation. The Customer Agreement, together with this ELA, comprise the terms of your service agreement with DIRECTV. Please be sure to read and keep copies of both. They are also available at www.directv.com/legal.

You understand and agree that you did not buy the equipment, do not own the equipment, and must use and return the equipment as explained in your service agreement with DIRECTV. The equipment you lease may be new or reconditioned.

PART ONE:
Part One of this agreement only applies to new customers, or to our existing customers who decide to upgrade or add an additional box (or boxes) to their account. **If you received this agreement in connection with simply replacing like for like boxes (e.g., standard definition for standard definition, HD for HD), please skip to Part Two below, which applies to all customers.**

PROGRAMMING AGREEMENT AND TERM. To keep costs down for you, we provide dishes and standard installation at reduced or no cost. In exchange, we ask that you remain a customer for a specified period of time. Specifically, you agree that within 30 days of getting DIRECTV equipment (either provided to you or installed professionally), you will activate your boxes and subscribe to a base level of programming valued at $29.99/mo or above, which may consist of a DIRECTV base programming package (English or Spanish language); Jadeworld; OR, a qualifying international-language a la carte service bundled with either BASIC CHOICE or PREFERRED CHOICE. If you selected a DVR, you also agree to activate DVR service ($7/mo.). Whole-Home DVR service is additional ($3/mo.). If you selected an HD box, you also agree to activate HD Access ($10/mo.). If you selected an HD-DVR box, you agree to activate both DVR service and HD Access. If you do not activate each box, you agree that DIRECTV or the authorized retailer from whom you obtained the equipment may charge you $150 per box as liquidated damages. **You agree to continuously maintain the minimum level of programming with us as follows: New customers: 24 consecutive months. Existing customers: 24 consecutive months for DVR, HD and/or HD-DVR boxes, or 12 consecutive months for standard boxes.**
THIS AGREEMENT TO MAINTAIN PROGRAMMING IS SEPARATE AND DIFFERENT FROM ANY OTHER YOU MAY HAVE MADE WITH DIRECTV AND IS FULLY ENFORCEABLE UNDER THESE TERMS.

EARLY CANCELLATION FEE. If you do not maintain your base level of programming for the full term, we will charge you an early cancellation fee. The maximum fee is $480 for new customers, $480 for existing customers with DVR, HD and/or HD-DVR boxes, or $240 for existing customers with only standard boxes. We prorate the fee, so for each month you've fulfilled your programming term agreement, we deduct $20 from the fee (i.e., if you have fulfilled 14 mos. of a 24 mo. agreement, your ECF would be $480 - $20 x 14, or $200). We reserve the right to charge this fee to the credit or debit card you have on file with us. We do not charge an ECF if you decide to cancel your DVR Service or HD Access early, so long as you maintain the base level of programming. However, upon cancellation of DVR Service and/or HD Access, you are required to return the equipment used in connection with these services to DIRECTV as described in Part Two below.

PART TWO:
MONTHLY FEES FOR ADDITIONAL BOXES. There is no additional monthly fee for one box. If you have 2 boxes, the fee is $6/mo. For the 3rd and each other box on your account, you are charged either a lease fee for rental of the box or an additional TV authorization fee of $6/mo. per box, depending on whether you lease or own the additional boxes. Sales, use or other taxes may apply. Fees are subject to change at any time.

WARRANTY DISCLAIMER. You are responsible for the loss of, damage to or the entire cost of any necessary service or repair of the leased DIRECTV equipment. You have no right to sell, give away, transfer, pledge, mortgage, alter or tamper with the equipment. DIRECTV PROVIDES THE EQUIPMENT AS IS AND WITH ALL FAULTS. YOU BEAR THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE EQUIPMENT. DIRECTV MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, REGARDING THE EQUIPMENT PROVIDED TO YOU. ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTIBILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED UNLESS OTHERWISE PROHIBITED BY YOUR STATE'S LAW. DIRECTV IS NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE EQUIPMENT PROVIDED TO YOU.

CUSTOMER SERVICE. In the event your leased equipment does not operate, please contact DIRECTV at 1-800-531-5000.

EQUIPMENT RETURN, NON-RETURN FEES. If you cease to be our customer (whether voluntarily or involuntarily), you must contact DIRECTV within 7 days of termination of your base level of programming to arrange for an equipment return kit or kits, and instructions on how to return your leased equipment (boxes, access cards and remotes). Leased equipment must be returned in good working order, normal wear and tear excepted. If we haven't received your equipment within 21 days of termination of your base level of programming, or if the equipment is returned in damaged condition, we will charge you $45 for each standard box, $175 for each DVR box, $125 for each HD box, and $250 for each HD-DVR, so please promptly attend to your equipment return. We reserve the right to charge these fees to the credit or debit card you have on file with us. If you are leasing a DVR, HD or HD-DVR box and decide to terminate DVR service or HD Access or both, as applicable, you agree to return that advanced equipment (and replace with standard box(es) if you are not terminating your base level of programming), in accordance with this paragraph or we will you charge you the stated fees. Visit DIRECTV.com or call 1-800-531-5000 for details.

ARBITRATION. You and DIRECTV agree that both parties will resolve any dispute under this ELA, the DIRECTV Customer Agreement, or regarding your DIRECTV service, through binding arbitration as fully set forth in the DIRECTV Customer Agreement.

AUTOMATIC PAYMENT REAUTHORIZATION. If you enrolled in auto-bill pay when signing up for service over the phone or through a retailer, by signing below, you confirm and reauthorize automatic payments for your DIRECTV service to the credit or debit card or bank account that you selected.

BY SIGNING I AUTHORIZE AND AGREE THAT DIRECTV MAY, AT ITS SOLE OPTION, CHARGE THE FEES DESCRIBED HEREIN. I WARRANT THAT I AM 18 YEARS OLD OR OLDER AND THAT ALL INFORMATION SUPPLIED BY OR ABOUT ME IS ACCURATE. I AGREE TO THE ABOVE TERMS AND CONDITIONS.

Customer Signature _____ Print Name _____ Date _____

White copy: HSP Office Yellow copy: Customer
CLA (0511)

2011 DIRECTV, Inc.

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CONTRATO DE LOCACIÓN DE EQUIPOS DE DIRECTV

☐ Tilde aquí si usted es un cliente nuevo de DIRECTV

☐ Tilde aquí si usted ya es cliente de DIRECTV y está actualizando equipos, agregando o remplazando decodificadores

¡Muchas gracias por elegir DIRECTV! El presente Contrato de Locación de Equipos (CLA) establece términos y condiciones importantes sobre los equipos que usted recibe en locación. En este contrato, el término "equipos," nos referimos al receptor o "decodificador," a la tarjeta de acceso del decodificador, y al control remoto (no nos referimos ni al plato de la antena ni al cableado). Usted recibió el Contrato con el Cliente de DIRECTV conjuntamente con su Confirmación de Pedido de DIRECTV. Tanto el Contrato con el Cliente como el presente CLA estipulan los términos de su acuerdo de servicios con DIRECTV. Tenga a bien leerlos y conservar copias de ambos. También puede acceder a ellos en www.directv.com/legal.

Usted comprende y acepta que no ha comprado los equipos, que usted no es el propietario de los equipos y que debe utilizar los equipos y devolverlos del modo descripto en su acuerdo de servicios con DIRECTV. Los equipos que usted recibe en locación pueden ser nuevos o pueden ser equipos reacondicionados.

PARTE UNO:
La Parte Uno de este contrato es de aplicación sólo para clientes nuevos, o en el caso de clientes existentes que deciden actualizar sus equipos o agregar decodificadores adicionales a sus cuentas. **Si usted ha recibido este contrato en relación con una simple sustitución de equipos del mismo tipo (p. ej., equipos de definición estándar por equipos de definición estándar, o equipos de alta definición (HD) por equipos de alta definición (HD)), por favor pase directamente a la Parte Dos que aparece a continuación ya que ésta es de aplicación a todos los clientes.**

CONTRATO DE PROGRAMACIÓN Y PLAZO. Para ayudar a nuestros clientes a reducir costos, proporcionamos los platos de las antenas y la instalación estándar a precios reducidos o sin costo. A cambio, les pedimos a nuestros clientes que sigan siendo nuestros clientes durante un período de tiempo previamente establecido. Concretamente, usted conviene que dentro de los 30 días de haber recibido los equipos de DIRECTV (sea que dichos equipos hayan sido recibidos por usted o que hayan sido instalados profesionalmente) activará sus decodificadores y tomará un abono a un nivel básico de programación de $29.99/mes o superior, que puede ser un paquete de programación básico de DIRECTV (en idioma inglés o español); Jadeworld; Ó, un servicio "a la carta", en los idiomas internacionales en los que está disponible esta opción, vinculado ya sea con SELECCIÓN BÁSICA o SELECCIÓN PREFERIDA. Si usted hubiera elegido un DVR, usted también se compromete a activar su servicio de DVR ($7/mes.). El servicio de DVR para Todo el Hogar es adicional ($3/mes.). Si usted hubiera seleccionado un decodificador de HD, también se compromete a activar su HD Access ($10/mes.). Si usted hubiera seleccionado un decodificador HD-DVR, usted se compromete a activar tanto el servicio DVR como el HD Access. Si usted no activa cada decodificador, usted conviene que DIRECTV o el local de atención al público autorizado de quien usted haya recibido los equipos podrán cobrarle $150 por decodificador en concepto de indemnización contractual por daños y perjuicios. **Usted se compromete a mantener en forma continua el nivel mínimo de programación con nosotros de acuerdo con el siguiente detalle:**
Clientes nuevos: 24 meses consecutivos. Clientes existentes: 24 meses consecutivos en el caso de decodificadores para DVR, HD y/o decodificadores HD-DVR, ó 12 meses consecutivos para decodificadores estándar.
ESTE COMPROMISO DE MANTENER LA PROGRAMACIÓN ES INDEPENDIENTE DE CUALQUIER OTRO COMPROMISO QUE USTED PUEDA HABER ASUMIDO ANTE DIRECTV Y SU CUMPLIMIENTO ES EXIGIBLE EN VIRTUD DE LOS PRESENTES TÉRMINOS.

CARGO POR CANCELACIÓN ANTICIPADA. Si usted no mantuviera su nivel básico de programación durante el plazo completo, le debitaremos un cargo por cancelación anticipada. El cargo máximo es de $480 para los nuevos clientes, $480 para los clientes existentes que tienen decodificadores de DVR, HD y/o HD-DVR, ó $240 para los clientes existentes que sólo tienen decodificadores estándar. Aplicamos dicho cargo en forma proporcional, de modo tal que cada mes que usted haya cumplido con su compromiso de plazo de programación, deducimos $20 del cargo (es decir, si usted ha cumplido con 14 meses de un compromiso de 24 meses, su Cargo por Cancelación Anticipada se calcularía así: $480 - $20 x 14, es decir, $200). Nos reservamos el derecho de debitar este cargo de la tarjeta de crédito o de débito que usted nos hubiera informado oportunamente. No cobramos Cargo por Cancelación Anticipada si usted decide cancelar su Servicio DVR o su HD Access en forma anticipada en tanto y en cuanto usted mantenga el nivel básico de programación. Sin embargo, en el momento de cancelar su Servicio DVR y/o HD Access en forma anticipada, usted debe devolver a DIRECTV los equipos usados en relación con estos servicios tal como se describe en la Parte Dos a continuación.

PARTE DOS:
CARGOS MENSUALES POR DECODIFICADORES ADICIONALES. No se cobran cargos mensuales adicionales por un decodificador. Si usted tiene 2 decodificadores, el cargo es de $6/mes. En relación con el tercero, y con todo otro decodificador registrado en su cuenta, a usted se le cobra ya sea un canon locativo por el decodificador o un cargo de autorización de TV adicional de $6/mes por decodificador, dependiendo de que, o bien usted tenga los equipos en locación, o de que usted sea el propietario de los decodificadores adicionales. Pueden aplicarse impuestos a las ventas, al uso o de otra índole. Estos cargos pueden sufrir modificaciones en cualquier momento.

EXENCIÓN DE RESPONSABILIDAD POR GARANTÍA. Con respecto a los equipos de DIRECTV recibidos en locación, usted asume responsabilidad por su pérdida, por los daños que pudieran sufrir y por la totalidad del costo de cualquier servicio o reparación que fuera necesario realizarles. Usted no tiene ningún derecho de vender, donar, transferir, prendar, hipotecar, alterar ni modificar los equipos. DIRECTV PROVEE LOS EQUIPOS EN EL ESTADO EN QUE SE ENCUENTRAN Y CON TODOS SUS DESPERFECTOS. USTED ASUME LA TOTALIDAD DEL RIESGO EN CUANTO A LA CALIDAD Y EL FUNCIONAMIENTO DE LOS EQUIPOS. DIRECTV NO ASUME NINGUNA OBLIGACIÓN DE GARANTÍA, NI EXPRESA NI TÁCITA, CON RESPECTO AL EQUIPO QUE SE LE PROVEE. DICHAS GARANTÍAS, QUE INCLUYEN SIN CARÁCTER TAXATIVO, LAS GARANTÍAS IMPLÍCITAS DE APTITUD PARA SER COMERCIALIZADOS Y PARA SER USADOS CON UN FIN ESPECÍFICO, SE ENCUENTRAN EXPRESAMENTE EXCLUIDAS A MENOS QUE ALGUNA LEY DE SU ESTADO PROHÍBA ESTA EXCLUSIÓN. DIRECTV NO ASUME RESPONSABILIDAD ALGUNA POR LOS DAÑOS ESPECIALES, INCIDENTALES O INDIRECTOS RELACIONADOS CON LOS EQUIPOS QUE LE HAN SIDO ENTREGADOS.

SERVICIO AL CLIENTE. En el caso de que el equipo que usted recibió en locación no funcione, por favor póngase en contacto con DIRECTV llamando al 1-800-531-5000.

DEVOLUCIÓN DE LOS EQUIPOS, CARGO POR FALTA DE DEVOLUCIÓN. Si usted dejara de ser nuestro cliente (por su propia voluntad o no), debe comunicarse con DIRECTV dentro de los 7 días de la caducidad de su nivel básico de programación para coordinar la provisión de un kit o kits de devolución de equipos y las instrucciones sobre el modo de devolución del equipo que usted recibió en locación (los decodificadores, las tarjetas de acceso y los controles remotos). Los equipos recibidos en locación deben ser devueltos en buenas condiciones de funcionamiento, salvo por el desgaste normal por el transcurso del tiempo. Si dentro de un plazo de 21 días posterior a la caducidad de su nivel de programación básico nosotros aún no hubiéramos recibido los equipos, o si los equipos nos fueran devueltos en malas condiciones, le debitaremos un cargo de $45 por cada decodificador estándar, $175 por cada decodificador DVR, $125 por cada decodificador HD, y $250 por cada decodificador HD-DVR, con lo cual, mucho le agradeceremos nos devuelva los equipos con prontitud. Nos reservamos el derecho de debitar estos cargos de la tarjeta de crédito o de débito que usted nos ha informado oportunamente. Si usted ha recibido en locación un decodificador DVR, HD o HD-DVR y decide cancelar el servicio DVR o el HD Access o ambos, según corresponda, usted se compromete a devolvernos los equipos que le hemos adelantado (y a reemplazarlos por el/los decodificador(es) estándar(es) si usted no cancela su nivel básico de programación), según lo establecido en este párrafo ya que de lo contrario le debitaremos los cargos consignados. Si desea más información, sírvase visitar DIRECTV.com o llamar al 1-800-531-5000.

ARBITRAJE. Usted y DIRECTV se comprometen a que ambas partes resolverán cualquier litigio que surja de este CLA, del Contrato con el Cliente de DIRECTV o de los servicios contratados con DIRECTV recurriendo al arbitraje vinculante según se estipula en toda su extensión en el Contrato con el Cliente de DIRECTV.

REAUTORIZACIÓN DE PAGOS AUTOMÁTICA. Si usted se ha adherido a un sistema de pago automático de facturas en el momento en que contrató este servicio, ya sea telefónicamente o a través de un local de atención al público, al firmar el presente, usted confirmará y reautorizará los pagos automáticos de su servicio de DIRECTV con su tarjeta de crédito o de débito o de la cuenta bancaria que usted haya seleccionado.

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ACADEMIC APPOINTMENTS

Alva P. Loiselle Professor of Law, University of Connecticut, School of Law, 1992-present; Professor of Law, 1979-present; Associate Professor of Law, 1976-1979.

Visiting Professor, Harvard Law School, 1999-2000.

Adjunct Professor, NYU Law School, 1989-present.

Visiting Professor, NYU Law School, Fall 1988.

Distinguished Professor in Residence, Chulalongkorn Law School, Bangkok, January 1988.

Visiting Scholar, University of Tokyo Law School, December 1987.

Visiting Professor, Boston College, Fall 1987.

Visiting Scholar, Harvard Law School, 1984-1985.

Visiting Professor, University of Texas, Spring 1981.

Instructor of Law, Boston College Law School, 1975-1976.

Director, International Tax Program, Harvard Law School, 1973-1976.

Courses Taught

Federal Income Taxation, Corporate Income Taxation, International Taxation, Tax Policy, State and Local Taxation, American Indian Taxation.

EDUCATION

Harvard Law School, Cambridge, Massachusetts
J.D. 1972 *magna cum laude*

University of Michigan, Ann Arbor, Michigan
B.S. 1967 *summa cum laude*

RECENT PRIZES AND AWARDS

2014 Council on State Taxation (COST), Excellence in State Taxation Award.

2013 State Tax Person of the Year, Tax Analysts.

2012 University of Connecticut's Faculty Excellence in Teaching—Graduate Level.

Bureau of National Affairs (BNA), Distinguished Service in State and Local Tax Law (2011).

All Decade State Tax Team, State Tax Notes, 2010.

NYU Institute on State and Local Taxation, Outstanding Achievement in State and Local Taxation (2008).

PROFESSIONAL ACTIVITIES

Hearing Officer, Multistate Tax Commission, 2013.

BNA Tax Advisory Board, 2011-present.

Member, California Commission on the 21st Century Economy, 2009-2010.

Co-Reporter for the Revision of the Uniform Division of Income for Tax Purposes Act (UDITPA), 2008-2009.

Advisory Board, State Sales Tax Alert, 2008 - 2010.

Member, Connecticut Streamlined Sales Tax Commission, 2007 - 2008.

Advisory Board, Pew Charitable Foundation Tax Project, 2007 - 2008.

General Editor, Lexis Connecticut Practice Insights, 2006-present.

Member, Connecticut Business Tax Credit and Tax Policy Review Committee, 2005.

Consultant, State of Delaware, 2002.

Consultant, South Carolina Department of Revenue, 2002-2003, 2005-2006.

Consultant, Treasurer, State of New Jersey, 2002-2003.

Consultant, City of San Francisco, 2001-2003.

CH, State Tax Advisory Board, 2000-2011.

Advisory Board, Interstate Tax Report, 2000-2010.

BNA Tax Management State Tax Advisory Board, 2000-present.

Consultant, California Legislature, 2000.

Consultant, State of West Virginia, 2000.

Consultant, California Franchise Tax Board, 2000.

Consultant, Alaska Department of Revenue, 1999-2010.

Consultant, New York Department of Taxation and Finance, 1998-1999.

Consultant, Pew Charitable Foundation, 1998-2000.

Consultant, U.S. Department of the Treasury, 1997-2000.

Consultant, Tennessee Attorney General, 1998-1999, 2001-2003.

Consultant, Montana Department of Revenue, 1998-1999, 2004-2008.

Consultant, U.S. Department of Justice, 1997, 2001.

Advisory Board, Deloitte & Touche Center for Multistate Taxation at University of Wisconsin, 1997-present.

Consultant, Louisiana Department of Revenue, 1995-2000.

Consultant, Utah Attorney General, 1994-1995.

Property Revaluation Task Force, Connecticut Institute of Municipal Studies, 1993.

Consultant, IMF, 1993, 1999.

Consultant, Multistate Tax Commission, 1993, 1996-2004, 2009-2010

Consultant, Illinois Department of Revenue, 1993.

Consultant, North Dakota Department of Revenue, 1992-1993, 1999-2005.

Consultant, IRS, 1992-94.

Editorial Advisory Board, State Income Tax Alert, 1992-present.

Book Review Editor, State Tax Notes, 1992-1994.

Columnist, Natural Resources Tax Review, 1992-1993.

Member, Blue Ribbon Committee on Municipal Overburden for the City of Hartford, 1991.

Advisory Board, State Tax Notes, 1991-present.

Consultant, Texas Comptroller of Public Accounts, 1991, 2002-2004.

Advisory Board, Center for State and Local Taxation, 1990-present.

Short Review Editor, Tax Notes International, 1989-1994.

Member, Connecticut Task Force to Study and Evaluate State Tax Revenue and the Current Tax Base, 1989-1991.

Special Counsel, Connecticut Senate Majority Leader, 1989, 1991.

Consultant, Ministries of Justice and Finance, The Gambia, 1989 (HIID).

Member, Consulting Group on Tax Policy and its Impact on Land Use, Lincoln Institute of Land Policy, 1988-present.

Consultant, Ministry of Finance, Republic of Indonesia, 1988-1989 (HIID).

Instructor, NYU-IRS Continuing Legal Education Program, 1988, 1989, 1991.

Educational Leader, Soviet-American Legal Tour, 1987.

Consultant, Connecticut Conference of Municipalities, 1987, 1989, 1991.

Consultant, Connecticut Attorney General, 1986, 2002-2004.

Director, New York State Tax Study Commission, 1982-1987.

Consultant, Citizens for Tax Justice, 1981.

Consultant, Appalachian Research and Defense Fund, 1981.

Referee, National Tax Journal, 1980-present.

Consultant, World Bank, 1980.

Chairman of the Board, Institute on Taxation and Economic Policy, 1979-present.

Consultant, People's Republic of China, 1979-1982, 1987.

Advisory Committee, Assessment and Valuation Legal Reporter, 1979-1993.

Consultant, City of Hartford, 1978-1980.

Consultant, Connecticut Department of Education, 1978-1979.

Consultant, Hartford Chamber of Commerce, 1978-1979.

Consultant, United Nations Conference on Trade and Development, 1977-1978.

Consultant, Navajo Nation, 1977-82.

Consultant, U.S. Office of Technology Assessment, 1977.

Consultant, Ministry of Finance, Mexico, 1977.

Consultant, Commissioner of Taxation, Republic of Zambia, 1976-1978.

Consultant, United Nations Development Program, 1975.

Editor, *European Taxation*, and Research Associate, International Bureau of Fiscal Documentation, the Netherlands, 1972-1973.

Commissioned Officer, U.S. Public Health Service, 1968-1970.

PUBLICATIONS

BOOKS AND MONOGRAPHS

STATE TAXATION OF AMERICAN INDIANS, THE TRIBES AND THOSE DOING BUSINESS WITH THEM: SOVEREIGNTY, INDIAN COMMERCE CLAUSE, TREATIES AND STATUTES (BNA, 2014).

2014 CCH GUIDEBOOK TO CONNECTICUT TAXES (ED.) (EARLIER EDITIONS OMITTED).

REPORT OF THE HEARING OFFICER, MULTISTATE TAX COMPACT ARTICLE IV, PROPOSED AMENDMENTS (2013).

STATE AND LOCAL TAXATION–SEVENTH EDITION (2011) (earlier editions omitted).

TAXING SMARTER AND FAIRER: PROPOSALS FOR INCREASED ACCOUNTABILITY AND TRANSPARENCY IN THE CONNECTICUT TAX STRUCTURE (2005).

TAX PREFERENCES FOR EXTRACTIVE INDUSTRIES: OIL & GAS, COAL, NONFUEL MINERALS, TIMBER, AND FISHING (2000) (WITH M. MCINTYRE).

PEOPLE'S REPUBLIC OF CHINA: TAXATION AND THE RULE OF LAW (1999) (with J. Li et al).

CORPORATE TAX POLICY AND THE RIGHT TO KNOW: IMPROVING STATE TAX POLICYMAKING BY ENHANCING LEGISLATIVE AND PUBLIC ACCESS (1993).

THE REVERSE TRANSFER OF TECHNOLOGY: LEGAL AND ADMINISTRATIVE ASPECTS OF COMPENSATION, TAXATION AND RELATED POLICY MEASURES (1977) (with O. Oldman).

ARTICLES

The Apportionment of Income: Reflections on the Multistate Tax Commission's (MTC) Proposals to Revise the Uniform Division of Income for Tax Purposes Act (UDITPA), National Tax Association, 107th Annual Proceedings (2014).

*Apportionment Formula: Economische Unie en de Verdeling Van Inkomen, 24 Forfaitair 19 (2011) (*with Vlassaker*).*

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DIRECTV, Inc. & Subsidiaries, v. S.C. Department of Revenue
Professor Richard D. Pomp

I. Introduction

A. My Qualifications

I am currently the Alva P. Loiselle Professor of Law at the University of Connecticut Law School, and an adjunct Professor of Law at NYU Law School in the LL.M. Program in Taxation.

For nearly 40 years, I have studied, lectured, taught, published, consulted, and testified on issues of state taxation. I have served as a consultant to Alaska, California, Connecticut, Delaware, Hartford, Illinois, Kansas, Louisiana, Montana, New Jersey, New York, North Dakota, San Francisco, South Carolina, Texas, Utah, West Virginia, the Multistate Tax Commission, the Uniform Law Commission, the Internal Revenue Service, the Department of Justice, the U.S. Department of the Treasury, the International Monetary Fund, the World Bank, the United Nations, and numerous foreign countries. These assignments all involved issues of tax policy. Most notably, my service for the Uniform Law Commission and for the Multistate Tax Commission concerned issues before this court.

I have been qualified and testified as an expert witness on various aspects of state tax policy in Alabama, Alaska, California, Colorado, Connecticut, Delaware, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, New Jersey, New York, New York City, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Michigan, Texas, Utah, and West Virginia. Nearly 40% of these approximately ninety appearances have been on behalf of the states.

In 2014, I received the Council on State Taxation Award for Excellence in State Taxation. I was selected by Tax Analysts as the 2013 State Tax

Person of the Year. I won the 2012 University of Connecticut's Faculty Excellence in Teaching—Graduate Level prize. The Bureau of National Affairs (BNA) selected me for the Distinguished Service in State and Local Tax Law award in 2011. State Tax Notes placed me on its All Decade State Tax Team in 2010. In 2008, I was received the NYU Institute on State and Local Taxation, Outstanding Achievement in State and Local Taxation award.

My curriculum vitae, attached to this Opinion, describes my career in further detail.

B. Overview

1. The Facts

DIRECTV ("Taxpayer") is incorporated and headquartered in California. Taxpayer provides direct broadcast satellite services to customers throughout the country. More specifically, Taxpayer provides television programming through satellites directly to homes and businesses of individual customers.

The signal sent to the customers is the last step in an elaborate process that starts with Taxpayer contacting, negotiating, and acquiring television programming services from a variety of sources, including broadcast television networks (e.g., ABC, NBC, and CBS), local broadcast stations, and providers of cable programming (e.g., CNN, ESPN, and HBO).

This programming is transmitted to Taxpayer in a variety of ways, including by satellite, fiber-optic cable, and over-the-air broadcasts. The programming is collected at two major broadcast centers and regional "uplink centers," which contain equipment to receive, process, and transmit the programming to satellites in orbit. Taxpayer maintains local collection facilities throughout the country to receive local television stations. A few of these are in South Carolina.

The satellites then retransmit the programming directly to customers, who receive the signals through a small satellite dish located on, or near, their homes or businesses. The satellite dishes transmit the programming to a "set-top" box, which processes the signal received from the satellite dish and sends it to the customer's television sets.

Customers pay a monthly fee to receive basic programming but also have the option of paying more for premium channels and pay-per view programming. A separate charge is imposed for the rental of the set-top boxes.

The Taxpayer performs very few activities in South Carolina. For example, none of the persons who identify and select the programming, and conduct the negotiations to obtain that programming from the studios and networks and other sources are in South Carolina. None of the persons who design and program the space satellites, the uplink centers, the satellite dishes, and the set-top boxes are in South Carolina. None of the persons who design or install the fiber-optic cables for transmitting the programming to the uplink centers are in South Carolina. None of the technological equipment used by the Taxpayer is manufactured in South Carolina. Taxpayer has no offices in South Carolina. Nor does it have any significant collection, transmission, or distribution facilities in South Carolina.[1]

Some of the unique features of the Taxpayer over its competition are attributable to activities occurring outside of South Carolina. Unlike its competition, Taxpayer offers viewers the ability to access almost every NFL football game being broadcast across the country. Its exclusive arrangement to cover NFL games is one of the valuable assets of the Taxpayer—so valuable that its proposed merger with ATT was made contingent on the arrangement with the NFL remaining in place. The

[1] The activities and assets described above are provided or owned by Taxpayer and two related entities, as set forth in the economic analysis conducted by KPMG.

negotiation of the NFL arrangement and the broadcast of the football games all take place outside of South Carolina.

Taxpayer has a prime orbital slot for its satellites. This slot allows it to have continuous coverage over the entire North American continent, with a minimum of satellites, again an advantage having nothing to do with South Carolina.

2. The Issue Before the Court

The issue before this court involves the treatment of the subscription revenue Taxpayer receives from the provision of its programming services. During the audit period, 2006-2011, South Carolina used an apportionment formula based only on gross receipts:

$TI \times \text{Gross Receipts}_{SC}/\text{Gross Receipts}_{US}$.

Taxpayer treated the amounts received from customers for the rental of their set-top boxes as South Carolina gross receipts. Taxpayer treated the subscription revenue as non-South Carolina gross receipts. Consequently, the fraction used to apportion taxable income was rental receipts for South Carolina set-top boxes divided by Taxpayer's total gross receipts.

The Department of Revenue rejected this filing and included in the numerator of the receipts factor the subscription revenue from South Carolina subscribers. The Department defends this approach on the grounds that "the delivery of the signal into the homes and onto the television screens of [Taxpayer's] customers—that produces income for [Taxpayer].[2] This approach ignores the location of Taxpayer's income-producing activity and looks solely to the location of Taxpayer's customers. The Department characterizes all of Taxpayer's out-of-state activities as "lack[ing] any and all intrinsic value without the actual

[2] Department Determination, Feb. 18, 2014, unpaginated.

provision of programming to South Carolina customers."[3] "[E]ach and every one of the activities the taxpayer attempts to characterize as 'income producing' has no direct causal effect upon the generation of income."[4]

Consequently, the issue for the court is what portion of Taxpayer's subscription revenue should be included in the numerator of the gross receipts factor.

South Carolina characterizes receipts from services as South Carolina gross receipts if the entire income-producing activity is within South Carolina.[5] If the income-producing activity is performed partly within and partly without South Carolina, sales are attributable to South Carolina to the extent the income-producing activity is performed within South Carolina.[6] The South Carolina courts have held that revenue from the provision of engineering services should be sourced to South Carolina based on the "place of activity."[7]

3. Opinion Requested

I was not asked to opine on the legal issue before the court. As someone who has been involved with the general issue of situsing receipts from the provision of services, especially on behalf of the Uniform Law Commission and the Multistate Tax Commission, I was asked to provide from a policy perspective the considerations that might be useful in resolving the issue.

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[3] Id.
[4] Id.
[5] S.C. Code Ann. Sec. 12-6-2295 (2007).
[6] Id.
[7] Lockwood Greene Engineers, Inc. v. South Carolina Tax Commission, 361 S.E.2d 346 (S.C. Ct. App. 1987). See also Rent-A-Center Texas L.P. v. S.C. Dep't of Revenue, No. 09-ALJ-17-0206-CC at *8 (explaining that Lockwood Greene's interpretation of gross receipts from with South Carolina was codified at S.C. Code Ann. Sec. 12-6-2295).

II. Analysis

South Carolina is a separate reporting state, which apportions the unitary business income of separate taxpayer. To determine what portion of that income should be apportioned to South Carolina by service providers, the State has adopted the single-factor gross receipts formula described above. To determine the amount of gross receipts to be included in the South Carolina numerator of that fraction, the State looks to income producing activities in South Carolina.

A. The Policy Considerations Regarding Income Producing Activities

The Uniform Division of Income for Tax Purposes Act (UDITPA) was enacted in 1957 and became the centerpiece of the Multistate Tax Compact, drafted in 1966. Section 17 of UDITPA provides inter alia that:

Sales, other than sales of tangible personal property, are in this State if:

(a) the income-producing activity is performed in this State; or

(b) the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other State, based on costs of performance.

UDITPA, which also sets forth an equally-weighted, three-factor apportionment formula using payroll, property, and sales, has been explicitly adopted by many states; other states, like South Carolina, have been influenced by the provisions in UDITPA.

South Carolina can be characterized as sourcing gross receipts from the provision of services on a proportional basis. Unlike UDITPA, which assigns the receipts from services entirely to the state in which the

taxpayer incurs a plurality of its costs of performance, South Carolina assigns the receipts *to the extent* the income-producing activity is performed in the State. The difference can be illustrated by considering a corporation that conducts 3% of its income producing activities in 32 states and 4% in the 33rd state. Under a proportionate approach, each of the 32 states would be assigned 3% of the receipts and the 33rd state would be assigned 4% of the receipts. Under UDITPA, it is possible that the all of the receipts would be assigned to the 33rd state and nothing to the other 32 states. Because of the dissatisfaction with UDITPA's approach, some states like South Carolina use the proportionate approach.

Once the income generating activities are identified, the next step is to determine the extent to which the activities are performed in South Carolina. UDITPA uses costs of performance method to make this determination. UDITPA does not define what constitutes a "cost of performance" but payroll would be one of them. South Carolina does not explicitly reference costs of performance, which means other alternatives are available. These alternatives would properly include payroll, time spent in a state, or the location of income generating assets.

A state's choice in selecting a taxpayer's income generating activities and how to measure them is not unbridled. The United States Supreme Court has held that the factor or factors used in an apportionment formula must reflect a reasonable sense of how income is generated.[8] This test is known as "external consistency." Although this test was formulated by the Court under the Commerce Clause, it would also seem required under the Due Process Clause.

Suppose a taxpayer performs all of its services in State A and mails a document embodying those services to a customer in South Carolina. Assume the South Carolina Department of Revenue attributes the receipt for the service as being attributable to the State because that is where the

[8] Container Corp. of Am. v. Franchise Tax Bd., 463 U.S. 159, 169-70 (1983).

customer is located. Assume further that the net income from the service is $100. The Department's position would mean that 100% of the net income would be taxed by South Carolina, thus disregarding all of the income generating activities that took place outside the State. This position would be problematic under the external consistency test. In effect, it would say that none of the income was earned in the only state in which the taxpayer performed its activities. Moreover, under this approach, there could not be any income producing activities performed both within and without the State.

How to assign receipts of a service provider cannot be thought about independently of the components of the apportionment formula. South Carolina uses only one factor—gross receipts—to apportion income. If receipts are assigned based on where the customer is located, then the formula has the effect of disregarding all of the taxpayer's income generating activities. Such a result is indefensible from a policy perspective.

Ironically, the early apportionment formulas actually involved only one factor, but it was property and not sales. When UDITPA was being debated, there were economists who argued that only property and payroll should be elements of an apportionment formula—not receipts. And the one time when Congress suggested a federal apportionment formula, it too suggested that only property and payroll should be used.

UDITPA contains an equally-weighted three-factor formula. For economic development reasons, the states started weighting the sales factor more heavily, which led to the double-weighted sales factor. The latest iteration of these developments is the use of only sales in the apportionment formula.

No one defends the use of only sales to apportion income on sound tax policy grounds. Compared with formulas that use property and payroll, a single-factor sales formula is viewed as encouraging the location or

expansion of companies in the taxing state that sell outside the taxing state.

III. Conclusion

Opinions can differ regarding how to situs or locate the receipts of a service provider. The South Carolina Legislature has decided, however, that if the income-producing activity is performed partly within and partly without the State, then the sales are attributable to South Carolina to the extent the income-producing activity is performed within South Carolina.

The Tax Department disregards that statutory provision by characterizing Taxpayer's non-South Carolina activities as lacking intrinsic value, and as having no direct causal effect on the generation of income. This position produces the indefensible result that a Taxpayer that has hundreds of millions of dollars in payroll and property outside South Carolina that it uses to produce a service that it sells entirely in South Carolina will apportion all of its income to South Carolina, as if its non-South Carolina activities had nothing to do with the generation of its income.

The Department seems to be saying that "but for" the delivery of the signal to the South Carolina customer there would be no income. But that proves too much. "But for" the activities outside the State there would no income as well. Every income producing activity can be made to look like the key to the taxpayer's income by simply applying a "but for" test to that activity. Even assuming that providing a service to a South Carolina customer is an income-producing activity, it is not the only such activity.

Opinions can also differ on how to measure the extent to which income producing activities should be viewed as taking place in South Carolina. But from a policy perspective, answering that question by simply ignoring the outside activities is unacceptable.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DIRECTV, Inc., Petitioner, vs. South Carolina Department of Revenue, Respondent.	) CIVIL ACTION NO.) 14-ALJ-17-0158-CC

* *

DEPOSITION OF: JOHN A. SWAIN

DATE TAKEN: Tuesday, December 16, 2014

TIME: 10:30 a.m.

PLACE: 17th Floor
1320 Main Street
Columbia, SC

REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

* *

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CHARLESTON, SOUTH CAROLINA 29413-1784

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Page 26

here?
A No.
Q I would like to go back to page 45. And the first full paragraph on page 45, it is the paragraph that starts, "There is, however," could you take a moment and review that paragraph?
A Okay.
Q This paragraph discusses criticisms of UDITPA's Section 17, correct?
A Right.
Q Could you read into the record the last sentence starting with "Accordingly"?
A Yes. It says, "Accordingly, as a matter of policy, states adopting a market-oriented approach for service providers have embraced a much sounder solution to the problem of attributing the receipts of service providers than those states that rely either on UDITPA's cost-of-performance methodology or on the traditional rule of assigning services to the state in which they are performed."
Q Do you agree with that statement?
A Let me read it now. Yes.
Q As we discussed previously, the treatise at least would put South Carolina in the category of states that has not adopted a market-oriented approach,

Page 27

would you agree with that?
A No. I don't agree with that.
Q And why not?
A Well, there are some states, the state that I practice law in, for example, is one of them that have rules or have interpreted the phrase income-producing activity in a market-oriented way, they reach a market-based result even though they don't -- haven't expressly adopted statutes that say that. And in the section of treatise where we are identifying a market-oriented approach, we are identifying states that have recently amended their statutes, largely under a recent trend to do that as states have moved to single sales factor apportionment, but some of those approaches are quite old, like the Iowa statute.
So no, I wouldn't say that those are the -- that the states we list in the treatise are the only ones that, in fact, are -- have a market-based approach.
Q I think the treatise here says that they were either -- you know, adopting a market-oriented approach. I think we talked before, you disagree with the characterization, but again how the treatise characterizes South Carolina, we discussed previously note 58 on Table -- 58 on Table 9-8 that the treatise

Page 28

says that South Carolina -- that receipts are sourced only to the extent the service was performed in this state.
So again, does the -- you know, does the treatise, would the treatise list include South Carolina as those states that have not adopted a market-oriented approach?
A I am a little bit lost. It sounds like you are referring back to the RIA table.
Q Which is part of the treatise, correct?
A It is included in the treatise and it includes a paraphrase of the South Carolina statute which may work in some cases; but depending on what you mean by performed, the South Carolina statute is what it is. It says income-producing activity. It doesn't say where performed; and to the extent that there is a legal difference there, I would say that -- not so much that the treatise is incorrect, but it is stating a general proposition without every particular nuance, exception to that general proposition.
Just like earlier, it said that -- you know, we said, what, the South Carolina statute resembled UDITPA. It is a general statement. It doesn't mean it is identical to, will be interpreted the same as UDITPA and so on.

Page 29

Q And you mentioned that -- you mentioned that you disagree with that, in part, because some states have adopted -- have adopted a market oriented or market-based approach to interpreting their particular statutes and you mention Arizona. Has South Carolina done that?
A Has South Carolina done?
Q Has South Carolina adopted a market-based approach to interpreting statutes?
A In this case it has.
Q And what document says that or what case or what authority can you rely on for that statement?
A The director's decision.
Q And from a -- as a matter of tax policy, is that good tax policy that a -- that an approach can just be laid out as a general rule in a Department determination?
A It needs to be consistent with the statute.
Q Okay. And so that's what you are relying on for -- that's what you are relying on for your response here as far as South Carolina adopting a market-oriented approach?
A Well, you are using the word adopting and --
Q I am just using I think what you said or, you know, they have -- a state that has interpreted their

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Page 30

statute to apply a market-based approach. Maybe that's a less objectionable way to say it.
A Certainly the result in this case reaches a market-based result.
Q Okay. All right.
MR. ROBERTS: Mark as Plaintiff's Exhibit 5.
(Plaintiff's Exhibit No. 5 marked.)
BY MR. ROBERTS:
Q Do you recognize this document?
A Yes.
Q Maybe not very first page, but --
A I can read these pretty well now.
Q Did you author this document?
A Yes.
Q And this article was originally published in 2008, correct?
A Correct.
Q Can you please refer to page 288, specifically the first full paragraph on 288 that starts "A glaring weakness"? Can you review that paragraph quickly and then --
A Okay.
Q Can you read the third and fourth sentences into the record, please?

Page 31

A The third and fourth sentences, "In computing the numerator of the sales factor, however, UDITPA attributes service receipts to the state in which the services are performed, regardless of where they are consumed. In other words, service receipts are attributed to the state of production rather than to the state that provides the market for the services. Many services are consumed where they are provided." I might have gone beyond what you wanted me to read.
Q That's fine. Thank you. Do you still agree with this characterization of Section 17 of UDITPA?
A Yeah, again, I will -- it is a generalized statement of how it operates.
Q What is your principal criticism of UDITPA Section 17 in this article?
A My principal criticism is that it doesn't do a good job of reflecting the role of the sales factor, which is to -- the role of the sales factor is to reflect the contributions of the market state to the taxpayer's income.
Q From a policy standpoint, what is the goal of an apportionment statute?
A Well, from a tax policy point of view, the primary goal is to reflect in a reasonable way where income is earned.

Page 32

Q And what factors from a tax policy standpoint, what factors would go in to determining where income is earned or what factors should be considered?
A Well, I don't think there is any sort of natural law on this point, but UDITPA was developed as sort of a fair compromise where we consider both sort of factors of production, labor, capital, and also the contribution of the market state. You can't have income without sales, you can't have income without a product. Let's consider both of those and give weight to both of those and then apportion income on that basis. So that's generally what we do.
I mean, there are other ways to do it if you don't use the apportionment approach. There is an allocation approach where you try to find the jurisdiction where that income is earned, but I think you typically look to some of the same indicia, either where the customer is or where the production occurs or delivery takes place.
Q This article and in a lot of your other writings you have clearly stated that your criticism of Section 17 is that it does not properly reflect the market contribution to a taxpayer's income. And, you know, this article -- you know, that statement in these

Page 33

articles all seem to be in the context of a three-factor apportionment formula. Is that a fair characterization?
A Well, that's one part of the analysis. And the major focus of this article was that context and it was the -- it was written in the context of an anticipated rewrite of UDITPA. As you certainly undoubtedly know, I talked about single sales factor apportionment in the article and sort of set that aside for another day. I made a few comments about single sales factor apportionment. But I -- well, I will leave it at that, yeah.
Q One of the criticisms that you levy in here, and please correct me if I am wrong because it is your article, seems to be that the UDITPA Section 17 and its cost of performance, it doesn't -- it doesn't reflect the market for the taxpayer's contribution and in essence gives additional weight to the property and payroll factor, which are already considered in the UDITPA formula. Is that an accurate --
A I think that's fair.
Q So if a state -- if a state has adopted a single factor sales factor and using a market-based approach for the sales factor, from a tax policy standpoint is that good tax policy?

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BRIAN J. CODY
Principal, KPMG

EXPERIENCE

Dr. Cody has worked in the field of applied economics since 1987, having principally consulted with global companies in a vast array of industries to plan and document their intercompany pricing policies. He has assisted in the negotiation of unilateral and multilateral Advance Pricing Agreements and developed a variety of innovative intercompany transaction structures for companies operating in North, Central and South America, Europe, the Middle East, Asia, and Australia. Dr. Cody has consulted on a wide range of intercompany pricing issues, including cost sharing/contribution arrangements, contract services structures, intangible property development, valuation, and migration, intangible property management companies, and group finance arrangements. In addition, he has employed real options and advanced financial market concepts to develop customized economic models that address unique technical issues posed by complex intercompany transactions.

Dr. Cody has provided assistance on intercompany pricing controversies involving tax authorities from the U.S. (Federal and state-level), Canada, Mexico, Australia, Japan, China and numerous European countries on issues related to tangible and intangible property, services, and financing arrangements. He has also been admitted as an expert economic witness and provided hearing and deposition testimony on intercompany pricing and other economic issues.

EDUCATIONAL BACKGROUND AND SELECTED AFFILIATIONS

- Ph.D., Economics, The University of North Carolina, Chapel Hill
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ADDITIONAL INFORMATION

Dr. Cody has been nominated as an Expert Transfer Pricing Adviser in the 1999, 2001, 2004, 2005, 2009, 2011 and 2013 *Guide to the World's Leading Transfer Pricing Advisers* published by Euromoney Legal Media Group. He is a frequent speaker at business and professional conferences, including Tax Executive Institute, American Institute of Certified Public Accountants, Canadian Importers Association, and European-American Tax Institute. He has published articles on the economics of intercompany pricing in the *Journal of International Taxation*, *Journal of Corporate Taxation*, *BNA Transfer Pricing Report*, and *Tax Planning International Review*. Dr. Cody has also served as Senior Economist, Research Department of the Federal Reserve Bank of Philadelphia, preparing and presenting preFederal Open Market Committee (FOMC) policy briefings and conducting research on international economics and foreign exchange risk. During this same period, Dr. Cody also taught International Finance at the Wharton School of the University of Pennsylvania.

PROFESSIONAL POSITIONS

- KPMG LLP – Principal, September 2006 - present
- CRA International, Inc. – Vice President, 2002 – September 2006
- Arthur Andersen, LLP – Partner, Central Region Intercompany Pricing Services Group, 1993 – 2002
- Coopers & Lybrand, LLP – Transfer Pricing Manager, 1991 – 1993
- The Federal Reserve Bank of Philadelphia – Senior Economist, Research Department, 1987 – 1991
- The Wharton School, University of Pennsylvania – Instructor in Finance/International Finance, 1988 – 1990

EDUCATION AND CERTIFICATIONS

- Ph.D., Economics - The University of North Carolina, Chapel Hill, 1987
- B.A. with honors, summa cum laude, Economics – The University of Missouri, Columbia, 1983
- B.A. with honors, summa cum laude, French – The University of Missouri, Columbia, 1983
- Certified in business French – Chambre de Commerce et d'Industrie de Paris

EXPERT REPORTS AND TESTIMONY

- Utah State Tax Commission, "Valuation and Arm's-length Royalty Rate for Retail Tradename Intangibles," Testimony at Hearing (May 2014). Issue: Analyze whether the valuation of retail tradename intangibles and subsequent licensing royalty rate were reasonable under the arm's-length standard.
- North Carolina Department of Revenue Administrative Tax Hearing, "Economic Analysis of Borrowed Capital," Expert Report (Spring, 2012). Issue: Analyze whether certain liabilities were properly characterized from an economic perspective as borrowed capital for North Carolina franchise tax purposes.
- State of Maryland, Tax Appeals Commission, "Economic Analysis of Value-Added Services, Licensing of Intellectual Property, and Cash Management Services," Expert Reports and Testimony in Maryland Tax Court (August 23-25, 2011). Issue: Analyze economic substance of the intercompany provision of value-added and cash management services, and the licensing of intellectual property and determine whether the intercompany transactions were reasonable under the arm's-length standard.
- Commonwealth of Massachusetts, Department of Revenue, "Economic Analysis of Intercompany Cash Management System", Expert Report and Testimony at Appellate Tax Board Hearing (February 22 – 24, 2010). Issue: Analyze intercompany cash management system to determine whether the intercompany advances and deposits were properly characterized as debt or equity-related transactions.
- State of Wisconsin, Department of Revenue, "Economic Substance and Arm's-Length Royalty Rates", Expert Report and Testimony at Hearing (March 17 – 19, 2009). Issue: Analyze intercompany licensing arrangement to determine whether the entities involved had appropriate economic substance and whether the intercompany royalty rates were reasonable under the arm's-length standard.
- State of New York, "Intercompany Transactions and 482 Analysis." Presentation to New York Department of Taxation and Finance Conciliation Conference (May 20, 2008). Issue:

Determination as to whether the pricing of various intercompany transactions was conducted at arm's-length prices.

- State of Utah, "Economic Characterization of Business and Non-business Income." Expert Report (May 31, 2006). Issue: Determination whether income generated by various transactions is properly characterized from an economic perspective as business or non-business income.
- Commonwealth of Massachusetts, "Characterization of Intercompany Service Transactions." Deposition Testimony (February 9, 2006). Issue: Examination whether various activities performed by company personnel constitute stewardship/shareholder or directly beneficial services.
- State of Minnesota, Tax Court, Regular Division, "Concerning Apportionment and the Nexus Standard for State Corporate Income Taxation." Expert Reports and Deposition Testimony (January 10, 2006). Issue: Analyze the structure and conduct of company operations and determine the location of the activities creating economic value.
- United States District Court, District of Massachusetts, American Twine Limited Partnership v. Gregory F. Whitten, Ruth Whitten and DKSW, LLC. Civil Action No. 02-10590-NMG, September 20, 2005. Expert Rebuttal Report and Testimony at Trial (August 16, 2005). Issue: Analyze economic nature of funds advanced from minority shareholder to determine whether such advances are properly characterized as debt or equity.
- State of New York Division of Tax Appeals, Hallmark Marketing Corporation for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Year 1999, Determination DTA No. 819956, January 26, 2006. Expert Report, Rebuttal Report, and Testimony at Hearings (February and April, 2005). Issue: Analyze intercompany pricing of tangible products and ancillary transactions and determine whether the prices were consistent with the arm's-length standard.
- Ontario, Canada, Superior Court of Justice, Commercial List, "Intercompany Pricing – Minority Shareholder Issues". Cross examination and submission of affidavits (February and March 2005). Issue: Analyze intercompany pricing of tangible products and ancillary transactions and determine whether the prices were consistent with the arm's-length standard.
- Harrison J. Golding Chapter 11 Trustee to PSINet Consulting Solutions Holdings, Inc. et al. v. PSINet, Inc. et al. and PSINet Liquidating L.L.C., Chapter 11 Case No. 01-14916 (REG), Adversary Proceeding No. 02/8077. Deposition Testimony (November 25, 2003) and Testimony at Trial, Federal Bankruptcy Court, Southern District of New York (March 10-11, 2004). Issue: Analyze economic nature of funds advanced intercompany to determine whether such advances are properly characterized as debt or equity.
- State of New York Department of Taxation and Finance Administrative Tax Hearing, "Economic Analysis of Investment Tax Credit Program and Recapture Provisions." Expert Report and Testimony at Hearing (October 1, 2003). Issue: Examine sale of group companies to determine whether the terms of the disposition satisfied from an economic perspective the recapture provisions of the State's investment tax credit program.
- North Carolina Department of Revenue Administrative Tax Hearing, "Economic Analysis of Intercompany Franchise Arrangements." Expert Report and Testimony at Hearing (July 10, 2003). Issue: Analyze intercompany licensing / franchise arrangements to determine whether the pricing embodied in those arrangements satisfied the arm's-length standard and to determine the location of the activities generating the inherent value of the subject intangible property.

PUBLICATIONS

- "Transfer Pricing Audits in China – A Hypothetical Case Study," (joint with Steven Tseng, Yvonne Chen and Matthias Kaut) *KPMG: A Meeting of Minds – Resolving Transfer Pricing Controversies* (July 2008).
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- "Using Real Options to Design Transfer Pricing Policies," (joint with Susan Rix Fickling) *Tax Management Transfer Pricing Report* 11, No. 22 (March 19, 2003): 990-995. Reprinted in *Tax Planning International: Transfer Pricing* 4, No. 4 (April 2003): 10-16.
- "Intercompany Pricing: 2001 Update," (Transcript of roundtable session at the University of Chicago, 54th Annual Federal Tax Conference, jointly presented with Lowell D. Yoder, Sean F. Foley, C. David Swenson, and Joel V. Williamson, November 13, 2001) *TAXES Magazine* (March, 2002).
- "Managing Your Intellectual Property Portfolio: Is Cost Sharing Right for You?" (joint with Rupesh Santoshi) *World Trade* (March 2002): 46-47.
- "A Foreign Exchange Options Model for Allocating Foreign Exchange Risk Among Related Parties," *Tax Management Transfer Pricing Report* (July 17, 1996).
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- "The Role of Functional Analysis in Intercompany Prices," (joint with Frans W. Blok, Christopher D. Rolfe, and Deloris R. Wright) International Bureau of Fiscal Documentation (1993).
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- "Japanese Intercompany Pricing Legislation: Current Developments," (joint with Deloris R. Wright and Kiyoshi Someya) *Tax Planning International Review* 19, No. 4 (April 1992): 23-25.
- "Alternative Methods for Determining Arm's Length Intercompany Prices," (joint with Frans W. Blok, Christopher D. Rolfe, and Deloris R. Wright) International Bureau of Fiscal Documentation (1992).
- "The Role of Commodity Prices in Formulating Monetary Policy," (joint with Leonard O. Mills) *The Review of Economics and Statistics* 73, No. 2 (May 1991): 358-365.
- "Seignorage and European Monetary Union," *Contemporary Policy Issues* IX, No. 2 (April 1991): 72-80.
- "Reducing the Costs and Risks of Trading Foreign Exchange," Federal Reserve Bank of Philadelphia *Business Review* (November/December 1990).

- "Exchange Controls, Political Risk and the Eurocurrency Market: New Evidence from Tests of Covered Interest Rate Parity," *International Economic Journal* 4, No. 2 (Summer 1990): 75-86.
- "Regional Impacts of Exchange Rate Movements," (joint with Gerald Carlino and Richard Voith) *Regional Science Perspectives* 20, No. 1 (1990): 89-104.
- "Imposing Exchange Controls to Dampen Currency Speculation: Political Risk and the French Franc, 1976-1984," *European Economic Review* 33, No. 9 (December 1989): 1751-1768.
- "International Policy Coordination: Building A Sound Foundation," Federal Reserve Bank of Philadelphia *Business Review* (March/April 1989). Reprinted as "Building a Foundation for Policy Coordination," in *Economic Impact* 1989/3, U.S. Information Agency. Also to be reprinted in The International Finance Reader, Robert W. Kolb (ed.), Kolb Publishing Company, Inc., Miami, 1991.

CITIZENSHIP

- United States of America and Republic of Ireland (dual)

PROFESSIONAL ORGANIZATIONS AND OTHER AFFILIATIONS

- American Economic Association
- St. Louis International Tax Club
- Phi Beta Kappa

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

DIRECTV, INC. & Subsidiaries	)
	)
Appellant,	)
	)
vs.	)
	)
South Carolina Department of Revenue	)
	)
Respondent.	)

EXPERT REPORT OF BRIAN J. CODY

ECONOMIC & VALUATION SERVICES
KPMG LLP

DECEMBER 8, 2014

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Contents

1	Overview and Background	1
1.1	Qualifications	1
1.2	Assignment	1
1.3	Summary of Opinion	1
1.4	Case Background	2
1.5	Economic Basis for Apportioning Revenues and the Role of Functional Analysis	2
2	Company Overview	3
2.1	Content	4
2.2	Broadcast Operations	5
2.3	Marketing Activities	5
2.4	Customer Service	6
3	Industry Analysis	7
3.1	General Overview	7
3.2	Recent Trends	7
3.2.1	Mergers, Joint Ventures, Splits, Spinoffs	7
3.2.2	Digital Television	8
3.3	A Key Industry Driver – Content Acquisition and Development	8
3.4	Competition	9
4	Functions, Assets, and Risk Analysis	11
4.1	DIRECTV, Inc.	11
4.1.1	Functions	11

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4.1.2	Assets	12
4.1.3	Risks	12
4.2	Enterprises	13
4.2.1	Functions	13
4.2.2	Assets	13
4.2.3	Risks	13
4.3	Operations	13
4.3.1	Functions	13
4.3.2	Assets	14
4.3.3	Risks	14
4.4	Customer Services	14
4.4.1	Functions	14
4.4.2	Assets	15
4.4.3	Risks	15
4.5	Functions, Assets, and Risks in South Carolina	15
5	Economic Analysis and Conclusion	15
5.1	Income Producing Activities	15
5.2	An Economically Appropriate Location of Income Producing Activities and Sourcing of Gross Subscriber Receipts	16

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1 Overview and Background

1.1 Qualifications

I am a Ph.D. economist and Principal with KPMG LLP ("KPMG"), a professional services firm that provides audit, tax, and advisory services. With offices in 140 countries, KPMG employees have backgrounds in economics, accounting, engineering, finance, marketing, and statistics.

For the past 23 years, my economic consulting work has been concentrated on the economic issue of how and where income is earned and taxes are paid in a variety of business arrangements, including financial transactions, product sales, transfers of intangibles, and provision of services. Intercompany transactions often involve these issues. I have also been qualified as an expert witness in matters involving the economic characterization of funds advanced between parties, the economics of investment tax credits, and intercompany transactions. A copy of my resume is included in Exhibit 1. KPMG is being compensated for work performed on this matter based upon the firm's standard hourly rates.

1.2 Assignment

I was retained by Morrison & Foerster LLP to render advice, assistance, and testimony in connection with matters currently pending in the South Carolina Tax Court regarding the state tax liability of DIRECTV, Inc. ("Taxpayer") and its subsidiaries (unless otherwise noted, the Taxpayer and its subsidiaries are hereinafter referred to collectively as "DIRECTV"). Specifically, I have been asked to identify from an economic perspective the income producing activities and the portion of those activities performed in South Carolina for the purpose of sourcing gross subscriber revenue to DIRECTV, Inc. in South Carolina for the fiscal years ended December 31, 2006 through December 31, 2011. My work has included reviewing various documents in relation to DIRECTV's business and activities in South Carolina and elsewhere, discussing factual and financial materials with DIRECTV management, and researching background information.

1.3 Summary of Opinion

From an economic perspective, the Commissioner of South Carolina's ("SC Commissioner") methodology of sourcing DIRECTV, Inc.'s gross subscriber revenue to South Carolina based upon the location of set-top boxes (*i.e.*, customer location) produces a distorted view as to the location of DIRECTV, Inc.'s income producing activities. As presented in the detailed economic and functional analysis contained in this report, virtually all of DIRECTV's income producing activities, that is, those activities which convert potential customers into subscribers and retain existing subscribers, all of which are directly engaged in by DIRECTV to generate subscriber revenue, are performed outside of the state of South Carolina. These activities include content development and contract negotiation, technology research and development, operation of transmission sites and satellites, marketing, and customer service.

There are two revenue streams that are relevant to this case: set-top box rental fees and subscriber revenue. DIRECTV sourced to South Carolina the income directly related to the set-top boxes of South Carolina customers. This opinion does not analyze that revenue stream. As individual subscriber receipts are directly

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correlated with the number of set-top boxes present at the subscriber's location, the SC Commissioner's focus upon receipts has the economic impact of essentially attributing all of the income producing activities to the company's set-top boxes, ignoring the contributions of virtually all of the other economically relevant assets and activities of the company.

The SC Commissioner's methodology sources more than 2.0 percent of DIRECTV, Inc.'s gross subscription revenue to the state. However, an economically reasonable sourcing methodology, one that accurately captures the location of DIRECTV, Inc.'s income producing activities based upon payroll, would source an average of 0.07 percent of gross subscriber receipts to South Carolina over the years at issue. This payroll-based sourcing methodology is consistent with the method used by the court in the Lockwood Greene case.[1] I also considered an alternative sourcing methodology based upon a combination of the taxpayer's payroll and assets. Under such a methodology, it would be reasonable to source on average 0.85 percent of gross subscriber revenue to the state over the period at issue. Under either approach, it is clear that the SC Commissioner's approach distorts the economic realities of the activities that generate income, resulting in an excessive sourcing of gross subscriber receipts to the state.

1.4 Case Background

The tax economic concept employed by the relevant statutes of State of South Carolina is that revenue is to be sourced to South Carolina based on the relative value of income producing activities that are conducted within the state versus elsewhere. This concept is implemented through a gross receipts factor in which the numerator is gross receipts sourced within South Carolina and the denominator is total gross receipts from everywhere. The sourcing of gross receipts within South Carolina is determined by the location of the taxpayer's income producing activities. The court in the case of Lockwood Greene implemented this concept using payroll within and without South Carolina as a proxy for locating income producing activities and, thus, to source gross receipts to the state.[2] As summarized above, the SC Commissioner in this case used the location of the customer to determine the location of DIRECTV, Inc.'s income producing activities and, in turn, to source gross subscriber receipts to South Carolina. The Taxpayer does not consider this sourcing methodology appropriate and is disputing the approach.

1.5 Economic Basis for Apportioning Revenues and the Role of Functional Analysis

Economically, the appropriate standard for state corporate income taxation should rely on how and where a firm generates income. Economic theory provides that the functions and assets of a firm, including the employees that perform functions for the firm, generate the firm's income. Further, the contribution to income of each of the functions and assets of the firm depends on the economic significance of the functions undertaken and resources employed by the firm. The first step in determining how and where a firm's income is produced is to identify those functions and assets which are economically significant for the

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[1] *Lockwood Greene Engineers, Inc. v. South Carolina Tax Commission*, 293 S.C. 447, 361.

[2] Ibid.

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operation or company in question. This identification process is often referred to as a "functional analysis".

The functional analysis, by identifying the economically-significant functions and assets which generate income for the firm, provides an analytical methodology by which to identify the locations where a firm generates its income. And, it is the location of the firm's employees who perform those functions and of the assets developed and utilized in those functions, that determines where the firm engages in its economically-significant business activities. This methodology should be used to locate where the company produces its income and, accordingly, to source that income for tax purposes.

Such an approach to sourcing income makes sense from both a tax policy and public finance standpoint. With regard to the former, the locations of a firm's significant economic activities (*i.e.*, the location of its assets and employees) are logically the locations at which the firm utilizes resources and services maintained and provided by state and local governments. The concept of economic efficiency supports the development of public policies that require firms to compensate state and local governments for the burden they impose on those jurisdiction. The functional analysis identifies the locations at which the economically significant functions of the firm are performed, and, thereby, identifies the state and local governments on which the firm is imposing a burden. Thus, the functional analysis enables the identification of the state and local governments which should be compensated through taxes and fees.

Similarly, public finance theory provides that state and local taxation should promote the efficient allocation of resources. Government units aid in the efficient allocation of resources in the economy by providing certain goods and services which would not be provided by the private sector, or would be provided in insufficient quantities. State and local governments collect taxes and fees to finance the provision of these goods and services. To ensure the efficient allocation of these publicly provided goods, governments should allocate the costs for these publicly provided goods and services such that those who impose the burdens on the state and local government by their use of the public goods bear the cost of providing these public goods.

2 Company Overview

DIRECTV, Inc. is a California corporation with its headquarters and principal place of business in El Segundo, California. DIRECTV, Inc. is the largest digital broadcasting services ("DBS") provider and the second largest multi-channel video program distribution provider in the United States. DIRECTV provides television programming delivered by satellites directly to homes and businesses of individual customers. On May 18, 2014, AT&T Inc. ("AT&T") agreed to purchase DIRECTV for stock and cash with a contingency in place that DIRECTV renegotiate certain of its content deals.

DIRECTV primarily provides programming services through the following affiliates: (i) DIRECTV, Inc.; (ii) DIRECTV Operations, LLC ("Operations"); (iii) DIRECTV Enterprises, LLC ("Enterprises"); and (iv) DIRECTV Customer Services, Inc. ("Customer Services").

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DIRECTV provides entertainment content to customers through its existing satellites and equipment. DIRECTV sells its services through a variety of distribution channels including direct sales, online sales, other telecommunications companies, third party sales providers, and consumer electronics retailers.[3]

Economically, there are four primary value drivers in DIRECTV's business: content (both original and acquired), marketing and subscriber acquisition, broadcast operations, and customer service. Programming and broadcast operations help to differentiate DIRECTV from broadcast, cable and other satellite-based competitors by obtaining unique content, and developing and deploying reliable technology to deliver the content to a customer's television set(s) and mobile device(s). Marketing/subscriber acquisition is heavily dependent on quality content and technology. Of course, reliable customer service is another differentiator that can help with recruitment and retention of customers. Each of these four primary value drivers is discussed in further detail below.

2.1 Content

Development of high quality and unique content to offer to its subscribers is of extreme importance. DIRECTV's content acquisition activities consist of negotiating agreements with third parties (*e.g.*, broadcast networks, cable/satellite-based providers such as ESPN, and others) to provide content through its service.

Typically, there are two types of content contracts: variable and fixed fee contracts. Under a variable fee scenario, DIRECTV negotiates with content owners to provide its customers with a line-up of channels. DIRECTV pays the content owners a monthly fee for each customer that subscribes to each channel. Those monthly fees are passed on to consumers through their monthly bill. An example of a variable fee contract would be a contract with Viacom, Inc. for DIRECTV to offer MTV or Comedy Central to its customers. In the event that the customer does not subscribe to a channel, DIRECTV does not pay Viacom. Under a fixed fee scenario, DIRECTV and the content owner agree to a fixed payment for content which is invariant to the level of subscriber activity. An example of a fixed fee contract is the agreement between DIRECTV and the National Football League ("NFL").

Besides the quality of the content itself, there are number of economic factors contributed by DIRECTV that impact the pricing of the content contracts and, ultimately, the income earned by DIRECTV, including the ability to bundle one content provider's content with another's to DIRECTV's subscribers, the number and quality of potential subscribers, and guaranteed service levels on the part of DIRECTV, amongst others. For instance, DIRECTV has worked with the NFL to develop the exclusive, premium subscription package "NFL Sunday Ticket". This subscription package provides DIRECTV's NFL Sunday Ticket subscribers access to every NFL game live, along with other exclusive game highlight features. Such content offerings drive substantial income at DIRECTV, contributing significantly to DIRECTV's value.

An exclusive content deal, like the deal for Sunday Ticket, can differentiate DIRECTV's services from those of its competitors and allow DIRECTV to charge premium prices. Additionally, shrewd negotiation

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[3] DIRECTV 10-K for the Fiscal Year Ended December 31, 2013, Filed June 27, 2014. http://www.sec.gov/Archives/edgar/data/1465112/000104746914005938/a2220529z10-ka.htm. Accessed: November 10, 2014. Please note that while this report references the company's 10-K for fiscal year 2013, the sum and substance of the information pertains equally to the years at issue in this case.

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with content owners which license content to DIRECTV's competitors can allow DIRECTV to reduce its costs and increase profit without the need for increased subscriber fees. In addition to negotiating for content with third parties, DIRECTV produces original content through its LABC division.

The value of content development to this business was demonstrated recently during AT&T's negotiations to acquire the company. On May 18, 2014, AT&T announced its intent to acquire DIRECTV. In its press release, AT&T announced that the combined company will be "a content distribution leader across mobile, video and broadband platforms"[4] and further announced that the acquisition would be contingent on the extension of the Sunday Ticket content deal between DIRECTV and the NFL.[5] On October 1, 2014, DIRECTV announced that it had extended the exclusive deal with the NFL to provide Sunday Ticket for eight years for an average price of $1.5 billion per year.[6]

2.2 Broadcast Operations[7]

DIRECTV's business strategy is to provide customers with the best possible video experience in the United States, in and outside of the home. Its existing satellite network allows for delivery of the video entertainment content to customer's homes. DIRECTV operates eleven satellites at various frequencies to digitally deliver content to its subscribers. DIRECTV owns orbital slots that allow it to provide high quality signals across the United States. In order to operate the satellites, DIRECTV maintains regulatory licenses with the FCC and other government bodies.

DIRECTV produces some original programming. Acquired content is received in several ways, including by satellite, fiber-optic cable, and over-the-air broadcast. Programming from local broadcast television stations is gathered by approximately 300 local collection facilities ("LCFs") throughout the United States, a very few of which are in South Carolina. The signals for the programming content are collected at broadcast and "uplink centers," which contain facilities to receive, process, and transmit programming content signals. The broadcast centers were located in Los Angeles, California and Castle Rock, Colorado. The uplink centers were located in Georgia (2010), Minnesota, New Hampshire, Washington, Arizona, and Virginia. The broadcast and uplink centers transmit the programming content signals to the satellites in orbit.

2.3 Marketing Activities

DIRECTV performs extensive marketing activities and invests in extensive advertising campaigns to present the features and content of a DIRECTV subscription to entice consumers to switch to DIRECTV from other satellite TV providers or from landline-based cable service providers, as well as to expand the

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[4] "AT&T to Acquire DRIECTV", AT&T Press Release, http://news.directv.com/2014/05/18/directv-att-merger-press-release/. Published: May 18, 2014, Accessed: November 10, 2014.
[5] "DirecTV, NFL Extend 'Sunday Ticket' Package: Renewed Pact for Games Clears the Way for AT&T Deal to Go Through", Wall Street Journal, http://online.wsj.com/articles/directv-nfl-extend-sunday-ticket-package-1412199478, Published October 1, 2014, Accessed: November 10, 2014.
[6] Ibid.
[7] DIRECTV 10-K for the Fiscal Year Ended December 31, 2013, Filed June 27, 2014.
http://www.sec.gov/Archives/edgar/data/1465112/000104746914005938/a2220529z10-ka.htm, Accessed: November 10, 2014.

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range of content to which current customers subscribe. For instance, DIRECTV often hires sports figures or other celebrities for its commercials. Recent examples of its advertisements include a rap music video with Peyton and Eli Manning to debut a channel that is devoted to Fantasy Football[8] and a high profile advertisement campaign that compares DIRECTV's services to cable services featuring Rob Lowe.[9] These promotions also regularly feature DIRECTV as an industry leader in customer satisfaction. DIRECTV Inc. develops the marketing and advertising campaigns primarily in New York.

DIRECTV clearly spends a large amount on advertising to acquire new customers and expand the income generated from its existing subscriber base. In addition to advertising spend, deep subscription discounts have also historically been used across the cable and satellite-based industry to attract new customers. Content owners are continually seeking greater payments for their content/channels, however, which diminishes the beneficial financial impact of attracting new customers and/or retaining existing subscribers through promotional pricing. In response to such market pressures, DIRECTV has reduced the promotional discount it offers for new customers and has shifted its marketing focus to attracting new customers, as well as improving long-term customer retention, through increased investment in unique content and penetration of its advanced technology.[10]

Typically, a sales contract between DIRECTV and its customers covers two years. DIRECTV recently launched an initiative to allow customers to upgrade their services to incorporate the latest product features and functionality every two years. For instance, after two years a customer who does not have the latest set-top box may upgrade to the newest Genie box to access additional functionality that was not part of the service agreement when the customer first signed up.

In summary, DIRECTV's marketing activities build heavily on the income generating activities it performs and investments it makes in technology and content development.

2.4 Customer Service

DIRECTV currently has approximately 20.3 million television subscribers in the United States and it tracks its customer feedback using a system called Net Promoter Score ("NPS").[11] By way of background, NPS allows a company to track promoters and detractors to produce a measure of a company's performance through the eyes of its customers.[12] To improve its NPS, DIRECTV has increasingly focused on further enhancing service quality and workforce engagement, simplification of customer-facing processes (*e.g.*, on-screen menu and website design promoting ease of use), and offering bundled services. By simplifying the customer facing processes, DIRECTV can jointly improve the customer experience and reduce call volumes in its call centers. DIRECTV operates six call centers. Those six call centers are located in the following cities: Boise, Idaho; Denver, Colorado; Huntington, West Virginia; Huntsville, Alabama; Missoula, Montana; and Tulsa, Oklahoma. All of the leases, buildings, communications equipment and

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[8] Please refer to http://youtu.be/qMor6dL0Lfl to view this advertisement.
[9] Please refer to https://www.youtube.com/watch?v=qNNkvQ9vkEM to view this advertisement.
[10] DIRECTV 10-K for the Fiscal Year Ended December 31, 2013. Filed June 27, 2014. http://www.sec.gov/Archives/edgar/data/1465112/000104746914005938/a2220529z10-ka.htm, Accessed: November 10, 2014.
[11] Ibid.
[12] "Measuring your Net Promoter Score℠", Bain & Company http://netpromotersystem.com/about/measuring-your-net-promoter-score.aspx

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customer service software that support the call centers are owned by Customer Services. As part of the service improvements, DIRECTV has negotiated and established agreements with other services providers to offer bundled internet and telephone services in conjunction with DIRECTV's satellite television services. The activities and investments which developed these bundled service offerings generate income which is incremental to the income that derives from the content flowing through the set-top box.

Moreover, DIRECTV has invested in a cross-functional learning lab dedicated to generating and testing ideas to improve customer service. These efforts include a focus on resolving any problems on the first time a customer makes contact, minimizing the number of times a customer is transferred between customer service agents, and providing in-home education to the Company's customers. While seemingly obvious and simple from a subscriber's point-of-view, delivering in a consistent fashion on such critical customer service initiatives requires substantial investments in technology, equipment, and training. As explained above, such investments contribute significantly to DIRECTV's income through improving customer retention and attracting new subscribers.

3 Industry Analysis

3.1 General Overview[13]

The broadcasting, cable, and satellite markets as a whole generate nearly $250 billion in annual revenues, and include thousands of individual companies of all sizes. This cable and satellite segment of this combined market is highly concentrated with only a few companies owning the majority of the assets. The major players in the cable and satellite market are:

- DIRECTV, Inc.
- Comcast Corp.
- Time Warner Cable Inc.
- DISH Network Corporation

3.2 Recent Trends

3.2.1 Mergers, Joint Ventures, Splits, Spinoffs[14]

In recent years, some cable and satellite companies have expanded their business by acquiring similar kinds of businesses to get the benefits of economies of scale. Some examples include AT&T's pending acquisition of DIRECTV announced in May 2014, and Comcast's pending acquisition of Time Warner Cable for USD 45 billion (expected to close by the end of 2014, subject to regulatory approvals). Despite the examples of consolidation since 2013, there have been relatively few spin-offs or strategic diversifications in the industry. Major spin-offs of strategic diversifications within the industry include

[13] Standard & Poor's, "Industry Surveys: Broadcasting, Cable & Satellite" April 2014.
[14] Ibid.

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EchoStar Corporation's spin off from DISH Network in 2008 and Time Warner Inc.'s spin off from Time Warner Cable Inc. in 2009. In addition, RCN Corp. and Mediacom Communications Corp, which are cable companies, have recapitalized through going-private transactions in recent years. The consolidation within the industry and sheer magnitude of the transactions cited in these examples points to the massive investments in infrastructure and technology required for companies to operate and compete in the cable and satellite industry.

3.2.2 Digital Television[15]

The national transition to digital television broadcasting in the U.S. was completed in June of 2009. At this time, virtually all of the nation's full-power TV stations switched to all-digital broadcasting, per the Federal Communications Commission's ("FCC's") mandate. As of December 31, 2013, the FCC licensed a total of 1,388 commercial TV stations (1,030 ultra-high frequency ("UHF") and 358 very high frequency ("VHF")), plus 396 educational stations. This digital conversion brings with it an era of sharper resolution and better picture quality for consumers who have the necessary equipment to receive the digital signals transmitted by the broadcasters.

It is also expected that this conversion should also provide for an even further adoption of high-definition ("HD") programming. DIRECTV's capabilities allow it to deliver all of its content using 100 percent digital signals from an upgraded network of satellites that provides access to almost 200 HD channels to its customers. This capability, made possible by DIRECTV's network investments, is more than is currently offered by Comcast or Time Warner Cable.[16] The differentiation in service is evidenced as a lack of bandwidth available to cable companies which provide high speed internet and television service on the same lines whereas satellite television companies can devote a greater percentage of their bandwidth on television services. Number of channels, including HD channels, drives subscription revenue and can be a differentiating factor in the market.

3.3 A Key Industry Driver – Content Acquisition and Development[17]

Ultimately, broadcast video services providers sell access to the content that is carried on their networks. As such, one of, if not, the most important driver for broadcast video services is the availability of high quality content for a consumer to choose from. The negotiation for new content deals, or the renewal of existing content deals, is becoming increasingly public and contentious.

A recent example of this public negotiating process took place in November 2014; AMC Networks, Inc. placed advertisements alerting DIRECTV customers that they could potentially lose access to AMC during an airing of its highest rated television show, The Walking Dead.[18] The Los Angeles Times notes that this is the "latest dispute...between content providers such as AMC and distributors such as DIRECTV...",

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[15] Ibid.
[16] HD Channels, HD Report. http://hd-report.com/hd-channels/. Accessed November 18, 2014.
[17] Standard & Poor's. "Industry Surveys: Broadcasting, Cable & Satellite" April 2014.
[18] "AMC warns DirecTV subscribers the network could go dark". The Los Angeles Times. http://www.latimes.com/entertainment/tv/showtracker/la-et-ct-amc-warns-directv-subscribers-they-could-go-dark-20141103-story.html: Published: November 3, 2014; Accessed: November 12, 2014.

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suggesting the critical importance of content negotiations to the success of broadcast video service providers such as DIRECTV.

Exclusive content is extremely important to a broadcast video service provider and provides it with a competitive advantage it can advertise in the marketplace, providing additional value to the service provider's shareholders. As discussed below, AT&T announced on May 18, 2014 its intent to acquire DIRECTV for stock and cash. In its press release, AT&T announced that the combined company will be "a content distribution leader across mobile, video and broadband platforms"[19] and further announced that the acquisition would be contingent on the extension of the Sunday Ticket content deal between DIRECTV and the NFL.[20]

3.4 Competition[21]

The competitive landscape of the industry was profoundly shaped by the consolidation that occurred from the mid-1990s through the early part of the last decade. The 1996 Telecom Act set off a series of deregulatory reforms that triggered a wave of broadcast consolidation for television and radio companies. During this time, the two satellite television providers, DIRECTV and DISH Network, became viable competitors to cable providers in the pay TV market.

DIRECTV faces competition from multiple competitors with differing technologies. The primary sources of competition for DIRECTV's services are cable television providers, telephone companies and other broadcast satellite television companies. Competitors of these types are able to offer substantially similar services to those that DIRECTV offers. Other competitors offer different services that allow customers to substitute away from DIRECTV's services if they are willing to make sacrifices in the availability of certain types of programming.

Cable television providers are the predominant provider of television services in the United States. In their 10-K, DIRECTV notes that there are approximately 55 million cable television subscribers in the United States and that cable television providers' cable lines pass by approximately 99 percent of the United States households and have completed upgrades that allow them to provide enhanced service offerings such as HD video and broadband internet access. Further, cable television providers often bundle their services together to offer discounts to customers who traditionally would purchase services from multiple service providers.[22]

Telephone companies have upgraded their telephone infrastructure by replacing copper wires with fiber optic lines that have much greater capacity to offer enhanced services such as broadband internet or digital quality video. Using the upgraded infrastructure, telephone companies are able to offer their customers

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[19] "AT&T to Acquire DRIECTV", AT&T Press Release. http://news.directv.com/2014/05/18/directv-att-merger-press-release/. Published: May 18, 2014, Accessed: November 10, 2014.
[20] "DirecTV, NFL Extend 'Sunday Ticket' Package: Renewed Pact for Games Clears the Way for AT&T Deal to Go Through". Wall Street Journal, http://online.wsj.com/articles/directv-nfl-extend-sunday-ticket-package-1412199478, Published October 1, 2014. Accessed: November 10, 2014.
[21] Ibid.
[22] DIRECTV 10-K for the Fiscal Year Ended December 31, 2013, Filed June 27, 2014. http://www.sec.gov/Archives/edgar/data/1465112/000104746914005938/a2220529z10-ka.htm. Accessed: November 10, 2014.

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television services provided through the internet. They can often bundle these services with home and mobile telephone services. [23]

DIRECTV competes directly in the satellite television market with DISH Network, which provides services to approximately 14 million customers and recently began offering high speed broadband internet to offer bundles to its customers. [24]

DIRECTV competes against cable and satellite companies in two ways: 1) Highest quality content and 2) Better customer service. For instance, DIRECTV has deals in place to offer sports packages for all of the United States' largest professional sports leagues, including an exclusive deal to carry NFL Sunday Ticket. This exclusive deal is very important to DIRECTV because it carries all of the out-of-market games[25] that would otherwise not be available to a customer.

According to an American Customer Satisfaction Index ("ACSI") survey, customer satisfaction with cable television providers is at an all-time low.[26] Comcast and Time Warner Cable were the two lowest scoring companies in the survey. Given that those two companies are the two largest cable television providers in the United States, DIRECTV promotes the fact that it is among the highest rated companies in the ACSI survey as a way to entice subscribers to switch service providers.

In order to compete by offering satellite broadcast television, DIRECTV must maintain its orbital licenses from the FCC and other government bodies. The FCC authorizes the use of certain radio frequencies from specified orbital locations over the United States. DIRECTV is currently authorized to broadcast using the Ka-Band[27] spectrum on three orbital slots (99° west longitude ("WL"), 101° WL, and 103° WL) and using the Ku-Band[28] on three orbital slots (101° WL, 110° WL and 119° WL). Renewal of satellite applications generally are authorized by the FCC subject to certain conditions, without substantial cost under a stable regulatory, legislative, and legal environment.[29] The FCC licenses represent an extremely valuable intangible asset for the company and they are owned and managed by Enterprises.

In addition to the cable television, telephone and satellite providers, DIRECTV indirectly competes with services that people can use to replace its satellite television services. Primarily these services are on demand internet video services that are available for households with broadband internet connections.[30] People can subscribe to various on-line streaming services, such as Amazon Prime (which offers video services as well as free shipping on certain Amazon purchases and other services) or Hulu Plus and see some of the television shows that they would normally watch on live television services like those provided by DIRECTV. These alternatives are typically offered to consumers at a fraction of the price that DIRECTV offers its live television services. However, there is currently not a legal way for consumers to

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[23] Ibid.
[24] Ibid.
[25] Out-of-market games are NFL games that are not carried by local network affiliate stations.
[26] "Customers give dismal scores to TV providers" CNN Money, http://money.cnn.com/2014/05/20/news/companies/cable-customer-satisfaction/index.html: Published May 20, 2014; Accessed: November 12, 2014.
[27] The Ka-Band is a high bandwidth radio communication that allows for High Definition television among other users.
[28] The Ku-Band is a range frequencies that is used by multiple broadcast television providers, including DIRECTV or content owners.
[29] DIRECTV 10-K for the Fiscal Year Ended December 31, 2013, Filed June 27, 2014.
http://www.sec.gov/Archives/edgar/data/1465112/000104746914005938/a2220529z10-ka.htm. Accessed: November 10, 2014.
[30] Ibid.

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stream live sporting events, such as NFL games, without a cable or satellite television services. Therefore, an exclusive content agreement, such as the Sunday Ticket, is a valuable asset to DIRECTV in competing against internet video services. In addition, as mentioned above, the newest NFL Sunday Ticket extension grants DIRECTV with exclusive streaming rights to the Sunday Ticket. Therefore, DIRECTV can sell Sunday Ticket to consumers who do not want other live cable television services. This leaves DIRECTV better positioned than other cable and satellite providers which use internet video as added value to existing subscribers.

For consumers that do not care about live sports, there is a typically lag between when a show is aired and when it is added to a streaming services. Sometimes, the lag can be up to a year or more. Therefore, popular television shows can be a catalyst for people to subscribe to cable and satellite television services. However, people can purchase season passes from companies such as Apple, Microsoft and Amazon and watch them on compatible devices but there are still lags and content limitations associated with each service that are not typically associated with satellite television services.[31] The primary advantage of DIRECTV, and other pay television subscribers, is the ability to record the newest shows or watch them on-demand immediately after they air. This has led to companies, such as DIRECTV, to invest in technology that allows people to watch television on their own schedules and from any device or television they choose, inside or outside the home. These technologies are referred to as place shifting and time shifting technologies, respectively.

4 Functions, Assets, and Risk Analysis

4.1 DIRECTV, Inc.

4.1.1 Functions

Programming

DIRECTV, Inc. performs all functions relating to programming content and programming acquisition, negotiates and manages agreements with content providers, and holds all contracts with content providers.

In order to provide DBS service, DIRECTV, Inc. first acquires television programming from a variety of sources, including broadcast television networks (*e.g.*, ABC, NBC, and CBS), local broadcast stations, and providers of cable channel programming (*e.g.*, CNN, ESPN, and HBO).

The content provider transmits the programming content in a variety of ways, including by satellite, fiber-optic cable, and over-the-air broadcast. Programming from local broadcast television stations is gathered by LCFs. LCFs are facilities consisting of antennae and other receiving equipment, including computer servers, which are used to gather signals from local broadcast stations so that those local stations can be rebroadcast to subscribers in the appropriate designated market areas. DIRECTV maintains approximately 300 LCFs throughout the country. During the 2006 to 2011 period, DIRECTV, Inc. owned the LCFs.

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[31] Ibid.

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The signals for the programming content are collected at broadcast and "uplink centers," which contain facilities to receive, process, and transmit programming content signals. Operations owned the broadcast centers in Los Angeles, California and Castle Rock, Colorado. DIRECTV, Inc. owned the uplink centers in Georgia (2010), Minnesota, New Hampshire, Washington, Arizona, and Virginia. The broadcast and uplink centers transmit the programming content signals to the satellites in orbit.

Nearly all of the activities associated with providing DIRECTV's programming services are performed by personnel outside of South Carolina and involve technology and equipment located outside of South Carolina. DIRECTV, Inc. personnel in California and New York select programming content and negotiate with studios, television networks, and other programming providers to obtain the content. Operations personnel that design the satellites and other technology used in collecting, transmitting, and delivering the programming content also work in California. Depending on the year, the customer service call centers were located in Colorado, Montana, Alabama, Idaho, West Virginia, and Oklahoma.

Subscriber acquisition

DIRECTV, Inc. is also responsible for subscriber acquisition and retention and performs all related marketing activities.

It holds all contracts with subscribers. DIRECTV, Inc. holds the DIRECTV trademarks, trade names, customer lists and recognizes the subscriber revenue.

Installation services

DIRECTV, Inc. contracts with third-party distributors in several states to provide customers with the satellite dishes and set-top boxes necessary to receive the service. DIRECTV, Inc. contracts with several third-party vendors to provide "home services," including installation of equipment in homes of new customers, repairs and diagnostics for existing customers, and related services that are provided on-site at the customer's location. Until 2008, none of the individuals that provided these "home services" were DIRECTV, Inc. employees. Beginning in 2008, some of these "home service providers" became employees of DIRECTV, Inc.

4.1.2 Assets

DIRECTV, Inc. owns and manages all contracts with content providers and subscribers. It also holds DIRECTV trademarks, trade names, customer lists and recognizes the subscriber revenue.

DIRECTV, Inc. owns most of the LCFs (few are owned by Operations) and the set-top boxes which the customers can own or lease.

4.1.3 Risks

The key risks for DIRECTV, Inc. are the loss of programming contracts with content providers and loss of customers. These risks are intertwined as subscriber acquisition and retention is a function of programming. Customers sign up for DIRECTV, Inc. in order to have access to certain content. For example, DIRECTV, Inc.'s contract with the NFL provides access to the NFL Sunday ticket. Loss of a contract with NFL could mean loss of subscribers.

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Other risks for DIRECTV, Inc. are accounts receivable (*i.e.*, inability to collect payment from customers), warranty costs for set-top boxes, asset obsolescence (*i.e.*, need to upgrade equipment to keep up with technological innovation), and deterioration of trademarks/trade names.

4.2 Enterprises

4.2.1 Functions

Enterprises provided some administrative and management functions. As the owner of satellites and transponders, Enterprises performed any functions necessary to ensure signal transmission. In addition, it managed the related insurance contracts and required FCC licenses.

4.2.2 Assets

Enterprises owns the fleet of satellites, and the associated insurance contracts, and holds the FCC licenses for use of the particular orbital slots. Enterprises also leases transmission capacity to Operations.

Enterprises owns 11 satellites in geostationary orbit (that is, the satellites remain in the same location above the United States to provide uninterrupted service) at different designated locations in space (over 22,500 miles above the earth). The satellites then transmit the signals directly to customers, who receive the signals by a small "satellite dish" mounted on or near their homes. The signals are then relayed from the dish to a decoder box, a "set-top box," which unscrambles each signal so that it can be viewed and transmits the signals to the customer's television sets. Subscribers owned the set-top boxes until February 28, 2006. Beginning on March 1, 2006 all new set-top boxes were owned by DIRECTV, Inc. and leased to customers.

4.2.3 Risks

The key risks for Enterprises relate to the satellites it owns and FCC licenses. Enterprises bears considerable risk in its investment in satellites that, for its launches in 2006 and 2007, are not protected by in-orbit insurance.

The Company's ability to generate revenue is contingent on U.S. regulatory approvals for the construction, launch, and operation of Enterprises' existing or future satellites. It is also dependent on the renewal of existing FCC licenses and approval for the use of frequencies at the orbital locations planned for these satellites or for the provision of service. The International Telecommunications Union is also a source of regulatory risk for Enterprises because of its right to request coordination of the operations of satellite operations with other users of the radio spectrum in order to avoid causing interference to those other users.

4.3 Operations

4.3.1 Functions

Operations provides DBS service to DIRECTV, Inc. and is responsible for all transponder-related services

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and technologies. As such, Operations (i) owns two of the broadcast centers, (ii) leases transmission capacity from Enterprises, (iii) provides broadcast services to DIRECTV, Inc. and (iv) is responsible for all research and development services.

Operations is divided into two groups, the Engineering group and the Information Technology (IT) group. The Engineering group is responsible for all transponder related services and technologies. The IT group provides information technology related services to all entities of the Company.

Transponder services and technologies involve all functions related to satellites, broadcast centers, and conditional engineering. The Engineering group provides these services to DIRECTV, Inc. through the lease of transponder space from Enterprises.

Operations is also responsible for R&D services for Enterprises and DIRECTV, Inc. Satellites owned by Enterprises are produced by third party construction companies. However, these companies are supplied with detailed specifications as to the design of the satellites from the Engineering group. In addition, upon delivery of satellites from producers, the group is responsible for testing of equipment.

R&D services by Operations also extend to the technology of set-top receivers. All leased set-top boxes are owned by DIRECTV, Inc. These receivers are designed by the Engineering group.

The Information Technology group in the Operations entity provides information technology services for all entities and its largest responsibility is the maintenance of the Company's billing system. One of the most important activities of the IT group is the billing process, which comprises approximately 75 percent of its costs. The billing process is comprised of the maintenance of applications and data warehouses pertaining to subscriber receivables, generation of paper bills, and the physical mailing of billing statements.

4.3.2 Assets

In connection to its signal broadcasting activities, Operations is the owner of Los Angeles Broadcast Center and the operator of Castle Rock broadcast center.

4.3.3 Risks

As a whole, Operations acts as a service provider. It provides transponder (engineering/technical) services, information technology services, and billing processing services.

4.4 Customer Services

4.4.1 Functions

Customer Services owns and operates the internal (*i.e.*, DIRECTV owned) call centers. Customer Services is responsible for the operation of internally operated DIRECTV customer service call centers, providing this service to DIRECTV, Inc. These call centers provide customer assistance for hardware, programming, installation and technical support. Depending on the year, Customer Services owned customer service centers located in: Boise, Idaho; Tulsa, Oklahoma; Huntsville, Alabama; and Missoula, Montana. In total, these four call centers had approximately 4,200 employees during FYE 2006. There were also DIRECTV

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call centers which provide similar assistance and are operated by four large third-party customer service center operators.

4.4.2 Assets

Customer Services owns the facilities and equipment needed to provide customer services.

4.4.3 Risks

As a service provider, the key risk for Customer Services primarily relates to loss of revenue due to loss of subscribers by DIRECTV, Inc.

4.5 Functions, Assets, and Risks in South Carolina

As can be seen from the analysis above, DIRECTV's operations are quite complex. Collectively, DIRECTV, Inc., Enterprises, Operations, and Customer Services perform a diverse array of functions, own different types of tangible and intangible assets, and carry a range of risks.

The functions, assets, and risks in South Carolina are limited. Functions consist primarily of home installation services and maintenance of equipment, which consists of LCFs and set-top boxes owned or leased by customers. Given the above, the risks in South Carolina are very limited.

5 Economic Analysis and Conclusion

5.1 Income Producing Activities

The above analysis demonstrates that the economically-significant income producing activities for DIRECTV are related to its content acquisition and development, marketing, technology, and customer service activities and investments. This conclusion is supported by a detailed functional analysis, industry analysis, and other market evidence such as the conditions which AT&T has placed on its proposed acquisition of DIRECTV. These income producing activities and investments exhibit themselves across the DIRECTV business in its content agreements and products, customer service centers, satellite fleet, and network of transmission sites and other physical assets.

The SC Commissioner has proposed to apportion DIRECTV's subscriber revenue to South Carolina based on the location of the set-top boxes (*i.e.*, customer location). This approach is not economically reasonable or supportable.

I disagree with SC Commissioner's position. Location of the customer is neither DIRECTV's income producing activity nor a reasonable proxy for locating DIRECTV's income producing activity. In is my opinion that the gross subscriber receipts are the result of income producing activities, which then may result in positive income or profit if the receipts revenue exceeds costs or in a loss if receipts are lower than costs. In the context of DIRECTV, all the assets and activities detailed throughout this document generate

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gross subscriber revenue in South Carolina and elsewhere. As individual subscriber receipts are directly correlated with the number of set-top boxes present at the subscriber's location, the SC Commissioner's focus upon receipts has the economic impact of essentially attributing all of the revenue generating activities to the company's set-top boxes, ignoring the contributions of virtually all of the economically relevant assets and activities of the company.

Moreover, as presented in the detailed economic and functional analysis above, virtually all of DIRECTV's income producing activities, that is, those activities which convert potential customers into subscribers and retain existing subscribers, are performed outside of the state of South Carolina. These activities include content development and contract negotiation, technology research and development, operation of transmission sites and satellites, marketing, and customer service. While the gross subscriber receipts provide the precise location of individual subscribers as captured by their set-top boxes, they provide no indication as to the location of the activities or assets that originally attracted those subscribers to DIRECTV, continues to retain them as subscribers, or influenced the subscriber fee that they pay. By equating customer location with DIRECTV's income producing activity, the SC Commissioner's approach produces a distorted view as to the location of the income producing activities performed by DIRECTV.

5.2 An Economically Appropriate Location of Income Producing Activities and Sourcing of Gross Subscriber Receipts

A reasonable and economically-sound methodology for locating the income producing activities across the DIRECTV business and, in particular, to South Carolina would focus on the entire contingent of the company's economically significant functions and assets as analyzed above. There are a variety of economic measures that could potentially be used to locate a company's income producing activities. Payroll and assets are, nonetheless, the most commonly employed metrics. Payroll, for instance, was used in the Lockwood Greene case to source gross receipts to South Carolina. It served as a proxy for the amount of activity taking place within and without the state. In fact patterns such as the one underlying the sourcing issue at the core of this case, it would be economically reasonable to equally take into account the assets of the company in combination with its payroll. The company has clearly developed and maintains substantial assets (*e.g.*, broadcast centers, uplink facilities, LCFs, satellite network, content contracts, trade names and trademarks, etc.) that constitute a significant portion of its income producing activities. An analysis of the location of DIRECTV, Inc.'s payroll and assets would then provide a reasonable methodology on which to source gross subscriber receipts to South Carolina.

The value of the taxpayer's payroll is readily available by company across the group for each of the years at issue in this case. The values for DIRECTV, Inc.'s physical assets are likewise readily available from the company's financial statements for each of the years. As explained above, however, the company also has substantial intangible assets, including content contracts, trade names and trademarks, various technologies used across its network. Unfortunately, values for these substantial intangible assets, which figure prominently in DIRECTV, Inc.'s income producing activities, are not available. My functional analysis demonstrates that most, if not substantially all, of the value of these intangibles was developed outside of South Carolina. Thus, while I cannot include intangible asset values in my sourcing calculations below, I conclude that my results are conservative from a South Carolina point-of-view as, if anything, they overstate the portion of gross subscriber receipts that should be sourced to the state.

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I analyzed the taxpayer's financial data for the 2006 through 2011 period. The relevant payroll account to determine total South Carolina payroll for this exercise is "Salaries and Wages per Fed 940 and State Payroll Tax Reports Incl. Off. Salary". The asset accounts considered for these calculations were: Net Inventory, Land and Net Land Improvements, Net Buildings and Improvements, Net Machinery and Equipment less Software, Net Satellites, Net Transportation Equipment, Net Furniture and Fixtures, Net Leasehold Improvements and Construction in Process. Based on these data, I calculated the total assets in South Carolina.

As my primary sourcing methodology, I calculated the proportion of gross subscriber receipts that should be sourced to South Carolina using the payroll figures. The calculation follows the methodology set forth in the Lockwood Greene case, namely dividing DIRECTV, Inc.'s South Carolina-based payroll by total its total payroll. As an alternative sourcing methodology, I calculated the proportion of gross subscriber receipts that should be sourced to South Carolina using an equal weighting of payroll and assets. It is my judgment that an equal weighting of the two was the most reasonable and unbiased measure of the combined effect of these economic measures. As such, I calculated the South Carolina-based payroll and asset proportions separately, and then took a simple average of the two values. The results of these sourcing calculations is presented in Tables 1a and 1b below.

Table 1a
Gross Receipts Sourcing Methodology based on
DIRECTV, Inc.'s South Carolina Payroll as a Percent of Total
Lockwood Greene Gross Receipts Sourcing Methodology
($000s)

	2006	2007	2008	2009	2010	2011	Weighted Average
South Carolina Payroll	69.6	72.9	94.6	114.9	284.3	490.5	1,126.8
United States Payroll	80,651.8	108,376.0	169,257.7	381,152.8	462,344.2	507,980.9	1,709,763.4
Payroll (%)	0.09%	0.07%	0.06%	0.03%	0.06%	0.10%	0.07%

As can be seen from this analysis, an economically reasonable gross receipts sourcing methodology, one that accurately captures the location of DIRECTV, Inc.'s income producing activities based on payroll, would result in an average of 0.07 percent of gross subscriber receipts being sourced to South Carolina over the years at issue in this case. On a year-by-year basis, the percentages range from 0.03 percent to 0.10 percent.

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Table 1b
Gross Receipts Sourcing Methodology based on
DIRECTV, Inc.'s South Carolina Combined Payroll/Assets as a Percent of Total
($000s)

	2006	2007	2008	2009	2010	2011	Weighted Average
South Carolina Assets	20,437 9	39,357.6	41,910.2	37,569.7	32,740.1	35,776.8	207,792.2
United States Assets	1,269,441.2	2,388,665.8	2,495,505.8	2,194,499.6	2,060,706.8	2,340,754.2	12,749,573.4
Asset (%)	1.61%	1.65%	1.68%	1.71%	1.59%	1.53%	1.63%
Payroll (%) (see Table 2a)	0.09%	0.07%	0.06%	0.03%	0.06%	0.10%	0.07%
Combined: Average of Payrol and Asset (%)	0.85%	0.86%	0.87%	0.87%	0.83%	0.81%	0.85%

Alternatively, a sourcing methodology that accurately captures the location of DIRECTV, Inc.'s income producing activities based on an equal weighting of the contributions of DIRECTV's payroll and assets, would result in an average of 0.85 percent of gross subscriber receipts being sourced to South Carolina over the years at issue in this case. On a year-by-year basis, the percentages range from 0.81 percent to 0.87 percent.

In contrast, the SC Commissioner's proposed methodology of allocating revenue based upon receipts results in over 2.0 percent of DIRECTV, Inc.'s gross subscriber receipts being sourced to South Carolina – an allocation of approximately 2 to 20 times the maximum amount supported by a detailed economic and functional analysis. The SC Commissioner's approach simply distorts the economic realities of the activities that generate income, resulting in an excessive sourcing of gross subscriber receipts to the state.

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EXHIBIT 1

BRIAN J. CODY
Principal, KPMG

EXPERIENCE

Dr. Cody has worked in the field of applied economics since 1987, having principally consulted with global companies in a vast array of industries to plan and document their intercompany pricing policies. He has assisted in the negotiation of unilateral and multilateral Advance Pricing Agreements and developed a variety of innovative intercompany transaction structures for companies operating in North, Central and South America, Europe, the Middle East, Asia, and Australia. Dr. Cody has consulted on a wide range of intercompany pricing issues, including cost sharing/contribution arrangements, contract services structures, intangible property development, valuation, and migration, intangible property management companies, and group finance arrangements. In addition, he has employed real options and advanced financial market concepts to develop customized economic models that address unique technical issues posed by complex intercompany transactions.

Dr. Cody has provided assistance on intercompany pricing controversies involving tax authorities from the U.S. (Federal and state-level), Canada, Mexico, Australia, Japan, China and numerous European countries on issues related to tangible and intangible property, services, and financing arrangements. He has also been admitted as an expert economic witness and provided hearing and deposition testimony on intercompany pricing and other economic issues.

EDUCATIONAL BACKGROUND AND SELECTED AFFILIATIONS

- Ph.D., Economics, The University of North Carolina, Chapel Hill
- American Economic Association

ADDITIONAL INFORMATION

Dr. Cody has been nominated as an Expert Transfer Pricing Adviser in the 1999, 2001, 2004, 2005, 2009, 2011 and 2013 *Guide to the World's Leading Transfer Pricing Advisers* published by Euromoney Legal Media Group. He is a frequent speaker at business and professional conferences, including Tax Executive Institute, American Institute of Certified Public Accountants, Canadian Importers Association, and European-American Tax Institute. He has published articles on the economics of intercompany pricing in the *Journal of International Taxation*, *Journal of Corporate Taxation*, *BNA Transfer Pricing Report*, and *Tax Planning International Review*. Dr. Cody has also served as Senior Economist, Research Department of the Federal Reserve Bank of Philadelphia, preparing and presenting preFederal Open Market Committee (FOMC) policy briefings and conducting research on international economics and foreign exchange risk. During this same period, Dr. Cody also taught International Finance at the Wharton School of the University of Pennsylvania.

PROFESSIONAL POSITIONS

- KPMG LLP – Principal, September 2006 - present
- CRA International, Inc. – Vice President, 2002 – September 2006
- Arthur Andersen, LLP – Partner, Central Region Intercompany Pricing Services Group, 1993 – 2002
- Coopers & Lybrand, LLP – Transfer Pricing Manager, 1991 – 1993
- The Federal Reserve Bank of Philadelphia – Senior Economist, Research Department, 1987 – 1991
- The Wharton School, University of Pennsylvania – Instructor in Finance/International Finance, 1988 – 1990

EDUCATION AND CERTIFICATIONS

- Ph.D., Economics - The University of North Carolina, Chapel Hill, 1987
- B.A. with honors, summa cum laude, Economics – The University of Missouri, Columbia, 1983
- B.A. with honors, summa cum laude, French – The University of Missouri, Columbia, 1983
- Certified in business French – Chambre de Commerce et d'Industrie de Paris

EXPERT REPORTS AND TESTIMONY

- Utah State Tax Commission, "Valuation and Arm's-length Royalty Rate for Retail Tradename Intangibles," Testimony at Hearing (May 2014). Issue: Analyze whether the valuation of retail tradename intangibles and subsequent licensing royalty rate were reasonable under the arm's-length standard.
- North Carolina Department of Revenue Administrative Tax Hearing, "Economic Analysis of Borrowed Capital," Expert Report (Spring, 2012). Issue: Analyze whether certain liabilities were properly characterized from an economic perspective as borrowed capital for North Carolina franchise tax purposes.
- State of Maryland, Tax Appeals Commission, "Economic Analysis of Value-Added Services, Licensing of Intellectual Property, and Cash Management Services," Expert Reports and Testimony in Maryland Tax Court (August 23-25, 2011). Issue: Analyze economic substance of the intercompany provision of value-added and cash management services, and the licensing of intellectual property and determine whether the intercompany transactions were reasonable under the arm's-length standard.
- Commonwealth of Massachusetts, Department of Revenue, "Economic Analysis of Intercompany Cash Management System", Expert Report and Testimony at Appellate Tax Board Hearing (February 22 – 24, 2010). Issue: Analyze intercompany cash management system to determine whether the intercompany advances and deposits were properly characterized as debt or equity-related transactions.
- State of Wisconsin, Department of Revenue, "Economic Substance and Arm's-Length Royalty Rates", Expert Report and Testimony at Hearing (March 17 – 19, 2009). Issue: Analyze intercompany licensing arrangement to determine whether the entities involved had appropriate economic substance and whether the intercompany royalty rates were reasonable under the arm's-length standard.
- State of New York, "Intercompany Transactions and 482 Analysis." Presentation to New York Department of Taxation and Finance Conciliation Conference (May 20, 2008). Issue:

Determination as to whether the pricing of various intercompany transactions was conducted at arm's-length prices.

- State of Utah, "Economic Characterization of Business and Non-business Income." Expert Report (May 31, 2006). Issue: Determination whether income generated by various transactions is properly characterized from an economic perspective as business or non-business income.
- Commonwealth of Massachusetts, "Characterization of Intercompany Service Transactions." Deposition Testimony (February 9, 2006). Issue: Examination whether various activities performed by company personnel constitute stewardship/shareholder or directly beneficial services.
- State of Minnesota, Tax Court, Regular Division, "Concerning Apportionment and the Nexus Standard for State Corporate Income Taxation." Expert Reports and Deposition Testimony (January 10, 2006). Issue: Analyze the structure and conduct of company operations and determine the location of the activities creating economic value.
- United States District Court, District of Massachusetts, American Twine Limited Partnership v. Gregory F. Whitten, Ruth Whitten and DKSW, LLC. Civil Action No. 02-10590-NMG, September 20, 2005. Expert Rebuttal Report and Testimony at Trial (August 16, 2005). Issue: Analyze economic nature of funds advanced from minority shareholder to determine whether such advances are properly characterized as debt or equity.
- State of New York Division of Tax Appeals, Hallmark Marketing Corporation for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the Year 1999, Determination DTA No. 819956, January 26, 2006. Expert Report, Rebuttal Report, and Testimony at Hearings (February and April, 2005). Issue: Analyze intercompany pricing of tangible products and ancillary transactions and determine whether the prices were consistent with the arm's-length standard.
- Ontario, Canada, Superior Court of Justice, Commercial List, "Intercompany Pricing – Minority Shareholder Issues". Cross examination and submission of affidavits (February and March 2005). Issue: Analyze intercompany pricing of tangible products and ancillary transactions and determine whether the prices were consistent with the arm's-length standard.
- Harrison J. Golding Chapter 11 Trustee to PSINet Consulting Solutions Holdings, Inc. et al. v. PSINet, Inc. et al. and PSINet Liquidating L.L.C., Chapter 11 Case No. 01-14916 (REG), Adversary Proceeding No. 02/8077. Deposition Testimony (November 25, 2003) and Testimony at Trial, Federal Bankruptcy Court, Southern District of New York (March 10-11, 2004). Issue: Analyze economic nature of funds advanced intercompany to determine whether such advances are properly characterized as debt or equity.
- State of New York Department of Taxation and Finance Administrative Tax Hearing, "Economic Analysis of Investment Tax Credit Program and Recapture Provisions." Expert Report and Testimony at Hearing (October 1, 2003). Issue: Examine sale of group companies to determine whether the terms of the disposition satisfied from an economic perspective the recapture provisions of the State's investment tax credit program.
- North Carolina Department of Revenue Administrative Tax Hearing, "Economic Analysis of Intercompany Franchise Arrangements." Expert Report and Testimony at Hearing (July 10, 2003). Issue: Analyze intercompany licensing / franchise arrangements to determine whether the pricing embodied in those arrangements satisfied the arm's-length standard and to determine the location of the activities generating the inherent value of the subject intangible property.

PUBLICATIONS

- "Transfer Pricing Audits in China – A Hypothetical Case Study," (joint with Steven Tseng, Yvonne Chen and Matthias Kaut) *KPMG: A Meeting of Minds – Resolving Transfer Pricing Controversies* (July 2008).
- "Past Losses, Future Profits and the Annual Audit," (joint with Tony Gorgas, Alexander Loh and Ron Simkover) *International Tax Review: Transfer Pricing* 35 (2007): 37-42.
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- "Using Real Options to Design Transfer Pricing Policies," (joint with Susan Rix Fickling) *Tax Management Transfer Pricing Report* 11, No. 22 (March 19, 2003): 990-995. Reprinted in *Tax Planning International: Transfer Pricing* 4, No. 4 (April 2003): 10-16.
- "Intercompany Pricing: 2001 Update," (Transcript of roundtable session at the University of Chicago, 54th Annual Federal Tax Conference, jointly presented with Lowell D. Yoder, Sean F. Foley, C. David Swenson, and Joel V. Williamson, November 13, 2001) *TAXES Magazine* (March, 2002).
- "Managing Your Intellectual Property Portfolio: Is Cost Sharing Right for You?" (joint with Rupesh Santoshi) *World Trade* (March 2002): 46-47.
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- "Japanese Intercompany Pricing Legislation: Current Developments," (joint with Deloris R. Wright and Kiyoshi Someya) *Tax Planning International Review* 19, No. 4 (April 1992): 23-25.
- "Alternative Methods for Determining Arm's Length Intercompany Prices," (joint with Frans W. Blok, Christopher D. Rolfe, and Deloris R. Wright) International Bureau of Fiscal Documentation (1992).
- "The Role of Commodity Prices in Formulating Monetary Policy," (joint with Leonard O. Mills) *The Review of Economics and Statistics* 73, No. 2 (May 1991): 358-365.
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- "Reducing the Costs and Risks of Trading Foreign Exchange," Federal Reserve Bank of Philadelphia *Business Review* (November/December 1990).

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- "Regional Impacts of Exchange Rate Movements," (joint with Gerald Carlino and Richard Voith) *Regional Science Perspectives* 20, No. 1 (1990): 89-104.
- "Imposing Exchange Controls to Dampen Currency Speculation: Political Risk and the French Franc, 1976-1984," *European Economic Review* 33, No. 9 (December 1989): 1751-1768.
- "International Policy Coordination: Building A Sound Foundation," Federal Reserve Bank of Philadelphia *Business Review* (March/April 1989). Reprinted as "Building a Foundation for Policy Coordination," in *Economic Impact* 1989/3, U.S. Information Agency. Also to be reprinted in The International Finance Reader, Robert W. Kolb (ed.), Kolb Publishing Company, Inc., Miami, 1991.

CITIZENSHIP

- United States of America and Republic of Ireland (dual)

PROFESSIONAL ORGANIZATIONS AND OTHER AFFILIATIONS

- American Economic Association
- St. Louis International Tax Club
- Phi Beta Kappa

Checkpoint Contents
State & Local Tax Library
WG&L State Tax Treatises
Hellerstein & Hellerstein: State Taxation
Appendix A. Uniform Division of Income for Tax Purposes Act
Appendix A. Uniform Division of Income for Tax Purposes Act

UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

at its

ANNUAL CONFERENCE MEETING IN ITS SIXTY-SIXTH YEAR AT NEW YORK, NEW YORK
JULY 8–13, 1957

WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association at its Meeting at New York, New York, July 16, 1957

UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Division of Income for Tax Purposes Act was as follows:

GEORGE V. POWELL, 1111 Dexter Horton Bldg., Seattle 4, Wash., *Chairman.*
GUY W. BOTTS, Barnett National Bank Bldg., Jacksonville, Fla.
RUPERT R. BULLIVANT, Pacific Bldg., Portland, Ore.
BARTON H. KUHNS, First National Bank Bldg., Omaha 2, Nebr.
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O. H. THORMODGSGARD, University of North Dakota Law School, University, N.D., *Chairman, Section C.*

Copies of all Uniform Acts and other printed matter issued by the Conference may be obtained from

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
1155 East Sixtieth Street
Chicago, Illinois 60637

UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT

PREFATORY NOTE The Uniform Division of Income for Tax Purposes Act is designed for enactment in those states which levy taxes on or measured by net income. The need for a uniform method of division of income for tax purposes among the several taxing jurisdictions has been recognized for many years and has long been recommended by the Council of State Governments. There is no other practical means of assuring that a taxpayer is not taxed on more than its net income. At present there are various formulae for determining the amount of income to be taxed in use by the states, and the differences in the formulae produce inequitable results. Many states now use the three factor formulae of this Act. The problem has been well analyzed and its historical background outlined in an article appearing in 18 Ohio State Law Journal, page 84. The Uniform Division of Income for Tax Purposes Act is the result of conferences with the representatives of the Controller's Institute of America, the Council of State Governments and various interested individuals. It was promulgated in 1957. The comments in the present reprinting of the Act were revised and extended in February 1966 in order to clarify the solutions to some of the problems which have been experienced in securing enactment of the Act in the several states.

March 1, 1966

UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT

Be It Enacted...

SECTION 1. As used in this Act, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. Comment

This definition refers to "the" taxpayer's trade or business as if he had one business. It is not intended by this language to require a taxpayer having several "businesses" to use the same allocation and apportionment methods for the

businesses. The language permits separate treatment of different businesses of a single taxpayer. Section 18 clearly permits separate treatment.

Income from the disposition of property used in a trade or business of the taxpayer is includible within the meaning of business income.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed. Comment

The phrase "directed or managed" is not intended to permit both the state where the board of directors meets and the state where the company is managed to claim the commercial domicile. The phrase "directed or managed" is intended as two words serving the same end; not as two separate concepts.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Comment

This definition is derived from the Model Unemployment Compensation Act which has been adopted in all states.

Compensation paid to "employees" becomes important in the payroll fraction in section 13. If a corporation is employed to provide personal services, section 18 may be used to include compensation paid to corporations in the fraction if exclusion of compensation paid to corporate agents fails to reflect adequately the business activity in the state.

(d) "Financial organization" means any bank, trust company, savings bank,

industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union,

cooperative bank, investment company, or any type of insurance company. Comment

This definition and the definition of "public utility" in subsection (f) is necessary because section 2 excludes from allocation and apportionment under this Act, income from these two types of business activity. The exclusion is proposed because some states have separate legislation for apportionment and allocation of income of such taxpayers. If not, and the state proposes to change subsection (2) so as to apply the Act to such taxpayers, this would not necessarily detract from the uniformity objective of this Act.

(e) "Non-business income" means all income other than business income.

(f) "Public utility" means

any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas. Comment

It is expected that "public utility" will be defined to include all taxpayers subject to the control of the state's regulatory bodies on the theory that separate legislation will provide for the apportionment and allocation of the income of such taxpayers.

See Comment to the definition of "financial organization" for purpose of this definition. "Oil, oil products or gas" is not intended to be so restrictive as to treat differently a public utility, if any, which transmits or produces "gas products." The essential point of the definition is the requirement that the business excluded by this definition and subsection 2 be a "public utility." Private transmission lines and private production or storage companies are thus not excluded.

(g) "Sales" means all gross receipts of the taxpayer not allocated under sections 4 through 8 of this Act. Comment

This all inclusive definition of sales is intended to make apportionable all income not allocated under sections 4 through 8. As indicated in the Comment to subsection 1(a) income from sales or property used in trade or business is included in apportionable income.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

SECTION 2. Any Taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Act.

SECTION 3. For purposes of allocation and apportionment of income under this Act, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not. Comment

This section defines, for purposes of section 2, where a taxpayer is "taxable both within and without this state." To bring this Act into operation a taxpayer must have

income from business activity, and he must be taxable in this state, and also in some other state.

Two tests are used by this section to determine when a taxpayer is "taxable in another state." The first test is a fairly obvious one, the taxpayer is taxable in another state if he is actually subjected to the type of taxes listed in subparagraph (1).

The second test, in subparagraph (2) uses a "notional" or "hypothetical" standard rather than an actual one. Thus, if a corporation has its commercial domicile in state X, which has only a sales tax and no tax measured by net income, but that corporation has business activity in state A, which has this apportionment Act, state A must apportion the business income as provided in this Act so that some of it is allocated to state X, even though as a result of the tax system of state X a portion of the business income escapes income taxation. This is desirable in order to treat the business of all states equally, and in order to avoid having this Act as a factor in inducing a state to have an income tax. If it does not wish to tax income, that is no reason for a state which does wish to tax income to attempt to obtain more than its share of taxable income.

It should be noted that in subsection 1(h) the word "state" is defined broadly enough to include a foreign country. This means that "taxable in another state" within section 3 may mean a foreign country. The apportioning state, however, need consider only whether the foreign country "could have" taxed the income under the constitution of the United States if it had been a state.

While subparagraph (1) lists several types of taxes which might be actually in effect in another state, the reference in subparagraph (2) only to a "net income" tax is not intended to be more restricted in the hypothetical tax than the section is with respect to an actual tax.

SECTION 4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute non-business income, shall be allocated as provided in sections 5 through 8 of this Act. Comment

This section is the general section on "allocating" non-business income to a state just as section 9 is the general section on apportionment of business income. Section 2 refers to an allocation and an apportionment of "net income." In "allocating" nonbusiness income to a state, the states concerned with this allocation may desire to allocate the expenses properly attributable to nonbusiness but allocable income in the same way that income is allocated so that these expenses will not be involved in determining net income from business activity where apportionment is used. Section 18 of this Code empowers the state to make this adjustment if it wishes.

SECTION 5

(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state, or

(2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

Comment

Rents from mobile tangible property are to be allocated in accordance with section 5 (c). This subsection apportions the rents by a fraction based on the number of days in the state on the assumption that the rents are generally based on time of use. If the rent itself is calculated on the basis of some factor other than time, section 18 would permit a state to substitute a fraction based on this substitute factor. Thus, if the rent for a drilling rig is calculated on the basis of number of feet drilled, the "extent of utilization" in the state might also be determined on the basis of a fraction which uses "feet drilled" rather than days in the state.

SECTION 6

(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if

(1) the property had a situs in this state at the time of the sale, or

(2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

SECTION 7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

SECTION 8

(a) Patent and copyright royalties are allocable to this state:

(1) if and to the extent that the patent or copyright is utilized by the payer in this state, or

(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

SECTION 9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

SECTION 10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. Comment

The property to be included in the numerator and denominator is property producing the net income to be apportioned. If net income from property is allocated property

under sections 5 through 8 such property should be excluded in constructing the fraction.

SECTION 11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals. Comment

This section is admittedly arbitrary in using original cost rather than depreciated cost, and in valuing rented property as eight times the annual rental. This approach is justified because the act does not impose a tax, nor prescribe the depreciation allowable in computing the tax, but merely provides a basis for division of the taxable income among the several states. The use of original cost obviates any differences due to varying methods of depreciation, and has the advantage that the basic figure is readily ascertainable from the taxpayer's books. No method of valuing the property would probably be universally acceptable.

In any situation where it is impossible to ascertain original cost, section 18 may be used to determine a fair value for such property. Section 18 may also be necessary to aid in determining "net annual rental value" of tangible personal property where the actual rent is so related to services that the part attributable to the object is difficult to determine.

Section 18 may also be used to determine a reasonable rental rate for this fraction where the actual rent is zero or norninal such as may be the case where a local government in attempting to induce an industry to come to a community supplies the property at a nominal rental.

SECTION 12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the

tax administrator may require the averaging of monthly values during the tax period of reasonably required to reflect properly the average value of the taxpayer's property.

SECTION 13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period. Comment

Payroll attributable to management or maintenance or otherwise allocable to nonbusiness property should be excluded from the fraction.

Payroll "paid" should be determined by the normal accounting methods of the business so that if the taxpayer "accrues" such matters the payroll should be treated as "paid" for purpose of this section.

SECTION 14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state; or

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state. Comment

This section is derived from the Model Unemployment Compensation Act. This is the same figure which will be used by taxpayers for unemployment compensation purposes.

SECTION 15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. Comment

The sales to be included in the fraction are only the sales which produce business income. Sales which produce "capital gains" are under section 6 and are to be allocated rather than apportioned.

"Total sales" means "total net sales" after discounts and returns.

SECTION 16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

Comment

The phrase "delivered or shipped to a purchaser" in this state includes shipments, at the designation of the purchaser, to a person in this state such as designating, while a shipment is enroute, the ultimate recipient.

Sales to the United States are treated separately. It is thought that this is justified because sales to the United States are not necessarily attributable to a market existing in the state to which the goods are originally shipped. This different treatment may also be justified because, if the goods are defense or war materials, it may be impossible to determine whether the goods ever come to rest in the state due to use of coded delivery instructions.

The section does not specify how sales from a subsidiary in the state to an out-of-state parent, such as a marketing corporation who thereupon redirects the goods back into the state, should be treated. If returns are not consolidated under existing state tax law, it may be necessary to use section 18 to make a fair representation of the business income in this situation.

SECTION 17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

SECTION 18. If the allocation and apportionment provisions of this Act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the

tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. Comment

It is anticipated that this Act will be made a part of the income tax acts of the several states. For that reason, this section does not spell out the procedure to

be followed in the event of a disagreement between the taxpayer and the tax administrator. The income tax acts of each state presumably outline the procedure to be followed.

Section 18 is intended as a broad authority, within the principle of apportioning business income fairly among the states which have contact with the income, to the tax administrator to vary the apportionment formula and to vary the system of allocation where the provisions of the Act do not fairly represent the extent of the taxpayer's business activity in the state. The phrases in section 18(d) do not foreclose the use of one method for some business activity and a different method for a different business activity. Neither does the phrase "method" limit the administrator to substituting factors in the formula. The phrase means any other method of fairly representing the extent of the taxpayer's business activity in the state.

SECTION 19. This Act shall be so construed so as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 20. This Act may be cited as the Uniform Division of Income for Tax Purposes Act.

SECTION 21. [The following acts and parts of acts are hereby repealed:

(a)

(b)

(c) .]

SECTION 22. This Act shall take effect .

END OF DOCUMENT -

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

DIRECTV, Inc.,	)	Civil Action No. 14-ALJ-17-0158-CC
	)	
Petitioner,	)	
	)	
vs.	)	**JOINT DEPOSITION DESIGNATIONS FROM DEPOSITION OF WILLIAM JOSEPH SPINA**
	)	
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	
	)	

Pursuant to Rule 32 of the South Carolina Rules of Civil Procedure, Petitioner DIRECTV, Inc. and Respondent South Carolina Department of Revenue hereby jointly submit designations for use at the trial of this action from the deposition of William Joseph Spina dated January 6, 2015. The parties designate the following excerpts by page and line:

6:20- 8:10	19:4– 19:10	33:7– 34:1
7:4- 7:13	20:1– 21:7	36:1– 37:14
10:12– 11:8	21:12– 22:2	37:23– 40:9
12:1– 12:5	22:12– 22:20	40:22– 41:3
12:9– 13:3	22:25 – 23:15	41:22– 42:21
13:18– 13:20	24:9– 25:1	
13:23– 14:23	25:11– 26:20	
15:20– 15:25	29:16– 31:1	
16-1– 16:4	31:8– 31:20	
16:15– 17:5	32:3– 32:16	
17:10– 18:14	32:18– 32:23	

FILED

JAN 12 2015

SC ADMIN. LAW COURT

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Charleston, South Carolina
January 12, 2015

SOUTH CAROLINA DEPARTMENT OF REVENUE

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Attorneys for SOUTH CAROLINA DEPARTMENT OF REVENUE

Columbia, South Carolina
January 12, 2015

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for DIRECTV, INC. and Subsidiaries, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified to the following address(es):

Pleadings: **JOINT DESIGNATIONS FROM DEPOSITION OF WILLIAM JOSEPH SPINA**

Counsel Served: **U.S. Mail**
Nicole M. Wooten, Esq.
William J. Condon, Jr., Esq.
South Carolina Department of Revenue
300A Outlet Pointe Blvd.
Post Office Box 12265
Columbia, SC 29211

Cindy K. Hess
Sr. Administrative Assistant

January 12, 2015

FILED
JAN 12 2015
SC ADMIN. LAW COURT

THO

State of South Carolina

'C' CORPORATION INCOME TAX RETURN

Return is due on or before the 15th day of the 3rd month following the close of the taxable year

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

SC 1120 (Rev. 8/22/06) 3091

SC FILE # 2043217-65

INCOME TAX PERIOD ENDING 12/31/2006

LICENSE FEE PERIOD ENDING 12/31/2007

FED EI # [redacted] 2043217-6

DIRECTV, INC. & SUBSIDIARY

NAME

MAILING ADDRESS

CITY STATE ZIP CODE 90245-

Change of ☐ Address ☐ Accounting Period

A COMPLETE COPY OF FEDERAL RETURN MUST BE ATTACHED TO THIS RETURN.

County or Counties in SC Where Property is Located: VARIOUS

City Audit Location: EL SEGUNDO, CA State:

Audit Contact: JOHN SCHNEIDER Telephone Number: (310) 964-0745

Check if ☐ Amended Return ▶ ☒ Consolidated Return

Total Gross Receipts. ▶ 13743345649.00

Total cost of depreciable personal property in SC. ▶ 30,002,937.00

If Filing a Final Return, See Instructions for Further Information.

▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per Federal Form 1120 or 1120A	See Stmt B ▶ 1.	1860205365.00
2.	Net Adjustment from line 12, Schedule A and B	Stmt 1 2.	2,586,685.00
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	▶ 3.	1862792050.00
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3	Stmt 3 ▶ 4.	39,925,221.00
5.	LESS: South Carolina net operating loss carryover, if applicable	5.	39,372,439.00
6.	South Carolina Net Income subject to tax (line 4 less line 5) 8405375 3	▶ 6.	552,782.00
7.	TAX: Multiply amount on line 6 by .05 (5.0%)	7.	27,639.10
8.	Less tax deferred on income from foreign trade receipts (see instructions) 8405375 4	▶ 8.	
9.	Balance (line 7 less line 8)	9.	27,639.00
10.	Credit Carryover (line 7, Schedule C) ▶ RECEIVED Non-refundable credits (line 5, Schedule C)	▶ 10.	( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero	11.	27,639.00
12.	Interest on DISC-deferred tax liability ; or Foreign Trade Deferred Tax Liability	12.	
13.	Total tax and/or interest (add lines 11 and 12)	13.	27,639.00
14.	**Payments:** (a) Tax Withheld (see instructions) ▶ (b) Paid by Declaration ▶		
	(c) Paid with Tentative Return ▶ 275,000.00 (d) Credit from Line 29b ▶		
	Refundable Credits: (e) Ammonia Additive ▶ (f) Milk Credit ▶		
15.	Total Payments and Refundable Credits (add lines 14a through 14f)	15.	275,000.00
16.	Balance of Tax and/or Interest Due (line 13 less line 15)	▶ 16.	NONE
17.	Interest Due ▶ Penalty Due ▶ (See penalty and interest instructions.) Enter Total	▶ 17.	
18.	**TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17)**	**BALANCE DUE** 18.	
19.	**OVERPAYMENT** (line 13 less line 13) 247,361.00 To be applied as follows:		
	(a) Estimated Tax ▶ 228,664.00 (b) License Fee ▶ 18,697.00 (c) REFUNDED ▶		

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid in Surplus (Multi-State Corporations See Schedule E)	▶ 20.	18,657,224.00
21.	FEE DUE - Line 20 x .001, plus $15.00 (**Fee cannot be less than $25.00 per taxpayer**)	Stmt 5 21.	18,697.00
22.	LESS: Applicable Credits against License Fee (attach SC1120-TC)	22.	
23.	Balance (line 21 less line 22)	23.	18,697.00
24.	Payments: (a) Paid with Tentative Return ▶ (b) Credit from line 19b ▶ 18,697.00		
25.	Total Payments (add line 24(a) and (b))	25.	18,697.00
26.	Balance of Fee Due (line 23 less line 25)	▶ 26.	NONE
27.	Interest Due ▶ Penalty Due ▶ (See penalty and interest instructions.) Enter Total	▶ 27.	
28.	**TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27)**	**BALANCE DUE** 28.	
29.	**OVERPAYMENT** (line 25 less line 23) To be applied as follows:		
	(a) Estimated Tax ▶ 1303 (b) Income Tax ▶ (c) REFUNDED ▶		
30.	**GRAND TOTAL - INCOME TAX and LICENSE FEE DUE (add lines 18 and 28)** . . . EFT	▶ 30.	

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please sign here ▶ Signature of officer B.R. PAPERNY Date 9/17/07 ▶ Title V.P., TAXES Telephone Number 310-9640745

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐

Preparer's Printed Name

Preparer's signature ▶ Date Check if self-employed ▶ ☐ Preparer's telephone number

Firm's name (or yours if self-employed) and address ▶ EI # ▶ ZIP Code ▶

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THO DIRECTV, INC. [redacted]

SC1120

SCHEDULE A AND B ADDITIONS TO FEDERAL TAXABLE INCOME

1.	Taxes on or Measured By Income	1. 7,916,800.00	
2.	Federal Net Operating Loss	2.	
3.		3.	
4.		4.	
5.	Other Additions (attach schedule)	5.	
6	Total Additions (add lines 1 through 5)		6. 7,916,800.00

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7.	Interest On Obligations Of The U.S.	7.	
8.		8.	
9.		9.	
10.	Other Deductions (attach schedule) Stmt 6	10. 5,228,561.00	
11.	Total Deductions (add lines 7 through 10)		11. 5,228,561.00
12.	Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12. 2,688,239.00

SCHEDULE C SUMMARY OF CREDITS (FROM SC1120-TC)

1.	Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 39)	1.
2.	Enter Total Credits from SC1120-TC, Column B, line 39. **SC1120-TC must be attached to return.**	2.
3.	Total Credits (add lines 1 and 2)	3.
4.	Tax (line 9, Part 1, SC1120)	4. 1,996,261.05
5.	Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 39.)	5.
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 39.)	6.
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 39.)	7.

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name DIRECTV, INC.
2. Incorporated under the laws of the State of California
3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND MALL BLVD
   In the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 7
   Nature of principal business in SC TV Program Distributor
   The total number of **authorized shares** of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
6. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
I.W. PALKOVIC	2250 E. Imperial Hwy EL SEGUNDO, CA 902
. CAREY	2250 E.Imperial Hwy EL SEGUNDO, CA 9024
. T. Doyle	2250 E. Imperial Hwy EL SEGUNDO, CA 9024
.D. Hunter	2250 E. IMPERIAL HWY. EL SEGUNDO, CA 902

Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
Date of this report 09/06/2007 Fed EI # [redacted]
If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
Was the name of the Corporation changed during the year? NO Give old name
The Corporation's books are in the care of John Schneider
Located at (street address) See Statement 7
If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
The total amount of stated capital per balance sheet is:

A.	Total paid in Capital Stock (cannot be a negative amount)	$
B.	Total paid in Capital Surplus (cannot be a negative amount)	$ 954,870,976.00
C.	Total amount of stated Capital (cannot be a negative amount)	$ 954,870,976.00

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SCHEDULE A AND B — ADDITIONS TO FEDERAL TAXABLE INCOME

1.	Taxes on or Measured By Income	1. -101,554.00	
2.	Federal Net Operating Loss	2.	
3.		3.	
4.		4.	
5.	Other Additions (attach schedule)	5.	
6.	Total Additions (add lines 1 through 5)		6. -101,554.00

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7.	Interest On Obligations Of The U.S.	7.	
8.		8.	
9.		9.	
10.	Other Deductions (attach schedule)	10.	
11.	Total Deductions (add lines 7 through 10)		11.
12.	Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12. -101,554.00

SCHEDULE C — SUMMARY OF CREDITS (FROM SC1120-TC)

1.	Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 39)	1.	
2.	Enter Total Credits from SC1120-TC, Column B, line 39. **SC1120-TC must be attached to return.**	2.	
3.	Total Credits (add lines 1 and 2)	3.	
4.	Tax (line 9, Part 1, SC1120)	4.	NONE
5.	Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 39.)	5.	
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 39.)	6.	
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 39.)	7.	

SCHEDULE D — ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name THIS SCHEDULE DOES NOT PRINT FOR SUBS
2. Incorporated under the laws of the State of _____
3. Location of the Registered Office of the Corporation in the State of South Carolina is _____
   In the City of _____ Registered Agent at such address is _____
4. Location of principal office (street address) _____
   Nature of principal business in SC _____
   The total number of **authorized shares** of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: _____ CLASS: _____ SERIES: _____
6. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: _____ CLASS: _____ SERIES: _____
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE

Date Incorporated _____ Date commenced business in the State of South Carolina was _____
Date of this report _____ Fed EI # [redacted]
If Foreign Corporation, the date qualified to do business in the State of South Carolina is _____
Was the name of the Corporation changed during the year? _____ Give old name _____
The Corporation's books are in the care of _____
Located at (street address) _____
If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
The total amount of stated capital per balance sheet is:

A. Total paid in Capital Stock (cannot be a negative amount). . . . . $ _____
B. Total paid in Capital Surplus (cannot be a negative amount). . . . . $ _____
C. Total amount of stated Capital (cannot be a negative amount). . . . . $ _____

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SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-in-Surplus at end of Year See Stmt Ref. for Page 1, Line 21 $
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) Also enter on line 20, Part II $

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1	1.	2043360512.00
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7	2.	
3. Total net income subject to apportionment (line 1 less line 2)	3.	2043360512.00
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, 2, or 3 and enter result here	4.	39,925,221.00
5. Add: Income subject to direct allocation to SC from Schedule F, line 8	5.	
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1	6.	39,925,221.00

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5, subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL **Property** Add lines 8 and 9 (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL **Payroll** (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL **Sales** (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL **Sales** (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

HEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
Total Gross Receipts	268,532,140.00	13743345649.00	
Less: Exclusion (see instructions)	( )	( )	
Gross Receipts (for ratio)	268,532,140.00	13743345649.00	
Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			1.9539 %

HEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
otal Within South Carolina		
otal for System		
South Carolina ÷ Total System)		%

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SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-In-Surplus at end of Year See Stmt Ref. for Page 1, Line 21 $ _____
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) Also enter on line 20, Part II $ _____

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1	1.	-180,568,462.00
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7	2.	
3. Total net income subject to apportionment (line 1 less line 2)	3.	-180,568,462.00
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, 2, or 3 and enter result here	4.	NONE
5. Add: Income subject to direct allocation to SC from Schedule F, line 8	5.	
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1	6.	NONE

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land			4,313,500.00	
2. Buildings			21,070,672.00	
3. Machinery and Equipment			137,421,911.00	
4. Inventories			41,787,517.00	
5. Other Property			1,607,968.00	
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5; subtract line 6)			206,201,568.00	

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)		103,100,784.00	
9. Rental or Lease Value		269,824.00	
10. TOTAL **Property** Add lines 8 and 9 (Col. 1 ÷ Col. 2 and enter ratio in Col 3)		103,370,608.00	NONE %
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL **Payroll** (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL **Sales** (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)		123,751,855.00	NONE %
15. TOTAL **Sales** (same as line 14)		123,751,855.00	NONE %
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			NONE %
17. Arithmetical Average of Ratios			NONE %

CHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
Total Gross Receipts			
Less: Exclusion (see Instructions)	( )	( )	
Gross Receipts (for ratio)			
Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			%

CHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
Total Within South Carolina		
for System		
(South Carolina ÷ Total System)		%

1.000

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SCHEDULE I RESERVED

SCHEDULE J CORPORATIONS INCLUDED IN CONSOLIDATED RETURN

AFFILIATED CORPORATION NO. 1

1. Name DIRECTV, INC.
2. Incorporated under the laws of the State of California
3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND MALL BLVD
   In the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 8
   Nature of principal business in S.C. TV Program Distributor
5. The total number of **authorized shares** of capital stock, itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

6. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
M.W. PALKOVIC	2250 E. Imperial Hwy EL SEGUNDO, CA 902
C. CAREY	2250 E.Imperial Hwy EL SEGUNDO, CA 9024
P. T. Doyle	2250 E. Imperial Hwy EL SEGUNDO, CA 9024
L.D. Hunter	2250 E. IMPERIAL HWY. EL SEGUNDO, CA 902

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/06/2007 Fed. EI # [redacted] SC File # 2043217-65
0. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
1. Was the name of the Corporation changed during the year? NO Give old name
2. The Corporation's books are in the care of John Schneider
   Located at (street address) See Statement 8
3. Corporate Mailing Address
I. The total amount of stated capital per balance sheet is:
   A. Total paid in Capital Stock (cannot be a negative amount) . . . . . $
   B. Total paid in Capital Surplus (cannot be a negative amount) . . . . . $ 954,870,976.
   C. Total amount of stated Capital (cannot be a negative amount) . . . . . $ 954,870,976.

For additional affiliated corporations duplicate Schedule J as needed.

ATTACH COMPLETED COPY OF FEDERAL RETURN.

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.

SCHEDULE I RESERVED

SCHEDULE J CORPORATIONS INCLUDED IN CONSOLIDATED RETURN

AFFILIATED CORPORATION NO. 1

1. Name DTV NETWORK SYSTEMS, INC.
2. Incorporated under the laws of the State of DELAWARE
3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND BLVD
   In the City of COLUMBIA Registered Agent at such address is CORP SERVICE COMPANY
4. Location of principal office (street address) See Statement 9
   Nature of principal business in S.C. MANUFACTURING COMMUNICATIONS EQUIPMENT
5. The total number of **authorized shares** of capital stock, itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

6. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
100.	COMMON	

7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
B.B. Churchill	2250 E. Imperial Hwy El Segundo, CA 9024
M.W. PALKOVIC	2250 E. Imperial Hwy El Segundo, CA 9024
P.T. Doyle	2250 E. Imperial Hwy El Segundo, CA 9024
L.D. Hunter	2250 E. IMPERIAL HWY El Segundo, CA 9024

8. Date Incorporated 11/13/2001 Date commenced business in the State of South Carolina was 12/31/2001
9. Date of this report 09/07/2007 Fed. EI # [redacted] SC File #
0. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 12/31/2001
1. Was the name of the Corporation changed during the year? NO Give old name
2. The Corporation's books are in the care of JOHN SCHNEIDER
   Located at (street address) See Statement 9
3. Corporate Mailing Address 2250 E. IMPERIAL HWY, CA-LA2-A126, EL SEGUNDO, CA 90245
4. The total amount of stated capital per balance sheet is:
   A. Total paid in Capital Stock (cannot be a negative amount) . . . . . $ NONE
   B. Total paid in Capital Surplus (cannot be a negative amount) . . . . . $ 144,754,869.
   C. Total amount of stated Capital (cannot be a negative amount) . . . . . $ 144,754,869.

For additional affiliated corporations duplicate Schedule J as needed.

ATTACH COMPLETED COPY OF FEDERAL RETURN.

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.

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Schedule A and B

	Combined	STATE HEC & SUBS SC CONSOLIDATION	Adjustments	DIRECTV, INC. AND CONSOLIDATED
Additions to federal net income				
1. Taxes on or measured by income	7,815,246.00			7,815,246.00
2. Federal net operating loss				
3.				
4.				
5. Other additions				
6. Total additions	7,815,246.00			7,815,246.00
Deductions from federal net income				
7. Interest on obligations of the U.S.				
8.				
9.				
10. Other deductions	5,228,561.00			5,228,561.00
11. Total deductions	5,228,561.00			5,228,561.00
12. Net adjustment	2,586,685.00			2,586,685.00

ROA 0373

Schedule A and B

	DIRECTV, Inc [redacted]	DTV Network Systems, Inc. [redacted]
Additions to federal net income		
1. Taxes on or measured by income	7,916,800.00	-101,554.00
2. Federal net operating loss		
3. ...		
4. ...		
5. Other additions		
6. Total additions	7,916,800.00	-101,554.00
Deductions from federal net income		
7. Interest on obligations of the U.S.		
8. ...		
9. ...		
10. Other deductions	5,228,561.00	
11. Total deductions	5,228,561.00	
12. Net adjustment	2,688,239.00	-101,554.00

ROA 0374

SC TAXABLE INCOME

	Combined	Adjustments	DIRECTV, INC. AND CONSOLIDATED [redacted]
Computation of Taxable Income			
1. Total net income as reconciled	1862792050.00		1862792050.00
2. Less: alloc. income to S.C. and other states			
3. Total net income subject to apportionment ...	1862792050.00		1862792050.00
Ratio			0.028800
4. South Carolina apportionment amount	39,925,221.00		39,925,221.00
5. Add: allocable income to S.C.			
6. Total S.C. net income	39,925,221.		39,925,221.

ROA 0375

SC TAXABLE INCOME

	DIRECTV, Inc	DTV Network Systems, Inc.
[redacted]		
Computation of Taxable Income		
1. Total net income as reconciled	2043360512.00	-180,568,462.00
2. Less: alloc. income to S.C. and other states		
3. Total net income subject to apportionment	2043360512.00	-180,568,462.00
Ratio	1.953900	NONE
4. South Carolina apportionment amount	39,925,221.00	NONE
5. Add: allocable income to S.C.		
6. Total S.C. net income	39,925,221.	NONE

ROA 0376

South Carolina SC1120, Page 1 Detail - Computation of License Fee

Company name	Tot. cap. & Paid in surplus	Apportionment %	Apportioned Capital	License fee due
DIRECTV, Inc	954,870,976.	1.953900	18,657,224.00	18,672.00
DTV Network Systems, Inc.	144,754,869.	NONE	NONE	25.00
Total license fee due	1,099,625,845.		18,657,224.00	18,697.00

ROA 0377

South Carolina SC1120, Page 2 Detail

Sch. B, Line 10 - Other deductions

2002 JGWA/2003 JGTRRA DEPRECIATION ADJ.	5,166,951.
2002 JGWA/2003 JGTRRA LOSS ON ASSET SALE ADJ.	61,610.
Total	5,228,561.

South Carolina SC1120, Page 2 Detail

Sch. D, Line 4 - Location of Principal Office

See Statement 2
EL SEGUNDO, CA 90245

Sch. D, Line 12 - Location of Books

2250 E.Imperial Hwy, CA-LA2-A126
El Segundo, CA 90245

South Carolina SC1120, Page 4 Detail

Sch. J, Line 4 - Location of Principal Office

See Statement 2
EL SEGUNDO, CA 90245

Sch. J, Line 12 - Location of Books

2250 E.Imperial Hwy, CA-LA2-A126
El Segundo, CA 90245

South Carolina SC1120, Page 4 Detail

Sch. J, Line 4 - Location of Principal Office

2250 E. IMPERIAL HWY, BOX 956, CA-LA2-A126
EL SEGUNDO, CA 90245

Sch. J, Line 12 - Location of Books

2250 E. IMPERIAL HWY, BOX 956, CA-LA2-A126
EL SEGUNDO, CA 90245

[redacted]

South Carolina Carryover Schedules

Net Operating Loss (non-SRLY)

Carryover generated YE 12/31/2003 .....$	953,709.	
Total utilization	(NONE)	
Carried forward from 12/31/2003		953,709.
Carryover generated YE 12/31/2004 .....$	21,443,996.	
Total utilization	(NONE)	
Carried forward from 12/31/2004		21,443,996.
Carryover generated YE 12/31/2005 .....$	16,974,734.	
Total utilization	(NONE)	
Carried forward from 12/31/2005		16,974,734.
Total amount carried forward From YE 12/31/2005.....$		39,372,439.

DIRECTV, Inc. & Subsidiaries
Consolidated South Carolina
Form SC 1120
TAX YEAR ENDING 12/31/2006
FEIN [redacted]
SC File # 2043217-65

INCOME TAX	SC 1120 Line 1 Federal Taxable Income	Additons to Income	Deductions from Income	SC 1120 Line 2 Net Adjustments to Income	SC 1120 Line 3 Total Net Income	SC 1120 Line 4 Apportioned Income
DIRECTV, Inc.	2,040,672,273	7,916,800	(5,228,561)	2,688,239	2,043,360,512	39,925,221
DTV Network Systems, Inc.	(180,466,908)	(101,554)	0	(101,554)	(180,568,462)	0
TOTAL	1,860,205,365	7,815,246	(5,228,561)	2,586,685	1,862,792,050	39,925,221

SC 1120 Line 5: LESS South Carolina NOL Carryforward	39,372,439
SC 1120 Line 6: South Carolina Net Income Subject to Tax	552,782
SC 1120 Line 7: South Carolina Income Tax	27,639

LICENSE FEE	SC 1120 Line 20 Total Capital & Paid In Surplus	SC 1120 Line 21 Fee Due
DIRECTV, Inc.	12,983,381	18,672
DTV Network Systems, Inc.	0	25
TOTAL	12,983,381	18,697

INCOME & LICENSE FEE PYMTS	SC 1120 Line 15 Total Income & License Fee pymts	SC 1120 Line 13 Income Tax Due	SC 1120 Line 21 Fee Due	SC 1120 Line 19a Overpymt applied to next year
TOTAL	275,000	27,639	18,697	(228,664)

DIRECTV, Inc. & Subsidaries
Consolidated South Carolina
Form SC 1120
TAX YEAR ENDING 12/31/2005
FEIN [redacted]
SC File # 2043217-65

The DIRECTV Group, Inc. filed a final return in 2005 because it withdrew from South Carolina on July 6, 2004. Thus, it no longer is the parent company of this consolidated group for South Carolina income tax filings.
For the tax year ending December 31, 2006, the new designated parent is DIRECTV, Inc., [redacted]

The following legal entities within this consolidated group is filing final South Carolina return:

DTV Network Systems, Inc. [redacted]

Thus with DTV Networks Systems, Inc. filing a final return in 2006, DIRECTV, Inc. will no longer file a consolidated return, Year 2007 it will file a stand alone separate tax return.

STATEMENT A

DIRECTV, INC. & SUBSIDIARIES
[redacted]
South Carolina Combined Tax Return
12/31/2006

Form SC 1120, Page 1, Line 1

	Directv, Inc. [redacted]	DTV Network Systems, Inc. [redacted]	Combined
Federal Taxable Income (Loss), Form 1120, Line 30	2,040,672,273	(218,920,366)	1,821,751,907
Net Capital Loss Disallowed, Form 1120, page 1, line 8	0	38,377,910	38,377,910
Charitable Contributions Disallowed, Form 1120,page 1, line 19	0	75,548	75,548
Federal Taxable Income (Loss) for South Carolina Purposes	2,040,672,273	(180,466,908)	1,860,205,365

STATEMENT B

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THO

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TENTATIVE CORPORATION TAX RETURN AND CONDITIONAL EXTENSION

SC1120-T
(Rev. 9/27/06)
3096

INSTRUCTIONS FOR TENTATIVE CORPORATION TAX RETURN

If any corporate income tax or license fee is anticipated to be due, a request for an extension of time must be filed using SC1120-T, on or before the day that the tax return is due. No refund will be issued from a tentative return. Any amounts shown to be due on this form must be paid when the SC1120-T is filed. A penalty will be incurred for failure to pay at least ninety (90) percent of the total tax due by the original due date.

If no income tax or license fee is anticipated to be due, and the taxpayer has requested a federal extension of time to file a federal income tax return, the department will accept a copy of a properly filed federal extension if the corporate return is received within the time extended by the Internal Revenue Service.

A copy of the federal or South Carolina extension(s) must be attached to the return when filed. An additional extension may be requested by filing an additional federal extension or by letter to the Department. **Do not file a second SC1120-T.** If a date is not shown SC1120-T, the extension will be considered valid for only 180 days.

For consolidated return filers: File a **Single Tentative Return** and attach a schedule listing the corporations to be included in the return. The license fees are computed separately and then added. Fee cannot be less than $25 per taxpayer. **Failure to list members of the affiliated group may result in the group's liability to elect to file a consolidated return.** The license fee is not applicable to savings and loan associations or banks. A federal extension will be accepted if all corporations filing in South Carolina are included in one or more federal extensions.

Mail to: SC Department of Revenue, Corporation, Columbia SC 29214-0006. Include Business Name, FEI Number and SC File Number on Check.

USE BLACK INK ONLY

THO

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TENTATIVE CORPORATION TAX RETURN AND CONDITIONAL EXTENSION

SC1120-T
(Rev. 9/27/06)
3096

SC CORPORATE FILE #	ACCOUNTING PERIOD ENDING
2043217-6	12/31/2006
[redacted]	09/15/2007
FED EI #	Return extended to

Corporate Name and Address

DIRECTV, INC. & SUBS
P O BOX 956, CA-LA2-A126
EL SEGUNDO, CA 90245-9056

CHECK IF:
- [ ] Foreign Not USA
- [ ] Tax EXEMPT
- [X] Consolidated Return Attach a schedule listing each member.
- [ ] Bank or S &
- [ ] QSSS Election Attach a schedule listing each member.
- [ ] Utility or Electric Coop

Signature [signature] Date 3/14/07

1. Tentative Tax Based on Net Income . . . 1.		255,000.00
2. LESS: Estimated Tax Payments . . . 2.		.00
3. Tentative Tax Due . . 3. 14-0804	▶	255,000.00
4. Total Capital and Paid in Surplus 20,000.00 x .001 plus $15.00 but not less than $25.00 Tentative License Fee 4. 14-0401	▶	20,000.00
5. Balance Remitted . . 5.	▶	275,000.00

30961023 2043217-69 954321465 1206 00025500000 000020000004

DIRECTV Inc. & Subsidiaries
FEIN.: [redacted]
Form SC1120-T
Tax Year: 1/1/2006 – 12/31/2006

Entity to be included in DIRECTV, Inc & Subs' South Carolina Form SC1120 consolidated corporate income tax filing:

DTV NETWORK SYSTEMS, INC. [redacted]
(fka Hughes Network Systems,Inc.)

AMENDED

STF

State of South Carolina
'C' CORPORATION INCOME TAX RETURN
Return is due on or before the 15th day of the 3rd month following the close of the taxable year.
Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

SC 1120
(Rev 8/22/06)
3091

FILE # 20432176 - 9

INCOME TAX PERIOD ENDING 12/31/2006
LICENSE FEE PERIOD ENDING 12/31/2007

FED EI # [redacted]

NAME DIRECTV, INC. & SUBSIDIARY
MAILING ADDRESS 2250 E. IMPERIAL HWY,
PO BOX 956, CA-LA2-A126
CITY EL SEGUNDO STATE CA ZIP CODE 90245-0956

Change of ☐ Address ☐ Accounting Period

A COMPLETE COPY OF FEDERAL RETURN MUST BE ATTACHED TO THIS RETURN.

County or Counties in SC Where Property is Located:
VARIOUS

City Audit Location: EL SEGUNDO, CA State:

Audit Contact: J. SCHNEIDER
Telephone Number: 310-964-0744

Check if ☐ Amended Return ▶ ☒ Consolidated Return

Total Gross Receipts. ▶ 13,743,345,649
Total cost of depreciable personal property in SC ▶ 30,002,937

If Filing a Final Return, See Instructions for Further Information.
▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I: INCOME TAX LIABILITY COMPUTATION

1.	Federal Taxable Income per Federal Form 1120 or 1120A	1.	1,851,293,005
2.	Net Adjustment from line 12, Schedule A and B	2.	2,586,685
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	3.	1,853,879,690
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3.	4.	39,751,082
5.	LESS: South Carolina net operating loss carryover, if applicable	5.	39,428,874
6.	South Carolina Net Income subject to tax (line 4 less line 5)	6.	322,208
7.	TAX: Multiply amount on line 6 by .05 (5.0%)	7.	16,110
8.	Less tax deferred on income from foreign trade receipts (see instructions)	8.	
9.	Balance (line 7 less line 8)	9.	16,110
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C).	10.	< >
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11.	16,110
12.	Interest on DISC-deferred tax liability _____; or Foreign Trade Deferred Tax Liability _____	12.	
13.	Total tax and/or interest (add lines 11 and 12)	13.	16,110
14.	**Payments:** (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ _____ (c) Paid with Tentative Return ▶ _____ (d) Credit from Line 29b ▶ 0		
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f) TAX PAID AS LAST FILED	15.	27,639
16.	Balance of Tax and/or Interest Due (line 13 less line 15)	16.	0
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	17.	0
18.	**TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) ... BALANCE DUE**	18.	0
19.	**OVERPAYMENT** (line 15 less line 13) 11,529 To be applied as follows: (a) Estimated Tax ▶ _____ (b) License Fee ▶ _____ (c) REFUNDED ▶		11,529

PART II: LICENSE FEE COMPUTATION

20.	Total Capital And Paid in Surplus (Multi-State Corporations See Schedule E)	20.	18,657,224
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	21.	18,697
22.	LESS: Applicable Credits against License Fee (attach SC1120-TC)	22.	
23.	Balance (line 21 less line 22)	23.	18,697
24.	Payments:(a) Paid with Tentative Return ▶ _____ (b) Credit from line 19b ▶ 0		
25.	Total Payments (add line 24(a) and (b)) TAX PAID AS LAST FILED	25.	18,697
26.	Balance of Fee Due (line 23 less line 25)	26.	0
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	27.	0
28.	**TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) ... BALANCE DUE**	28.	0
29.	**OVERPAYMENT** (line 25 less line 23) 0 To be applied as follows: (a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶		0
30.	**GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) ... EFT** ☐	30.	0

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please sign in ▶ Signature of officer 1/31/06 Date ▶ Sr. V.P. Taxes Title ▶ Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐ Preparer's Printed Name

Preparer's signature ▶ Dan McMillen Date ▶ 2/16/10 Check if self-employed ▶ ☐ Preparer's telephone number

Preparer's Firm's name (or yours if self-employed) and address ▶ DuChanne, McMillen & Assoc. Inc.
296 Concord Road, Billerica, MA 01821
Telephone: (978) 262-0010

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AMENDED FOR A-

SCHEDULE A AND B ADDITIONS TO FEDERAL TAXABLE INCOME

1. Taxes on or Measured By Income	1.	7,815,246	
2. Federal Net Operating Loss	2.		
3.	3.		
4.	4.		
5. Other Additions (attach schedule)	5		
6. Total Additions (add lines 1 through 5)			6. 7,815,246

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7. Interest On Obligations Of The U.S.	7.		
8.	8.		
9.	9.		
10. Other Deductions (attach schedule)	10.	5,228,561	
11. Total Deductions (add lines 7 through 10)			11. 5,228,561
12. Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120			12. 2,586,685

SCHEDULE C SUMMARY OF CREDITS (FROM SC1120-TC)

1. Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 39).	1.	
2. Enter Total Credits from SC1120-TC, Column B, line 39. **SC1120-TC must be attached to return.**	2.	
3. Total Credits (add lines 1 and 2)	3.	
4. Tax (line 9, Part 1, SC1120)	4.	
5. Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 39.)	5.	
6. Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 39.)	6.	
7. Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 39.)	7.	

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name SAME AS LAST FILED
2. Incorporated under the laws of the State of _____
3. Location of the Registered Office of the Corporation in the State of South Carolina is _____
   In the City of _____ Registered Agent at such address is _____
4. Location of principal office (street address) _____
   Nature of principal business in SC _____
5. The total number of **authorized shares** of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: _____ CLASS: SAME AS LAST FILED SERIES: _____
6. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: _____ CLASS: _____ SERIES: _____
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are: (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
	SAME AS LAST FILED

8. Date Incorporated _____ Date commenced business in the State of South Carolina was _____
9. Date of this report _____ Fed EI # _____
0. If Foreign Corporation, the date qualified to do business in the State of South Carolina is _____
1. Was the name of the Corporation changed during the year? _____ Give old name _____
2. The Corporation's books are in the care of SAME AS LAST FILED
   Located at (street address) _____
3. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
1. The total amount of stated capital per balance sheet is:
   A. Total paid in Capital Stock (cannot be a negative amount) $ _____
   B. Total paid in Capital Surplus (cannot be a negative amount) $ _____
   C. Total amount of stated Capital (cannot be a negative amount) $ 0

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SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-in-Surplus at end of Year $ _____
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) Also enter on line 20, Part II $ _____

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1	1.
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7	2.
3. Total net income subject to apportionment (line 1 less line 2)	3.
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, 2, or 3 and enter result here	4.
5. Add: Income subject to direct allocation to SC from Schedule F, line 8	5.
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1	6.

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions	< >	< >	< >	< >
7. TOTAL (add lines 1 - 5; subtrad line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL Property Add lines 8 and 9. (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	< >	< >	
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL Sales (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H - 2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts			
2. Less: Exclusion (see instructions)	< >	< >	
3. Gross Receipts (for ratio)			
4. Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			%

SCHEDULE H - 3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

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SCHEDULE I RESERVED

SCHEDULE J CORPORATIONS INCLUDED IN CONSOLIDATED RETURN

AFFILIATED CORPORATION NO. 1

1. Name DIRECTV, INC.
2. Incorporated under the laws of the State of California
3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND MALL BLVD
   In the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 8
   Nature of principal business in S.C. TV Program Distributor
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are: (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
M.W. PALKOVIC	2250 E. Imperial Hwy EL SEGUNDO, CA 902
J. CAREY	2250 E.Imperial Hwy EL SEGUNDO, CA 9024
P. T. Doyle	2250 E. Imperial Hwy EL SEGUNDO, CA 9024
L.D. Hunter	2250 E. IMPERIAL HWY. EL SEGUNDO, CA 902

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/06/2007 Fed. EI # [redacted] SC File # 2043217-65
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of John Schneider
    Located at (street address) See Statement 8
13. Corporate Mailing Address
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount) . . . . . $
    B. Total paid in Capital Surplus (cannot be a negative amount) . . . . . $ 954,870,976.
    C. Total amount of stated Capital (cannot be a negative amount) . . . . . $ 954,870,976.

For additional affiliated corporations duplicate Schedule J as needed.

ATTACH COMPLETED COPY OF FEDERAL RETURN.

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.

THO

SC1120

SCHEDULE I — RESERVED

SCHEDULE J — CORPORATIONS INCLUDED IN CONSOLIDATED RETURN

AFFILIATED CORPORATION NO. 1

1. Name DTV NETWORK SYSTEMS, INC.
2. Incorporated under the laws of the State of DELAWARE
3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND BLVD
   In the City of COLUMBIA Registered Agent at such address is CORP SERVICE COMPANY
4. Location of principal office (street address) See Statement 9
   Nature of principal business in S.C. MANUFACTURING COMMUNICATIONS EQUIPMENT
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
100.	COMMON	

7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are: (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
B.B. Churchill	2250 E. Imperial Hwy El Segundo, CA 9024
M.W. PALKOVIC	2250 E. Imperial Hwy El Segundo, CA 9024
P.T. Doyle	2250 E. Imperial Hwy El Segundo, CA 9024
L.D. Hunter	2250 E. IMPERIAL HWY El Segundo, CA 9024

8. Date Incorporated 11/13/2001 Date commenced business in the State of South Carolina was 12/31/2001
9. Date of this report 09/07/2007 Fed. EI # [redacted] SC File #
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 12/31/2001
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
    Located at (street address) See Statement 9
13. Corporate Mailing Address 2250 E. IMPERIAL HWY. CA-LA2-A126, EL SEGUNDO, CA 90245
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount) . . . . . $ NONE
    B. Total paid in Capital Surplus (cannot be a negative amount) . . . . . $ 144,754,869.
    C. Total amount of stated Capital (cannot be a negative amount) . . . . . $ 144,754,869.

For additional affiliated corporations duplicate Schedule J as needed.

ATTACH COMPLETED COPY OF FEDERAL RETURN.

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.

THE DIRECTV GROUP, INC.
SOUTH CAROLINA CONSOLIDATED RETURN
TAX YEAR 2006
AS PER RAR

	COMBINED TOTALS	DIRECTV, INC.	DTV NETWORK SYSTEMS, ONC.
FEIN:		[redacted]	[redacted]
FEDERAL TAXABLE INCOME	1,860,206,368	2,040,672,273	(180,466,908)
RAR ADJUSTMENT - FTI	(8,912,360)	(8,912,360)	
REVISED FEDERAL TAXABLE INCOME	1,851,293,008	2,031,759,913	(180,466,908)
STATE AND MUNICIPAL INTEREST	7,816,246	7,916,800	(101,554)
STATE INCOME TAXES	0	0	0
FEDERAL NET OPERATING LOSS	0	0	0
OTHER ADDITIONS	0	0	0
TOTAL (ADD LINES 1 THROUGH 5)	1,859,108,251	2,039,676,713	(180,568,462)
INTEREST ON US OBLIGATIONS	0	0	0
IRC SECTION 78 AND 80% FOREIGN DIV	0	0	0
OTHER SUBTRACTIONS	5,228,561	5,228,561	0
TOTAL SUBTRACTIONS (ADD LINES 7 THROUGH 9)	5,228,561	5,228,561	0
NET INCOME BEFORE APPT.	1,853,879,690	2,034,448,152	(180,568,462)
TOTAL NONAPPORTIONABLE INCOME	0	0	0
APPORTIONABLE BUSINESS INCOME	1,853,879,690	2,034,448,152	(180,568,462)
APPORTIONMENT % - PER ORIGINAL RETURN		1.953900%	0.000000%
AMOUNT TO SOUTH CAROLINA	39,751,082	39,751,082	0
NONBUSINESS INCOME	0	0	0
SOUTH CAROLINA NET INCOME BEFORE NOL	39,751,082	39,751,082	0
NET OPERATING LOSS DEDUCTION	39,428,874		
SOUTH CAROLINA TAXABLE INCOME	322,208		

AMENDED

THO

State of South Carolina
'C' CORPORATION INCOME TAX RETURN
Return is due on or before the 15th day of the 3rd month following the close of the taxable year.
Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

SC 1120 (Rev. 8/22/06) 3091

SC FILE # 2043217-65

INCOME TAX PERIOD ENDING 12/31/2006
LICENSE FEE PERIOD ENDING 12/31/2007

FED EI # [redacted]
DIRECTV, INC. & SUBSIDIARY
NAME

MAILING ADDRESS
2250 E. IMPERIAL HWY, CA-LA2-A126
CITY El Segundo STATE CA ZIP CODE 90245-

Change of ☐ Address ☐ Accounting Period

A COMPLETE COPY OF FEDERAL RETURN MUST BE ATTACHED TO THIS RETURN.

County or Counties in SC Where Property is Located:
VARIOUS

City Audit Location: EL SEGUNDO, CA State:

Audit Contact: JOHN SCHNEIDER Telephone Number: (310) 964-0745

Check if ☒ Amended Return ▶ ☒ Consolidated Return

Total Gross Receipts. ▶ 13743345649.00

Total cost of depreciable personal property in SC. ▶ 30,002,937.00

If Filing a Final Return, See Instructions for Further Information.
▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per Federal Form 1120 or 1120A		1. 1851293005.00
2.	Net Adjustment from line 12, Schedule A and B	Stmt 1	2. 2,586,685.00
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)		3. 1853879690.00
4.	If Multi-state Corporation, enter amount from line 6, Schedule C; otherwise, enter amount from line 3	Stmt 3	4. 500,474.00
5.	LESS: South Carolina net operating loss carryover, if applicable		5. 500,474.00
6.	South Carolina Net Income subject to tax (line 4 less line 5)		6.
7.	TAX: Multiply amount on line 6 by .05 (5.0%)		7. NONE
8.	Less tax deferred on income from foreign trade receipts (see instructions)		8.
9.	Balance (line 7 less line 8)		9. NONE
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C)		10.
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero		11. NONE
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____		12.
13.	Total tax and/or Interest (add lines 11 and 12)		13. NONE
14.	Payments: (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ _____		
	(c) Paid with Tentative Return ▶ _____ (d) Credit from Line 29b ▶ _____		
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f) TAX PAID AS LAST FILED		15. 16,110.00
16.	Balance of Tax and/or Interest Due (line 13 less line 15)		16. NONE
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.		17.
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) BALANCE DUE		18.
19.	OVERPAYMENT (line 15 less line 13) 16,110.00 To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) License Fee ▶ _____ (c) REFUNDED ▶		16,110.00

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid in Surplus (Multi-State Corporations See Schedule E)		20. 234,898.00
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	Stmt 5	21. 275.00
22.	LESS: Applicable Credits against License Fee (attach SC1120-TC)		22.
23.	Balance (line 21 less line 22)		23. 275.00
24.	Payments: (a) Paid with Tentative Return ▶ _____ (b) Credit from line 19b ▶ _____		
25.	Total Payments (add line 24(a) and (b)) TAX PAID AS LAST FILED		25. 18,697.00
26.	Balance of Fee Due (line 23 less line 25)		26. NONE
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.		27.
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) BALANCE DUE		28.
29.	OVERPAYMENT (line 25 less line 23) 18,422.00 To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶		18,422.00
30.	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) . . . EFT ☐		30.

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please Sign Here ▶ Signature of officer B.R. PAPERNY Date 9/10/16 Title VP., TAXES Telephone Number 310-964-074

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐

Preparer's Printed Name

Paid Preparer's Use Only: Preparer's signature | Date | Check if self-employed ▶ ☐ | Preparer's telephone number

Firm's name (or yours if self-employed) and address | EI # | ZIP Code

04911 1.000 00025G 712M 09/07/2010 13:54:32 V2007.061 2

ROA 0396

SCHEDULE A AND B — ADDITIONS TO FEDERAL TAXABLE INCOME

1. Taxes on or Measured By Income	1.	7,916,800.00	
2. Federal Net Operating Loss	2.		
3.	3.		
4.	4.		
5. Other Additions (attach schedule)	5.		
6. Total Additions (add lines 1 through 5)			6. 7,916,800.00

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7. Interest On Obligations Of The U.S.	7.		
8.	8.		
9.	9.		
10. Other Deductions (attach schedule) Stmt 6	10.	5,228,561.00	
11. Total Deductions (add lines 7 through 10)			11. 5,228,561.00
12. Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120			12. 2,688,239.00

SCHEDULE C — SUMMARY OF CREDITS (FROM SC1120-TC)

1. Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 39).	1.	
2. Enter Total Credits from SC1120-TC, Column B, line 39. **SC1120-TC must be attached to return.**	2.	
3. Total Credits (add lines 1 and 2)	3.	
4. Tax (line 9, Part 1, SC1120)	4.	NONE
5. Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 39.)	5.	
6. Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 39.)	6.	
7. Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 39.)	7.	

SCHEDULE D — ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name DIRECTV, INC.
2. Incorporated under the laws of the State of California
3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND MALL BLVD
   In the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 7
   Nature of principal business in SC TV Program Distributor
5. The total number of **authorized shares** of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
6. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are: (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
M.W. PALKOVIC	2250 E. Imperial Hwy EL SEGUNDO, CA 902
C. CAREY	2250 E.Imperial Hwy EL SEGUNDO, CA 9024
P. T. Doyle	2250 E. Imperial Hwy EL SEGUNDO, CA 9024
L.D. Hunter	2250 E. IMPERIAL HWY. EL SEGUNDO, CA 902

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/15/2010 Fed EI # [redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of John Schneider
    Located at (street address) See Statement 7
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount) $
    B. Total paid in Capital Surplus (cannot be a negative amount) $ 954,870,976.00
    C. Total amount of stated Capital (cannot be a negative amount) $ 954,870,976.00

D4912 1.000

SCHEDULE A AND B — ADDITIONS TO FEDERAL TAXABLE INCOME

1.	Taxes on or Measured By Income	1. -101,554.00	
2.	Federal Net Operating Loss	2.	
3.		3.	
4.		4.	
5.	Other Additions (attach schedule)	5.	
6.	Total Additions (add lines 1 through 5)		6. -101,554.00

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7.	Interest On Obligations Of The U.S.	7.	
8.		8.	
9.		9.	
10.	Other Deductions (attach schedule)	10.	
11.	Total Deductions (add lines 7 through 10)		11.
12.	Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12. -101,554.00

SCHEDULE C — SUMMARY OF CREDITS (FROM SC1120-TC)

1.	Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 39).	1.
2.	Enter Total Credits from SC1120-TC, Column B, line 39. **SC1120-TC must be attached to return.**	2.
3.	Total Credits (add lines 1 and 2)	3.
4.	Tax (line 9, Part 1, SC1120)	4. NONE
5.	Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 39.)	5.
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 39.)	6.
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 39.)	7.

SCHEDULE D — ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name THIS SCHEDULE DOES NOT PRINT FOR SUBS
2. Incorporated under the laws of the State of
3. Location of the Registered Office of the Corporation in the State of South Carolina is
   In the City of Registered Agent at such address is
4. Location of principal office (street address)
5. Nature of principal business in SC
5. The total number of **authorized shares** of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: CLASS: SERIES:
6. The total number of **issued and outstanding shares** of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: CLASS: SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE

8. Date Incorporated Date commenced business in the State of South Carolina was
9. Date of this report Fed EI #
0. If Foreign Corporation, the date qualified to do business in the State of South Carolina is
1. Was the name of the Corporation changed during the year? Give old name
2. The Corporation's books are in the care of
   Located at (street address)
3. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
1. The total amount of stated capital per balance sheet is:
   A. Total paid in Capital Stock (cannot be a negative amount). . . . . $
   Total paid in Capital Surplus (cannot be a negative amount). . . . . $
   C. Total amount of stated Capital (cannot be a negative amount). . . . . $

4912 1.000

SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-in-Surplus at end of Year See Stmt Ref. for Page 1, Line 21 $ _____
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) Also enter on line 20, Part II $ _____

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1	1.	2034448152.00
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7	2.	
3. Total net income subject to apportionment (line 1 less line 2)	3.	2034448152.00
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, 2, or 3 and enter result here	4.	500,474.00
5. Add: Income subject to direct allocation to SC from Schedule F, line 8	5.	
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1	6.	500,474.00

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5; subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL Property Add lines 8 and 9. (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL Sales (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts	3,376,851.00	13743345649.00	
2. Less: Exclusion (see instructions)	( )	( )	
3. Gross Receipts (for ratio)	3,376,851.00	13743345649.00	
4. Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			0.0246 %

SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

)4913 1.000

SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-In-Surplus at end of Year See Stmt Ref. for Page 1, Line 21 $
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) Also enter on line 20, Part II $

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1	1.	-180,568,462.00
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7	2.	
3. Total net income subject to apportionment (line 1 less line 2)	3.	-180,568,462.00
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, 2, or 3 and enter result here	4.	NONE
5. Add: Income subject to direct allocation to SC from Schedule F, line 8	5.	
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1	6.	NONE

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land			4,313,500.00	
2. Buildings			21,070,672.00	
3. Machinery and Equipment			137,421,911.00	
4. Inventories			41,787,517.00	
5. Other Property			1,607,968.00	
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5; subtract line 6)			206,201,568.00	

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)		103,100,784.00	
9. Rental or Lease Value		269,824.00	
10. TOTAL Property Add lines 8 and 9. (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)		103,370,608.00	NONE %
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)		123,751,855.00	NONE %
15. TOTAL Sales (same as line 14)		123,751,855.00	NONE %
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			NONE %
17. Arithmetical Average of Ratios			NONE %

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts			
2. Less: Exclusion (see instructions)	( )	( )	
3. Gross Receipts (for ratio)			
4. Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			%

SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total System		
3. Ratio (South Carolina ÷ Total System)		%

04913 1.000

SCHEDULE I RESERVED

SCHEDULE J CORPORATIONS INCLUDED IN CONSOLIDATED RETURN

AFFILIATED CORPORATION NO. 1

1. Name DIRECTV, INC.
2. Incorporated under the laws of the State of California
3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND MALL BLVD
   In the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 8
   Nature of principal business in S.C. TV Program Distributor
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
M.W. PALKOVIC	2250 E. Imperial Hwy EL SEGUNDO, CA 902
C. CAREY	2250 E.Imperial Hwy EL SEGUNDO, CA 9024
[redacted]. T. Doyle	2250 E. Imperial Hwy EL SEGUNDO, CA 9024
L.D. Hunter	2250 E. IMPERIAL HWY. EL SEGUNDO, CA 902

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/15/2010 Fed. EI # [redacted] SC File # 2043217-65
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of John Schneider
    Located at (street address) See Statement 8
13. Corporate Mailing Address
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount) . . . . . $
    B. Total paid in Capital Surplus (cannot be a negative amount) . . . . . $ 954,870,976.
    C. Total amount of stated Capital (cannot be a negative amount) . . . . . $ 954,870,976.

For additional affiliated corporations duplicate Schedule J as needed.

ATTACH COMPLETED COPY OF FEDERAL RETURN.

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.

SCHEDULE I RESERVED

SCHEDULE J CORPORATIONS INCLUDED IN CONSOLIDATED RETURN

AFFILIATED CORPORATION NO. 1

Name DTV NETWORK SYSTEMS, INC.

2. Incorporated under the laws of the State of DELAWARE

3. Location of the Registered Office of the Corporation in the State of South Carolina is 5000 THURMOND BLVD
In the City of COLUMBIA Registered Agent at such address is CORP SERVICE COMPANY

4. Location of principal office (street address) See Statement 9
Nature of principal business in S.C. MANUFACTURING COMMUNICATIONS EQUIPMENT

5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
1,000.	COMMON	

6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:

NUMBER OF SHARES	CLASS	SERIES
100.	COMMON	

7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
(If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
B.B. Churchill	2250 E. Imperial Hwy El Segundo, CA 9024
M.W. PALKOVIC	2250 E. Imperial Hwy El Segundo, CA 9024
P.T. Doyle	2250 E. Imperial Hwy El Segundo, CA 9024
L.D. Hunter	2250 E. IMPERIAL HWY El Segundo, CA 9024

8. Date Incorporated 11/13/2001 Date commenced business in the State of South Carolina was 12/31/2001

9. Date of this report 09/15/2010 Fed. EI # [redacted] SC File #

10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 12/31/2001

11. Was the name of the Corporation changed during the year? NO Give old name

12. The Corporation's books are in the care of JOHN SCHNEIDER
Located at (street address) See Statement 9

13. Corporate Mailing Address 2250 E. IMPERIAL HWY, CA-LA2-A126, EL SEGUNDO, CA 90245

14. The total amount of stated capital per balance sheet is:

A.	Total paid in Capital Stock (cannot be a negative amount)	$ NONE
B.	Total paid in Capital Surplus (cannot be a negative amount)	$ 144,754,869.
C.	Total amount of stated Capital (cannot be a negative amount)	$ 144,754,869.

For additional affiliated corporations duplicate Schedule J as needed.

ATTACH COMPLETED COPY OF FEDERAL RETURN.

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.

Schedule A and B

	Combined	STATE HEC & SUBS SC CONSOLIDATION	Adjustments	Top Con DTVG [redacted]
Additions to federal net income				
1. Taxes on or measured by income	7,815,246.00			7,815,246.00
2. Federal net operating loss			NONE	NONE
3. ...				
4. ...				
5. Other additions				
6. Total additions	7,815,246.00			7,815,246.00
Deductions from federal net income				
7. Interest on obligations of the U.S.				
8. ...				
9. ...				
10. Other deductions	5,228,561.00			5,228,561.00
11. Total deductions	5,228,561.00			5,228,561.00
12. Net adjustment	2,586,685.00			2,586,685.00

ROA 0403

Schedule A and B

	DIRECTV, Inc [redacted]	DTV Network Systems, Inc. [redacted]
Additions to federal net income		
1. Taxes on or measured by income	7,916,800.00	-101,554.00
2. Federal net operating loss		
3. ...		
4. ...		
5. Other additions		
6. Total additions	7,916,800.00	-101,554.00
Deductions from federal net income		
7. Interest on obligations of the U.S.		
8. ...		
9. ...		
10. Other deductions	5,228,561.00	
11. Total deductions	5,228,561.00	
12. Net adjustment	2,688,239.00	-101,554.00

ROA 0404

SC TAXABLE INCOME

	Combined	Adjustments	Top Con DTVG
Computation of Taxable Income			
1. Total net income as reconciled	1853879690.00		1853879690.00
2. Less: alloc. income to S.C. and other states			
3. Total net income subject to apportionment ...	1853879690.00		1853879690.00
Ratio			0.028800
4. South Carolina apportionment amount	500,474.00		500,474.00
5. Add: allocable income to S.C.			
6. Total S.C. net income	500,474.		500,474.

ROA 0405

SC TAXABLE INCOME

	DIRECTV, Inc	DTV Network Systems, Inc.
	[redacted]	[redacted]
Computation of Taxable Income		
1. Total net income as reconciled	2034448152.00	-180,568,462.00
2. Less: alloc. income to S.C. and other states		
3. Total net income subject to apportionment	2034448152.00	-180,568,462.00
Ratio	0.024600	NONE
4. South Carolina apportionment amount	500,474.00	NONE
5. Add: allocable income to S.C.		
6. Total S.C. net income	500,474.	NONE

ROA 0406

Company name	Tot. cap. & Paid in surplus	Apportionment %	Apportioned Capital	License fee due
DIRECTV, Inc	954,870,976.	0.024600	234,898.00	250.00
DTV Network Systems, Inc.	144,754,869.	NONE	NONE	25.00
Total license fee due	1,099,625,845.		234,898.00	275.00

ROA 0407

[redacted]

South Carolina SC1120, Page 2 Detail

Sch. B, Line 10 - Other deductions

2002 JGWA/2003 JGTRRA DEPRECIATION ADJ.	
2002 JGWA/2003 JGTRRA LOSS ON ASSET SALE ADJ.	
Depr. Adj. for Job Creation and Workers' Assistance Act	5,228,561.
Total	5,228,561.

[redacted]

South Carolina SC1120, Page 2 Detail

Sch. D, Line 4 - Location of Principal Office

See Statement 2
EL SEGUNDO, CA 90245

Sch. D, Line 12 - Location of Books

2250 E.Imperial Hwy, CA-LA2-A126
El Segundo, CA 90245

[redacted]

South Carolina SC1120, Page 4 Detail

Sch. J, Line 4 - Location of Principal Office

See Statement 2
EL SEGUNDO, CA 90245

Sch. J, Line 12 - Location of Books

2250 E.Imperial Hwy, CA-LA2-A126
El Segundo, CA 90245

[redacted]

South Carolina SC1120, Page 4 Detail

Sch. J, Line 4 - Location of Principal Office

2250 E. IMPERIAL HWY, BOX 956, CA-LA2-A126
EL SEGUNDO, CA 90245

Sch. J, Line 12 - Location of Books

2250 E. IMPERIAL HWY, BOX 956, CA-LA2-A126
EL SEGUNDO, CA 90245

DIRECTV, INC.
SOUTH CAROLINA
NET OPERATING LOSS CARRYOVER
2003-2006

TAX RETURN	2003	2004	2005	2006	Total
Net Income					
Net Operating Loss	(953,298)	(21,955,106)	(16,520,470)	0	(39,428,874)
NOL Utilized - 2006	500,474			0	500,474
Total NOL Available	(452,824)	(21,955,106)	(16,520,470)	0	(38,928,400)

DIRECTV, INC.
[redacted]
State of South Carolina
Form SC 1120 - AMENDED
Income Tax Period Ending 12/31/2006

The return is being amended to apportion sales receipts to the state under S.C. Code Ann. §. 12-6- 2295 which sources sales of services under a pro-rata cost of performance method. The originally filed return incorrectly apportioned satellite television subscription receipts to South Carolina using market-based sourcing, rather than the cost of performance sourcing that is prescribed by statute.

ATTACHMENT A

647477-002 EFT

704911 1 000

1062 THO

State of South Carolina
'C' CORPORATION INCOME TAX RETURN
Return is due on or before the 15th day of the 3rd month following the close of the taxable year.
Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

SC1120 (Rev. 9/14/07) 3418

SC FILE # 2043217-65

INCOME TAX PERIOD ENDING 12/31/2007
LICENSE FEE PERIOD ENDING 12/31/2008

FED EI # [redacted] 2045321-6

NAME DIRECTV, INC.
MAILING ADDRESS 2250 E.IMPERIAL HWY.PO BOX 956,CA-LA2-A12
CITY EL SEGUNDO STATE CA ZIP CODE 90245-

Change of ☐ Address ☐ Accounting Period

A COMPLETE COPY OF FEDERAL RETURN MUST BE ATTACHED TO THIS RETURN.

County or Counties in SC Where Property is Located: VARIOUS

City Audit Location: EL SEGUNDO, CA State:

Audit Contact: JOHN SCHNEIDER Telephone Number: (310) 964-0745

Check if ☐ Amended Return ☐ Consolidated Return

Total Gross Receipts: ▶ 15483044020

Total cost of depreciable personal property in SC: ▶ 59630381

If Filing a Final Return, See Instructions for Further Information.
▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per Federal Form 1120 or 1120A (Stmt A)	1.	1,975,930,872
2.	Net Adjustment from line 12, Schedule A and B	2.	10,049,906
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	3.	1,985,980,778
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3.	4.	39,751,391
5.	LESS: South Carolina net operating lose carryover, if applicable (DEPT. OF REVENUE)	5.	
6.	South Carolina Net Income subject to tax (line 4 less line 5)	6.	39,751,391
7.	TAX: Multiply amount on line 6 by .05 (5.0%) (SEP. 19 2008)	7.	1,987,570
8.	Less tax deferred on income from foreign trade receipts (see instructions)	8.	
9.	Balance (line 7 less line 8) (#28T)	9	1,987,570
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (Schedule C) (RECEIVED)	▶10	( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11	1,987,570
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____ (14136.64)	12	
13.	Total tax and/or Interest (add lines 11 and 12)	13.	1,987,570
14.	Payments: (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ 1,398,664		
	(c) Paid with Tentative Return ▶ 75,000 (d) Credit from Line 29b ▶ _____		
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f) (DLN 95248176)	15.	1,473,664
16.	Balance of Tax and/or Interest Due (line 13 less line 15) (525,127)	▶16.	513,906
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	▶17.	
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) BALANCE DUE	18.	513,906
19.	OVERPAYMENT (line 15 less line 13) _____ To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) License Fee ▶ _____ (c) REFUNDED ▶		

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid In Surplus (Multi-State Corporations See Schedule G) (NO REMITTANCE ENCLOSED)	20.	11,206,406
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer) (Envelope amended by)	21.	11,221
22.	Credit Carryover ▶ _____ Credit taken this year from SC1120C, Part II, Column C ▶	22	( )
23.	Balance (line 21 less line 22)	23.	11,221
24.	Payments: (a) Paid with Tentative Return ▶ _____ (b) Credit from line 29b ▶ _____		
25.	Total Payments (add line 24(a) and (b))	25	
26.	Balance of Fee Due (line 23 less line 25)	▶26.	11,221
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	▶27.	
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) BALANCE DUE	28.	11,221
29	OVERPAYMENT (line 25 less line 23) _____ To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶		
30	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) . . . EFT X X	▶30	525,127

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return

Please Sign Here ▶ Signature of officer B.R.PAPERNY Date 9/11/08 ▶ Title SENIOR VP, TAX Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐ Preparer's Printed Name

Paid Preparer's Use Only — Preparer's signature ▶ Date Check if self-employed ▶ ☐ Preparer's telephone number

Firm's name (or yours if self-employed) and address ▶ EI # ▶ ZIP Code ▶

1062 0001LL 712M 09/08/2008 17:32:56 V07-7.4 [redacted] 4

647477-003

THO
SC1120

SCHEDULE A AND B — ADDITIONS TO FEDERAL TAXABLE INCOME

1. Taxes on or Measured By Income	1. 13,913,135		
2. Federal Net Operating Loss	2.		
3.	3.		
4.	4.		
5. Other Additions (attach schedule)	5.		
6. Total Additions (add lines 1 through 5)		6.	13,913,135

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7. Interest On Obligations Of The U S	7.		
8.	8.		
9.	9.		
10. Other Deductions (attach schedule) Stmt 1	10. 3,863,229		
11. Total Deductions (add lines 7 through 10)		11.	3,863,229
12. Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12.	10,049,906

SCHEDULE C — SUMMARY OF INCOME TAX CREDITS (FROM SC1120-TC)

1. Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 43)	1.	
2. Enter Total Credits from SC1120-TC, Column B, line 43. SC1120-TC must be attached to return.	2.	
3. Total Credits (add lines 1 and 2)	3.	
4. Tax (line 9, Part 1, SC1120)	4.	1,987,570
5. Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 43.)	5.	
6. Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 43.)	6.	
7. Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 43.)	7.	

SCHEDULE D — ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1 Name DIRECTV, INC.

2 Incorporated under the laws of the State of California

3 Location of the Registered Office of the Corporation in the State of South Carolina is 1703 LAUREL STREET
In the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY

4. Location of principal office (street address) See Statement 2
Nature of principal business in SC TV PROGRAM DISTRIBUTOR

5 The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:

6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:

7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
(If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
C. Carey	2250 E. Imperial Hwy. El Segundo, CA 902
M.W. Palkovic	2250 E. Imperial Hwy. El Segundo, CA 902
L.D. Hunter	2250 E. Imperial Hwy. El Segundo, CA 902
J.W. Little	2250 E. Imperial Hwy El Segundo, CA 9024

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/06/2008 Fed EI # [redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
Located at (street address) See Statement 2
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
A Total paid In Capital Stock (cannot be a negative amount) $
B. Total paid In Capital Surplus (cannot be a negative amount) $ 559,872,402
C Total amount of stated Capital (cannot be a negative amount) $ 559,872,402

SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-In-Surplus at end of Year . . . . . $ 559,872,402
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) OR enter amount from Schedule H-4, Part II. Also enter on line 20, Part II . . . . . $ 11,206,406

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1 . . . . . 1. 1,985,980,778
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7 . . . . . 2.
3. Total net income subject to apportionment (line 1 less line 2) 3. 1,985,980,778
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, 2, or 3 and enter result here OR enter amount from Schedule H-4, Part I 4. 39,751,391
5. Add: Income subject to direct allocation to SC from Schedule F, line 8 . . . . . 5.
6. Total S.C Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1 . . . . . 6 39,751,391

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1 Property Within South Carolina		2 Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1 Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6 Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5 subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL Property Add lines 8 and 9 (Col 1+Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL Sales (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2 Total Everywhere	3. Ratio
1. Total Gross Receipts	309,904,220	15,483,044,020	
2. Less: Exclusion (see instructions)	( )	( )	
3 Gross Receipts (for ratio)	309,904,220	15,483,044,020	
4. Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			2.0016%

SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

SCHEDULE H-4 COMPUTATION OF SINGLE FACTOR APPORTIONMENT

SINGLE FACTOR APPORTIONMENT RATIO SCHEDULE

	Amount	Ratio
1. Total Sales Within South Carolina		
2. Total Sales Everywhere		
3. Ratio (South Carolina ÷ Everywhere)		

Note: If there are no sales anywhere, enter 100% on Line 3, if South Carolina is the principal place of business OR enter 0% on Line 3 if principal place of business is outside SC.

PART I COMPUTATION OF SC NET INCOME SUBJECT TO TAX FOR MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Enter amount from Sch G, Line 3 . . . . . 1. _____
2. Enter Ratio from Sch H-1, Line 17 . . . . . 2. _____ %
3. Multiply Line 2 by Line 1 . . . . . 3 _____
4. Enter Ratio from Line 3 of single factor apportionment schedule . . . . . 4 _____ %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule G Line 4 . . . . . 5 _____
6. Line 3 minus Line 5 . . . . . 6. _____
7. For tax year 2007, multiply amount on Line 6 by 20% (.20). This is the amount of reduction in SC taxable income allowed this year . . . . . 7. _____
8. Line 3 minus Line 7. Enter this amount on Sch G, Line 4 . . . . . 8. _____

PART II COMPUTATION OF LICENSE FEE - MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Total Capital and Paid-in-Surplus at the end of the year. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 1. _____
2. Enter the ratio from Sch H-1, Line 17 . . . . . 2. _____ %
3. Multiply Line 1 by Line 2. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 3. _____
4. Enter the ratio from Line 3 of single factor apportionment schedule . . . . . 4. _____ %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule E Line 2 . . . . . 5. _____
6. Line 3 minus Line 5 . . . . . 6. _____
7. For tax year 2007, multiply the amount on Line 6 by 20% (20). This is the amount of reduction of license fee basis allowed this year . . . . . 7. _____
8. Line 3 minus Line 7. Enter here and on Schedule E, Line 2 . . . . . 8. _____

South Carolina SC1120, Page 2 Detail

Sch. B, Line 10 - Other deductions

Depr. Adj. for Job Creation and Workers' Assistance Act	3,863,229.
Total	3,863,229.

South Carolina SC1120, Page 2 Detail

Sch. D, Line 4 - Location of Principal Office

2250 E.IMPERIAL HWY.,PO BOX 956,CA-LA-A126
EL SEGUNDO, CA 90245

Sch. D, Line 12 - Location of Books

2250 E.IMPERIAL HWY, CA-LA2-A126
EL SEGUNDO, CA 90245

647477-009

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TENTATIVE CORPORATION TAX RETURN
AND CONDITIONAL EXTENSION

SC1120-T
(Rev. 9/26/07)
3098

INSTRUCTIONS FOR TENTATIVE CORPORATION TAX RETURN

If any corporate income tax or license fee is anticipated to be due, a request for an extension of time must be filed using SC1120-T, on or before the day that the tax return is due. No refund will be issued from a tentative return. Any amounts shown to be due on this form must be paid when the SC1120-T is filed. A penalty will be incurred for failure to pay at least ninety (90) percent of the total tax due by the original due date

If no income tax or license fee is anticipated to be due, and the taxpayer has requested a federal extension of time to file a federal income tax return, the department will accept a copy of a properly filed federal extension if the corporate return is received within the time extended by the Internal Revenue Service.

A copy of the federal or South Carolina extension(s) must be attached to the return when filed. The Department may allow an extension of time not to exceed six months.

For consolidated return filers: File a Single Tentative Return and attach a schedule listing the corporations to be included in the return. The license fees are computed separately and then added. Fee cannot be less than $25 per taxpayer. Failure to list members of the affiliated group may result in the group's inability to elect to file a consolidated return. The license fee is not applicable to savings and loan associations or banks. A federal extension will be accepted if all corporations filing in South Carolina are included in one or more federal extensions.

Mail to: SC Department of Revenue, Corporation, Columbia SC 29214-0006. Include Business Name, FEI Number and SC File Number on Check.

USE BLACK INK ONLY
PLEASE DO NOT CUT, SUBMIT ENTIRE PAGE

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
TENTATIVE CORPORATION TAX RETURN
AND CONDITIONAL EXTENSION

SC1120-T
(Rev 9/26/07)
3098

SC CORPORATE FILE #	ACCT PERIOD END (MM-YY)
2043217-6	12-07

[redacted]
FED EI #

Corporate Name and Address

DIRECTV, Inc.
P.O. Box 956, CA-LA2-A126
El Segundo, CA 90245-0956

1. Tentative Tax Based on Net Income.....		1,340,000 .00
2. LESS: Estimated Tax Payments.....		1,417,361 .00
3. Tentative Tax Due.. 14-0604	▶	0 .00
4. Total Capital and Paid in Surplus 7,100,000 x .001 plus $15.00 but not less than $25.00 Tentative License Fee..... 14-0401	▶	7,100 .00
5. Balance Remitted..	▶	75,000 .00

CHECK IF:
- ☐ Foreign Not USA
- ☐ Tax EXEMPT
- ☐ Consolidated Return (Attach a schedule listing each member.)
- ☐ Bank or S & L
- ☐ QSSS Election (Attach a schedule listing each member.)
- ☐ Utility or Electric Cooperative

Signature _____ Date 3/10/08

PAID BY ACH CREDIT

30961031

7D4011 1 000

1062 THO

State of South Carolina

'C' CORPORATION INCOME TAX RETURN

Return is due on or before the 15th day of the 3rd month following the close of the taxable year.

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

SC1120 (Rev. 9/14/07) 3418

SC FILE # 2043217-65

INCOME TAX PERIOD ENDING 12/31/2007

LICENSE FEE PERIOD ENDING 12/31/2008

FED EI # [redacted]

NAME DIRECTV, INC.

MAILING ADDRESS 2250 E.IMPERIAL HWY, PO BOX 956,CA-LA2-A12

CITY EL SEGUNDO STATE CA ZIP CODE 90245-

Change of ☐ Address ☐ Accounting Period

A COMPLETE COPY OF FEDERAL RETURN MUST BE ATTACHED TO THIS RETURN.

County or Counties in SC Where Property is Located: VARIOUS

City Audit Location State: EL SEGUNDO, CA

Audit Contact: JOHN SCHNEIDER Telephone Number: (310) 964-0745

Check if [X] Amended Return ▶ ☐ Consolidated Return

Total Gross Receipts. ▶ 15483044020

Total cost of depreciable personal property in SC. ▶ 59630381

If Filing a Final Return, See Instructions for Further Information.

▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per Federal Form 1120 or 1120A	1.	1,975,930,872
2.	Net Adjustment from line 12, Schedule A and B	2.	10,049,906
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	3.	1,985,980,778
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3.	4.	1,608,644
5.	LESS: South Carolina net operating loss carryover, if applicable	5.	1,608,644
6.	South Carolina Net Income subject to tax (line 4 less line 5)	6.	NONE
7.	TAX: Multiply amount on line 6 by .05 (5.0%)	7.	NONE
8.	Less tax deferred on income from foreign trade receipts (see instructions)	8.	
9.	Balance (line 7 less line 8)	9.	NONE
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C)	10.	( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11.	NONE
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____	12.	
13.	Total tax and/or interest (add lines 11 and 12)	13.	NONE
14.	**Payments:** (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ _____ (c) Paid with Tentative Return ▶ _____ (d) Credit from Line 29b ▶ _____ **Refundable Credits:** (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f)	15.	1,987,570
16.	Balance of Tax and/or Interest Due (line 13 less line 15)	16.	
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	17.	
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) . . . . . BALANCE DUE	18.	
19.	OVERPAYMENT (line 15 less line 13) 1,987,570 To be applied as follows: (a) Estimated Tax ▶ _____ (b) License Fee ▶ _____ (c) REFUNDED ▶		1,987,570

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid In Surplus (Multi-State Corporations See Schedule E)	20.	453,497
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	21.	468
22.	Credit Carryover ▶ _____ Credit taken this year from SC1120TC, Part II, Column C	22.	( )
23.	Balance (line 21 less line 22)	23.	468
24.	Payments: (a) Paid with Tentative Return ▶ _____ (b) Credit from line 19b ▶ _____		
25.	Total Payments (add line 24(a) and (b))	25.	11,221
26.	Balance of Fee Due (line 23 less line 25)	26.	-10,753
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	27.	
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) . . . . . BALANCE DUE	28.	
29.	OVERPAYMENT (line 25 less line 23) 10,753 To be applied as follows: (a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶		10,753
30.	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) . . . EFT ☐ ▶	30.	

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please Sign Here ▶ Signature of officer R.R. PAPERNY Date 5/4/11 ▶ Title SENIOR VP, TAX Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐ Preparer's Printed Name

Preparer's signature ▶ Date Check if self-employed ▶ ☐ Preparer's telephone number

Firm's name (or yours if self-employed) and address ▶ EI # ▶ ZIP Code ▶

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THO

AMENDED

SC1120

SCHEDULE A AND B — ADDITIONS TO FEDERAL TAXABLE INCOME

1	Taxes on or Measured By Income	1. 13,913,135	
2.	Federal Net Operating Loss	2.	
3.	-	3.	
4.		4.	
5.	Other Additions (attach schedule)	5.	
6.	Total Additions (add lines 1 through 5)		6. 13,913,135

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7.	Interest On Obligations Of The U.S.	7.	
8.		8.	
9.		9.	
10.	Other Deductions (attach schedule) Stmt 1	10. 3,863,229	
11.	Total Deductions (add lines 7 through 10)		11. 3,863,229
12.	Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12. 10,049,906

SCHEDULE C — SUMMARY OF INCOME TAX CREDITS (FROM SC1120-TC)

1.	Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 43).	1.
2.	Enter Total Credits from SC1120-TC, Column B, line 43. SC1120-TC must be attached to return.	2.
3.	Total Credits (add lines 1 and 2)	3.
4.	Tax (line 9, Part 1, SC1120)	4. NONE
5.	Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 43.)	5.
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 43.)	6.
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 43.)	7.

SCHEDULE D — ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name DIRECTV, INC.
2. Incorporated under the laws of the State of CA
3. Location of the Registered Office of the Corporation in the State of South Carolina is 1703 LAUREL STREET
   in the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 2
   Nature of principal business in SC TV PROGRAM DISTRIBUTOR
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are: (If additional space is necessary, attach separate schedule).

NAME	BUSINESS ADDRESS AND OFFICE
SAME AS LAST FILED	

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/06/2008 Fed E[redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
    Located at (street address) See Statement 2
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount) $
    B. Total paid in Capital Surplus (cannot be a negative amount) $ 559,872,402
    C. Total amount of stated Capital (cannot be a negative amount) $ 559,872,402

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SC1120

AMENDED

SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-in-Surplus at end of Year . . . . . $ 559,872,402
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) OR enter amount from Schedule H-4, Part II. Also enter on line 20, Part II . . . . . $ 453,497

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1 . . . . . 1. 1,985,980,778
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7 . . . . . 2.
3. Total net income subject to apportionment (line 1 less line 2) 3. 1,985,980,778
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, 2, or 3 and enter result here OR enter amount from Schedule H-4, Part I 4. 1,608,644
5. Add: Income subject to direct allocation to SC from Schedule F, line 8 . . . . . 5.
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1 . . . . . 6. 1,608,644

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5; subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL Property Add lines 8 and 9. (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL Sales (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts	12,547,540	15,483,044,020	
2. Less: Exclusion (see instructions)	( )	( )	
3. Gross Receipts (for ratio)	12,547,540	15,483,044,020	
Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			0.0810%

THO

AMENDED

SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

SCHEDULE H-4 COMPUTATION OF SINGLE FACTOR APPORTIONMENT

SINGLE FACTOR APPORTIONMENT RATIO SCHEDULE

	Amount	Ratio
1. Total Sales Within South Carolina		
2. Total Sales Everywhere		
3. Ratio (South Carolina ÷ Everywhere)		

Note: If there are no sales anywhere, enter 100% on Line 3, if South Carolina is the principal place of business OR enter 0% on Line 3 if principal place of business is outside SC.

PART I COMPUTATION OF SC NET INCOME SUBJECT TO TAX FOR MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Enter amount from Sch G, Line 3 . . . . . 1. _____
2. Enter Ratio from Sch H-1, Line 17 . . . . . 2. _____ %
3. Multiply Line 2 by Line 1 . . . . . 3. _____
4. Enter Ratio from Line 3 of single factor apportionment schedule . . . . . 4. _____ %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule G Line 4 . . . . . 5. _____
6. Line 3 minus Line 5 . . . . . 6. _____
7. For tax year 2007, multiply amount on Line 6 by 20% (.20). This is the amount of reduction in SC taxable income allowed this year . . . . . 7. _____
8. Line 3 minus Line 7. Enter this amount on Sch G, Line 4 . . . . . 8. _____

PART II COMPUTATION OF LICENSE FEE - MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Total Capital and Paid-in-Surplus at the end of the year. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 1. _____
2. Enter the ratio from Sch H-1, Line 17 . . . . . 2. _____ %
3. Multiply Line 1 by Line 2. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 3. _____
4. Enter the ratio from Line 3 of single factor apportionment schedule . . . . . 4. _____ %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule E Line 2 . . . . . 5. _____
6. Line 3 minus Line 5 . . . . . 6. _____
7. For tax year 2007, multiply the amount on Line 6 by 20% (.20). This is the amount of reduction of license fee basis allowed this year . . . . . 7. _____
8. Line 3 minus Line 7. Enter here and on Schedule E, Line 2 . . . . . 8. _____

AMENDED

South Carolina SC1120, Page 2 Detail

Sch. B, Line 10 - Other deductions

Depr. Adj. for Job Creation and Workers' Assistance Act	3,863,229.
Total	3,863,229.

AMENDED

South Carolina SC1120, Page 2 Detail

Sch. D, Line 4 - Location of Principal Office

2250 E.IMPERIAL HWY.,PO BOX 956,CA-LA-A126
EL SEGUNDO, CA 90245

Sch. D, Line 12 - Location of Books

2250 E.IMPERIAL HWY, CA-LA2-A126
EL SEGUNDO, CA 90245

DIRECTV, INC.
SOUTH CAROLINA
NET OPERATING LOSS CARRYOVER
2003-2007

AMENDED

TAX RETURN	2003	2004	2005	2006	Total
Net Income					
Net Operating Loss	(953,298)	(21,955,106)	(16,520,470)	0	(39,428,874)
NOL Utilized - 2006	500,474			0	500,474
NOL Utilized - 2007	452,824	1,155,820		0	1,608,644
Total NOL Available	0	(20,799,286)	(16,520,470)	0	(37,319,756)

DIRECTV, INC.
[redacted]
State of South Carolina
Form SC 1120 - AMENDED
Income Tax Period Ending 12/31/2007

AMENDED

The return is being amended to apportion sales receipts to the state under S.C. Code Ann. §. 12-6- 2295 which sources sales of services under a pro-rata cost of performance method. The originally filed return incorrectly apportioned satellite television subscription receipts to South Carolina using market-based sourcing, rather than the cost of performance sourcing that is prescribed by statute.

ATTACHMENT A

1 6D4935 2 000

1062

THO

State of South Carolina

'C' CORPORATION INCOME TAX RETURN

Return is due on or before the 15th day of the 3rd month following the close of the taxable year

SC1120

(Rev. 7/25/08)

3091

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

SC FILE # 2043217-65

INCOME TAX PERIOD ENDING 12/31/2008

LICENSE FEE PERIOD ENDING 12/31/2009

FED EI # [redacted]

NAME DIRECTV, INC

MAILING ADDRESS 2250 E. IMPERIAL HWY, PO BOX 9

CITY EL SEGUNDO STATE CA ZIP CODE 90245-

Change of ☐ Address ☐ Accounting Period

Attach complete copy of Federal Return

County or Counties in SC Where Property is Located: Various

City EL SEGUNDO Audit Location State CA JUL 12 2010

Audit Contact JOHN SCHNEIDER Telephone Number (310) 964-0745

Check if ☐ Amended Return ☐ Consolidated Return

Total Gross Receipts. ▶ 17244942010

Total cost of depreciable personal property in SC. ▶ 79814876

If Filing a Final Return, See Instructions for Further Information.

▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per Federal Form 1120 or 1120A	1. 1,349,412,559
2.	Net Adjustment from line 15, Schedule A and B	2. 370,978,048
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	▶ 3. 1,720,390,607
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3.	▶ 4. 35,341,984
5.	LESS: South Carolina net operating loss carryover, if applicable	5.
6.	South Carolina Net Income subject to tax (line 4 less line 5)	▶ 6. 35,341,984
7.	TAX: Multiply amount on line 6 by 5% (.05)	7. 1,767,099
8.	Less tax deferred on income from foreign trade receipts (see instructions)	▶ 8.
9.	Balance (line 7 less line 8)	9. 1,767,099
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C)	▶ 10. ( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11. 1,767,099
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____	12.
13.	Total tax and/or interest (add lines 11 and 12)	13. 1,767,099
14.	Payments: (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ 2,260,000	
	(c) Paid with Tentative Return ▶ _____ (d) Credit from Line 29b ▶ _____	
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____	
15.	Total Payments and Refundable Credits (add lines 14a through 14f)	15. 2,260,000
16.	Balance of Tax and/or Interest Due (line 13 less line 15)	▶ 16.
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	▶ 17.
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) BALANCE DUE	18.
19.	OVERPAYMENT (line 15 less line 13) 492,901 To be applied as follows:	
	(a) Estimated Tax ▶ 481,214 (b) License Fee ▶ 11,687 (c) REFUNDED ▶	

COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid In Surplus (Multi-State Corporations See Schedule E)	▶ 20. 11,671,942
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	21. 11,687
22.	Credit Carryover ▶ _____ Credit taken this year from SC1120TC, Part II, Column C	▶ 22. ( )
23.	Balance (line 21 less line 22)	23. 11,687
24.	Payments: (24a) Paid with Tentative Return ▶ _____ (24b) Credit from line 19b ▶ 11,687	
25.	Total Payments (add line 24a and 24b)	25. 11,687
26	Balance of Fee Due (line 23 less line 25)	▶ 26
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	▶ 27.
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) BALANCE DUE	28.
29.	OVERPAYMENT (line 25 less line 23) _____ To be applied as follows:	
	(a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶	
30.	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) . . . EFT ☐	▶ 30.

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.
Go to www.sctax.org and look for the DOR ePay logo for other payment options.

For Office Use Only

RETURN AS FILED

62 0001VX 712M 09/11/2009 17:40:29 V08-7.6 [redacted]

Electronic Return Acknowledgement

Tax Year : 2008 **Return No:** 0001TG
Taxpayer: THE DIRECTV GROUP, INC.
ID No : [redacted]

Return Identification Number	: 95661720090705000000
Return Type	: 7004
Filing Type Description	: Federal Extension
Tax Period End Date	: 12/31/2008
Electronic Postmark	: 2009-03-11 18:30:55
Return Status	: Accepted
IRS Processed Date	: 03/11/2009

onic Postmark : is the date and time (Central time Zone) the electronic file is received at our host computers.

0 1 000

0001TG 712M 03/11/2009 20:09:02 V08-4.2 [redacted]

Form **7004** (Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns

▶ File a separate application for each return.
▶ See separate instructions.

OMB No. 1545-0233

Type or Print

File by the due date for the return for which an extension is requested. See instructions.

Name: THE DIRECTV GROUP, INC.

Identifying number: [redacted]

Number, street, and room or suite no. (If P.O. box, see instructions.): 2250 E. Imperial Hwy, PO Box 956, CA-LA2-A126

City, town, state, and ZIP code (If a foreign address, enter city, province or state, and country (follow the country's practice for entering postal code)): El Segundo, CA 90245-0956

Note. See instructions before completing this form.

Part I Automatic 5-Month Extension Complete if Filing Form 1065, 1041, or 8804

1a Enter the form code for the return that this application is for (see below) . . . . . [ ][ ]

Application Is For:	Form Code	Application Is For:	Form Code
Form 1065	09	Form 1041 (estate)	04
Form 8804	31	Form 1041 (trust)	05

Part II Automatic 6-Month Extension Complete if Filing Other Forms

b Enter the form code for the return that this application is for (see below) . . . . . [1][2]

Application Is For:	Form Code	Application Is For:	Form Code
Form 706-GS(D)	01	Form 1120-PC	21
Form 706-GS(T)	02	Form 1120-POL	22
Form 1041-N	06	Form 1120-REIT	23
Form 1041-QFT	07	Form 1120-RIC	24
Form 1042	08	Form 1120S	25
Form 1065-B	10	Form 1120-SF	26
Form 1066	11	Form 3520-A	27
Form 1120	12	Form 8612	28
Form 1120-C	34	Form 8613	29
Form 1120-F	15	Form 8725	30
Form 1120-FSC	16	Form 8831	32
Form 1120-H	17	Form 8876	33
Form 1120-L	18	Form 8924	35
Form 1120-ND	19	Form 8928	36
Form 1120-ND (section 4951 taxes)	20		

2 If the organization is a foreign corporation that does not have an office or place of business in the United States, check here . . . . . ▶ [ ]

3 If the organization is a corporation and is the common parent of a group that intends to file a consolidated return, check here . . . . . ▶ [X]
If checked, attach a schedule, listing the name, address, and Employer Identification Number (EIN) for each member covered by this application.

Part III All Filers Must Complete This Part

4 If the organization is a corporation or partnership that qualifies under Regulations section 1.6081-5, check here . . . . . ▶ [ ]

5 a The application is for calendar year 2008, or tax year beginning _____, 20____, and ending _____, 20____

b **Short tax year.** If this tax year is less than 12 months, check the reason:
[ ] Initial return [ ] Final return [ ] Change in accounting period [ ] Consolidated return to be filed

6	Tentative total tax	6	416,340,942.
7	Total payments and credits (see instructions)	7	479,000,000.
8	**Balance due.** Subtract line 7 from line 6. Generally, you must deposit this amount using the Electronic Federal Tax Payment System (EFTPS), a Federal Tax Deposit (FTD) Coupon, or Electronic Funds Withdrawal (EFW) (see instructions for exceptions)	8	NONE

[redacted]

Form 7004 - Affiliated Group Members

Name	Employer ID	Name	Employer ID
DIRECTV, INC (DivCon)	[redacted]	DIRECTV Customer Services, Inc.	[redacted]
DIRECTV Financing Co., Inc.	[redacted]	DIRECTV International, Inc.	[redacted]
DIRECTV Latin America Holdings, Inc.	[redacted]	DIRECTV Merchandising, Inc.	[redacted]
DIRECTV Programming Holdings I, Inc	[redacted]	DIRECTV Programming Holdings II, Inc	[redacted]
DTH TechCo, Inc.	[redacted]	DTV Communications Galaxy, Inc.	[redacted]
DTV Communications, Inc	[redacted]	DTV Network Systems, Inc.	[redacted]
DTV HSP Merger Sub, Inc.	[redacted]	DTV Realty, Inc.	[redacted]
DTV Systems International	[redacted]	DTVG India, Inc.	[redacted]
DTVG Licensing, Inc.	[redacted]	DTVI Two, Inc.	[redacted]
DTVJ Holdings, Inc.	[redacted]	DTVLA Mexico Investment Holdings,Inc	[redacted]
HNS-Clairtel GP, Inc.	[redacted]	LABC On-Air Music, Inc.	[redacted]
LABC TV Music, Inc.	[redacted]	MCOP Holdings	[redacted]
News America DTH Techco. Inc.	[redacted]	180 Connect Inc. (DE)	[redacted]

SCHEDULE A AND B ADDITIONS TO FEDERAL TAXABLE INCOME

1. Taxes on or Measured By Income	1.	21,231,981	
2. Federal Net Operating Loss	2.		
3.	3.		
4.	4.		
5. Other Additions (attach schedule) Stmt 1	5.	349,746,067	
6. Total Additions (add lines 1 through 5)			6. 370,978,048

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7. Interest On Obligations Of The U.S.	7.		
8.	8.		
9.	9.		
10. Other Deductions (attach schedule)	10.		
11. Total Deductions (add lines 7 through 10)			11.
12. Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120			12. 370,978,048

SCHEDULE C SUMMARY OF INCOME TAX CREDITS (FROM SC1120-TC)

1. Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 16)	1.	
2. Enter Total Credits from SC1120-TC, Column B, line 16. SC1120-TC must be attached to return.	2.	
3. Total Credits (add lines 1 and 2)	3.	
4. Tax (line 9, Part 1, SC1120)	4.	1,767,099
5. Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 16.)	5.	
6. Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 16)	6.	
7. Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 16)	7.	

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please Sign Here

Signature of officer B.R. PAPERNY | Date 9/11/09 | Title Senior Vice President, Taxes | Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐ | Preparer's Printed Name

Paid Preparer's Use Only

Preparer's signature | Date | Check if self-employed ☐ | Preparer's Telephone Number

Firm's name (or yours if self-employed) and address | FEI # | ZIP Code

SCHEDULE D **ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS**

1. Name DIRECTV, INC
2. Incorporated under the laws of the State of CA
3. Location of the Registered Office of the Corporation in the State of South Carolina is 1703 Laurel Street
   In the City of Columbia Registered Agent at such address is Corporation Service Company
4. Location of principal office (street address) See Statement 2
   Nature of principal business in SC TV Program Distributor
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: Common SERIES:
6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: Common SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	TITLE	BUSINESS ADDRESS
Chase Carey	President	2250 E. Imperial Hwy El Segundo, CA 9024
Michael Palkovic	Vice President	2250 E. Imperial Hwy El Segundo, CA 9024
Larry Hunter	General Counse	2250 E. Imperial Hwy El Segundo, CA 9024
J. Little	Treasurer	2250 E. Imperial Hwy El Segundo, CA 9024

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/11/2009 Fed EI # [redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
    Located at (street address) See Statement 2
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount). . . . . $
    B. Total paid in Capital Surplus (cannot be a negative amount). . . . . $ 568,171,256
    C. Total amount of stated Capital (cannot be a negative amount). . . . . $ 568,171,256

SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-in-Surplus at end of Year . . . . . $ 568,171,256
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) OR enter amount from Schedule H-4, Part II. Also enter on line 20, Part II . . . . . $ 11,671,942

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1 . . . . . 1. 1,720,390,607
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7 . . . . . 2.
3. Total net income subject to apportionment (line 1 less line 2) 3. 1,720,390,607
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, H-2, or H-3 and enter result here OR enter amount from Schedule H-4, Part I 4. 35,341,984
5. Add: Income subject to direct allocation to SC from Schedule F, line 8 . . . . . 5.
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1 . . . . . 6. 35,341,984

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5; subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL Property Add lines 8 and 9 (Col. 1÷Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL Sales (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts	354,257,512	17,244,942,010	
2. Less: Exclusion (see instructions)	( )	( )	
3. Gross Receipts (for ratio)	354,257,512	17,244,942,010	
Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			2.0543%

SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

SCHEDULE H-4 COMPUTATION OF SINGLE FACTOR APPORTIONMENT

SINGLE FACTOR APPORTIONMENT RATIO SCHEDULE

	Amount	Ratio
1. Total Sales Within South Carolina		
2. Total Sales Everywhere		
3. Ratio (South Carolina ÷ Everywhere)		

Note: If there are no sales anywhere, enter 100% on Line 3, if South Carolina is the principal place of business OR enter 0% on Line 3 if principal place of business is outside SC.

PART I COMPUTATION OF SC NET INCOME SUBJECT TO TAX FOR MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Enter amount from Sch G, Line 3 . . . . . 1. 1,720,390,607
2. Enter Ratio from Sch H-1, Line 17 . . . . . 2. ____ %
3. Multiply Line 2 by Line 1 . . . . . 3. ____
4. Enter Ratio from Line 3 of single factor apportionment schedule . . . . . 4. ____ %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3, Schedule H-4, Part I on Schedule G, Line 4 . . . . . 5. ____
6. Line 3 minus Line 5 . . . . . 6. ____
7. For tax year 2008, multiply amount on Line 6 by 40% (.40). This is the amount of reduction in SC taxable income allowed this year . . . . . 7. ____
8. Line 3 minus Line 7. Enter this amount on Sch G, Line 4 . . . . . 8. ____

PART II COMPUTATION OF LICENSE FEE - MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Total Capital and Paid-in-Surplus at the end of the year. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 1. 568,171,256
2. Enter the ratio from Sch H-1, Line 17 . . . . . 2. ____ %
3. Multiply Line 1 by Line 2. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 3. ____
4. Enter the ratio from Line 3 of single factor apportionment schedule . . . . . 4. ____ %
5. Multiply Line 1 by Line 4. If Line3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule E, Line 2 . . . . . 5. ____
6. Line 3 minus Line 5 . . . . . 6. ____
7. For tax year 2008, multiply the amount on Line 6 by 40% (.40). This is the amount of reduction of license fee basis allowed this year . . . . . 7. ____
8. Line 3 minus Line 7. Enter here and on Schedule E, Line 2 . . . . . 8. ____

8D4935 2 000 **AMENDED** 430609

1062 THO

State of South Carolina

'C' CORPORATION INCOME TAX RETURN

Return is due on or before the 15th day of the 3rd month following the close of the taxable year

SC1120 (Rev. 7/25/08)

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100 3091

SC FILE # 2045321 7-6 ~~2043217-65~~

INCOME TAX PERIOD ENDING 12/31/2008

LICENSE FEE PERIOD ENDING 12/31/2009

FED EI # [redacted]

NAME DIRECTV, INC

MAILING ADDRESS 2250 E. IMPERIAL HWY, PO BOX 9

CITY EL SEGUNDO STATE CA ZIP CODE 90245-

Change of ☐ Address ☐ Accounting Period

Attach complete copy of Federal Return

County or Counties in SC Where Property is Located: Various

City EL SEGUNDO | Audit Location | State CA

Audit Contact JOHN SCHNEIDER | Telephone Number (310) 964-0745

Check if [X] Amended Return ▶ ☐ Consolidated Return

Total Gross Receipts. ▶ 17244942010

Total cost of depreciable personal property in SC. ▶ 79814876

If Filing a Final Return, See Instructions for Further Information.

▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per Federal Form 1120 or 1120A (14074088)	1.	1,349,412,559
2.	Net Adjustment from line 15, Schedule A and B	2.	370,978,048
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	3.	1,720,390,607
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3.	4.	1,956,084
5.	LESS: South Carolina net operating loss carryover, if applicable	5.	1,956,084
6.	South Carolina Net Income subject to tax (line 4 less line 5)	6.	
7.	TAX: Multiply amount on line 6 by 5% (.05)	7.	
8.	Less tax deferred on income from foreign trade receipts (see instructions)	8.	
9.	Balance (line 7 less line 8)	9.	
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C)	10.	( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11.	
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____	12.	
13.	Total tax and/or Interest (add lines 11 and 12)	13.	
14.	Payments: (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ 2,260,000		
	(c) Paid with Tentative Return ▶ _____ (d) Credit from Line 29b ▶ _____		
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f)	15.	2,260,000
16.	Balance of Tax and/or Interest Due (line 13 less line 15)	16.	
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	17.	
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) . . . BALANCE DUE	18.	
19.	OVERPAYMENT (line 15 less line 13) 2,260,000 To be applied as follows:		
	(a) Estimated Tax ▶ 481,214 (b) License Fee ▶ 661 (c) REFUNDED ▶		1,778,125

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid In Surplus (Multi-State Corporations See Schedule E)	20.	646,011
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	21.	661
22.	Credit Carryover ▶ _____ Credit taken this year from SC1120TC, Part II, Column C	22.	( )
23.	Balance (line 21 less line 22)	23.	661
24.	Payments: (24a) Paid with Tentative Return ▶ _____ (24b) Credit from line 19b ▶ 661		
25.	Total Payments (add line 24a and 24b)	25.	661
26	Balance of Fee Due (line 23 less line 25)	26	
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	27.	
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) . . . BALANCE DUE	28.	
29.	OVERPAYMENT (line 25 less line 23) _____ To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶		
30.	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) . . . EFT ☐	30.	

Make check payable to: SC Department of Revenue. Include Business Name, FEI Number and SC File Number.
Go to www.sctax.org and look for the DOR ePay logo for other payment options.

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SC1120

AMENDED

SCHEDULE A AND B ADDITIONS TO FEDERAL TAXABLE INCOME

1.	Taxes on or Measured By Income	1. 21,231,981	
2.	Federal Net Operating Loss	2.	
3.		3.	
4.		4.	
5.	Other Additions (attach schedule) Stmt 1	5. 349,746,067	
6.	Total Additions (add lines 1 through 5)		6. 370,978,048

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7.	Interest On Obligations Of The U.S.	7.	
8.		8.	
9.		9.	
10.	Other Deductions (attach schedule)	10.	
11.	Total Deductions (add lines 7 through 10)		11.
12.	Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12. 370,978,048

SCHEDULE C SUMMARY OF INCOME TAX CREDITS (FROM SC1120-TC)

1.	Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 16)	1.
2.	Enter Total Credits from SC1120-TC, Column B, line 16. SC1120-TC must be attached to return.	2.
3.	Total Credits (add lines 1 and 2)	3.
4.	Tax (line 9, Part 1, SC1120)	4.
5.	Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 16.)	5.
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 16.)	6.
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 16.)	7.

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please Sign Here	Signature of Officer B.R. PAPERNY	Date 5/6/11	Title SENIOR V.P., TAXES	Telephone Number 310-964-0745
	I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer.	Yes ☐ No ☐	Preparer's Printed Name	
Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed ☐	Preparer's Telephone Number
	Firm's name (or yours if self-employed) and address		FEI #	
			ZIP Code	

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name DIRECTV, INC
2. Incorporated under the laws of the State of CA
3. Location of the Registered Office of the Corporation in the State of South Carolina is 1703 Laurel Street
   In the City of Columbia Registered Agent at such address is Corporation Service Company
4. Location of principal office (street address) See Statement 2
   Nature of principal business in SC TV Program Distributor
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: Common SERIES:
6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: Common SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	TITLE	BUSINESS ADDRESS
SAME AS LAST FILED		

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/11/2009 Fed EI # [redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is 06/20/1995
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
    Located at (street address) See Statement 2
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount). . . . . $
    B. Total paid in Capital Surplus (cannot be a negative amount). . . . . $ 568,171,256
    C. Total amount of stated Capital (cannot be a negative amount). . . . . $ 568,171,256

AMENDED

SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-in-Surplus at end of Year . . . . . $ 568,171,256
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) OR enter amount from Schedule H-4, Part II. Also enter on line 20, Part II . . . . . $ 646,011

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1 . . . . . 1. 1,720,390,607
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7 . . . . . 2.
3. Total net income subject to apportionment (line 1 less line 2) 3. 1,720,390,607
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, H-2, or H-3 and enter result here OR enter amount from Schedule H-4, Part I 4. 1,956,084
5. Add: Income subject to direct allocation to SC from Schedule F, line 8 . . . . . 5.
6. Total S.C. Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1 . . . . . 6. 1,956,084

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-6; subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL Property Add lines 8 and 9. (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL Sales (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts	19,605,211	17,244,942,010	
Less: Exclusion (see instructions)	( )	( )	
Gross Receipts (for ratio)	19,605,211	17,244,942,010	
4. Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			0.1137%

AMENDED

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SC1120

SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

SCHEDULE H-4 COMPUTATION OF SINGLE FACTOR APPORTIONMENT

SINGLE FACTOR APPORTIONMENT RATIO SCHEDULE

	Amount	Ratio
1. Total Sales Within South Carolina		
2. Total Sales Everywhere		
3. Ratio (South Carolina ÷ Everywhere)		

Note: If there are no sales anywhere, enter 100% on Line 3, if South Carolina is the principal place of business OR enter 0% on Line 3 if principal place of business is outside SC.

PART I COMPUTATION OF SC NET INCOME SUBJECT TO TAX FOR MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Enter amount from Sch G, Line 3 . . . . . 1. 1,720,390,607
2. Enter Ratio from Sch H-1, Line 17 . . . . . 2. %
3. Multiply Line 2 by Line 1 . . . . . 3.
4. Enter Ratio from Line 3 of single factor apportionment schedule . . . . . 4. %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3, Schedule H-4, Part I on Schedule G, Line 4 . . . . . 5.
6. Line 3 minus Line 5 . . . . . 6.
7. For tax year 2008, multiply amount on Line 6 by 40% (.40). This is the amount of reduction in SC taxable income allowed this year . . . . . 7.
8. Line 3 minus Line 7. Enter this amount on Sch G, Line 4 . . . . . 8.

PART II COMPUTATION OF LICENSE FEE - MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Total Capital and Paid-In-Surplus at the end of the year. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 1. 568,171,256
2. Enter the ratio from Sch H-1, Line 17 . . . . . 2. %
3. Multiply Line 1 by Line 2. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 3.
4. Enter the ratio from Line 3 of single factor apportionment schedule . . . . . 4. %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule E, Line 2 . . . . . 5.
6. Line 3 minus Line 5 . . . . . 6.
7. For tax year 2008, multiply the amount on Line 6 by 40% (.40). This is the amount of reduction of license fee basis allowed this year . . . . . 7.
8. Line 3 minus Line 7. Enter here and on Schedule E, Line 2 . . . . . 8.

AMENDED

South Carolina SC1120, Page 2 Detail

Sch. A, Line 5 - Other additions

Bonus Depreciation Adjustment	349,746,067.
Total	349,746,067.

AMENDED

South Carolina SC1120, Page 2 Detail

Sch. D, Line 4 - Location of Principal Office

2250 E. Imperial Hwy
El Segundo CA 90245

Sch. D, Line 12 - Location of Books

2250 E.IMPERIAL HWY., CA-LA2-A126
EL SEGUNDO, CA CA 90245

DIRECTV, INC.
SOUTH CAROLINA
NET OPERATING LOSS CARRYOVER
2003-2008

AMENDED

TAX RETURN	2003	2004	2005	Total
Net Income Net Operating Loss	(953,298)	(21,955,106)	(16,520,470)	(39,428,874)
NOL Utilized - 2006	500,474			500,474
NOL Utilized - 2007	452,824	1,155,820		1,608,644
NOL Utilized - 2008	0	1,956,084		1,956,084
Total NOL Available	0	(18,843,202)	(16,520,470)	(35,363,672)

AMENDED

DIRECTV, INC.
[redacted]
State of South Carolina
Form SC 1120 - AMENDED
Income Tax Period Ending 12/31/2008

The return is being amended to apportion sales receipts to the state under S.C. Code Ann. §. 12-6- 2295 which sources sales of services under a pro-rata cost of performance method. The originally filed return incorrectly apportioned satellite television subscription receipts to South Carolina using market-based sourcing, rather than the cost of performance sourcing that is prescribed by statute.

ATTACHMENT A

PD4038 1 000

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State of South Carolina

'C' CORPORATION INCOME TAX RETURN

Return is due on or before the 15th day of the 3rd month following the close of the taxable year.

SC1120 (Rev. 8/28/09)

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100 3091

SC FILE # ~~2043217-65~~ 20153217-6

INCOME TAX PERIOD ENDING 12/31/2009

LICENSE FEE PERIOD ENDING 12/31/2010

FEIN [redacted]

NAME DIRECTV, INC

MAILING ADDRESS 2250 E. IMPERIAL HWY, PO BOX 9

CITY EL SEGUNDO STATE CA ZIP CODE 90245-

Change of ☐ Address ☐ Accounting Period

Attach complete copy of Federal Return

County or Counties in SC Where Property is Located: VARIOUS

MAR 15 201

City EL SEGUNDO Audit Location State CA

Audit Contact JOHN SCHNEIDER Telephone Number 310-964-0745

Check if ☐ Amended Return ▶ ☐ Consolidated Return

Total Gross Receipts. ▶ 18586546795

Total cost of depreciable personal property in SC. ▶ 92992942

If Filing a Final Return, see General Instructions, page 6.

You MUST close your account with the SECRETARY OF STATE and complete I-349.

▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per Federal Form 1120 or 1120A	1.	1,615,034,988
2.	Net Adjustment from line 12, Schedule A and B	2.	278,074,937
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	▶ 3.	1,893,109,925
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3.	▶ 4.	2,720,399
5.	LESS: South Carolina net operating loss carryover, if applicable	5.	2,720,399
6.	South Carolina Net Income subject to tax (line 4 less line 5) 1445279.	▶ 6.	
7.	TAX: Multiply amount on line 6 by 5% (.05)	7.	
8.	Less tax deferred on income from foreign trade receipts (see instructions)	▶ 8.	
9.	Balance (line 7 less line 8)	9.	
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C)	▶ 10.	( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11.	
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____	12.	
13.	Total tax and/or interest (add lines 11 and 12)	13.	
14.	Payments: (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ ~~481214~~ 2,111,214		
	(c) Paid with Tentative Return ▶ ~~130000 100,000~~ (d) Credit from Line 29b ▶ _____		
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f)	15.	2,211,214
16.	Balance of Tax and/or Interest Due (line 13 less line 15)	▶ 16.	
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	▶ 17.	
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) BALANCE DUE	18.	
19.	OVERPAYMENT (line 15 less line 13) 2,211,214 To be applied as follows:		
	(a) Estimated Tax ▶ TRAS 2,210,441 (b) License Fee ▶ TRAS 773 (c)*REFUNDED ▶		

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid In Surplus (Multi-State Corporations See Schedule E)	▶ 20.	757,502
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	21.	773
22.	Credit Carryover ▶ _____ Credit taken this year from SC1120TC, Part II, Column C	▶ 22.	( )
23.	Balance (line 21 less line 22)	23.	773
24.	Payments: (24a) Paid with Tentative Return ▶ _____ (24b) Credit from line 19b ▶ 773		
25.	Total Payments (add line 24a and 24b)	25.	773
26	Balance of Fee Due (line 23 less line 25)	▶ 26	
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total.	▶ 27.	
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) BALANCE DUE	28.	
29.	OVERPAYMENT (line 25 less line 23) _____ To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c)*REFUNDED ▶		
30.	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) . . . EFT ☐	▶ 30.	

Make check payable to: SC Department of Revenue. Include Business Name, FEIN and SC File Number.
Go to www.sctax.org and look for the DOR ePay logo for other payment options. 35143933

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SCHEDULE A AND B — ADDITIONS TO FEDERAL TAXABLE INCOME

1.	Taxes on or Measured By Income	1. 11,646,260	
2.	Federal Net Operating Loss	2.	
3.		3.	
4.		4.	
5.	Other Additions (attach schedule) Stmt 1	5. 266,428,677	
6.	Total Additions (add lines 1 through 5)		6. 278,074,937

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7.	Interest On Obligations Of The U.S.	7.	
8.		8.	
9.		9.	
10.	Other Deductions (attach schedule)	10.	
11.	Total Deductions (add lines 7 through 10)		11.
12.	Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12. 278,074,937

SCHEDULE C — SUMMARY OF INCOME TAX CREDITS (FROM SC1120-TC)

1.	Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 16)	1.
2.	Enter Total Credits from SC1120-TC, Column B, line 16. **SC1120-TC must be attached to return.**	2.
3.	Total Credits (add lines 1 and 2)	3.
4.	Tax (line 9, Part 1, SC1120)	4.
5.	Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 16.)	5.
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 16.)	6.
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 16.)	7.

***REFUND NOTE:** Income tax refunds of less than $100 and license fee refunds of less than $100 will be applied to the next year's estimated tax unless indicated here: Initial here for refund to be sent. _____

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please Sign Here

Signature of officer BRIAN R. PAPERNY Date 9/13/10 | Title SR. VP, TAX | Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐ | Preparer's Printed Name

Paid Preparer's Use Only

Preparer's signature | Date | Check if self-employed ☐ | Preparer's Telephone Number

Firm's name (or yours if self-employed) and address | FEIN | ZIP Code

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name DIRECTV, INC
2. Incorporated under the laws of the State of CA
3. Location of the Registered Office of the Corporation in the State of South Carolina is 1703 Laurel Street
   In the City of Columbia Registered Agent at such address is Corporation Service Company
4. Location of principal office (street address) See Statement 2
   Nature of principal business in SC TV Program Distributor
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are:
   (If additional space is necessary, attach separate schedule).

NAME	TITLE	BUSINESS ADDRESS

8. Date Incorporated 10/30/1990 Date commenced business in the State of South Carolina was 6/20/1995
9. Date of this report 09/13/2010 FEIN [redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
    Located at (street address) See Statement 2
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount). . . . . $
    B. Total paid in Capital Surplus (cannot be a negative amount). . . . . $ 527,141,071
    C. Total amount of stated Capital (cannot be a negative amount). . . . . $ 527,141,071

SCHEDULES E, F, G, AND H ARE TO BE COMPLETED BY MULTI-STATE CORPORATIONS

SCHEDULE E COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-in-Surplus at end of Year . . . . . $ 527,141,071
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) OR enter amount from Schedule H-4, Part II. Also enter on line 20, Part II . . . . . $ 757,502

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1 . . . . . 1. 1,893,109,925
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7 . . . . . 2.
3. Total net income subject to apportionment (line 1 less line 2) 3. 1,893,109,925
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, H-2, or H-3 and enter result here OR enter amount from Schedule H-4, Part I 4. 2,720,399
5. Add: Income subject to direct allocation to SC from Schedule F, line 8 . . . . . 5.
6. Total SC Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1 . . . . . 6. 2,720,399

SCHEDULE H-1 COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions	( )	( )	( )	( )
7. TOTAL (add lines 1-5; subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL **Property** Add lines 8 and 9. (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officers Compensation and Exclusions	( )	( )	
13. TOTAL **Payroll** (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL **Sales** (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL **Sales** (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts	26,702,174	18,586,546,795	
2. Less: Exclusion (see instructions)	( )	( )	
3. Gross Receipts (for ratio)	26,702,174	18,586,546,795	
4. Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			0.1437 %

SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

SCHEDULE H-4 COMPUTATION OF SINGLE FACTOR APPORTIONMENT

SINGLE FACTOR APPORTIONMENT RATIO SCHEDULE

	Amount	Ratio
1. Total Sales Within South Carolina		
2. Total Sales Everywhere		
3. Ratio (South Carolina ÷ Everywhere)		

Note: If there are no sales anywhere, enter 100% on Line 3, if South Carolina is the principal place of business OR enter 0% on Line 3 if principal place of business is outside SC.

PART I COMPUTATION OF SC NET INCOME SUBJECT TO TAX FOR MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Enter amount from Sch G, Line 3 . . . . . 1. 1,893,109,925
2. Enter Ratio from Sch H-1, Line 17 . . . . . 2. %
3. Multiply Line 2 by Line 1 . . . . . 3.
4. Enter Ratio from Line 3 of single factor apportionment schedule . . . . . 4. %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3, Schedule H-4, Part I on Schedule G, Line 4 . . . . . 5.
6. Line 3 minus Line 5 . . . . . 6.
7. For tax year 2009, multiply amount on Line 6 by 60% (.60). This is the amount of reduction in SC taxable income allowed this year . . . . . 7.
8. Line 3 minus Line 7. Enter this amount on Sch G, Line 4 . . . . . 8.

PART II COMPUTATION OF LICENSE FEE - MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Total Capital and Paid-In-Surplus at the end of the year. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 1. 527,141,071
2. Enter the ratio from Sch H-1, Line 17 . . . . . 2. %
3. Multiply Line 1 by Line 2. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2 . . . . . 3.
4. Enter the ratio from Line 3 of single factor apportionment schedule . . . . . 4. %
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule E, Line 2 . . . . . 5.
6. Line 3 minus Line 5 . . . . . 6.
7. For tax year 2009, multiply the amount on Line 6 by 60% (.60). This is the amount of reduction of license fee basis allowed this year . . . . . 7.
8. Line 3 minus Line 7. Enter here and on Schedule E, Line 2 . . . . . 8.

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State of South Carolina

C CORPORATION INCOME TAX RETURN

SC1120 (Rev. 8/31/10) 3091

Return is due on or before the 15th day of the 3rd month following the close of the taxable year.

If a refund or zero return, mail to: SC DOR, Corporation Return, Columbia SC 29214-0033

If a balance due return, mail to: SC DOR, Corporation Return, Columbia SC 29214-0034

Attach complete copy of Federal Return.

SC FILE # 2043217-65

County or Counties in SC Where Property Is Located: VARIOUS

INCOME TAX PERIOD ENDING 12/31/2010

LICENSE FEE PERIOD ENDING 12/31/2011

City: EL SEGUNDO — Audit Location — State: CA

Audit Contact: JOHN SCHNEIDER — Telephone Number: 310-964-0745

FEIN [redacted]

NAME DIRECTV, INC

MAILING ADDRESS 2250 E. IMPERIAL HWY., PO BOX 9

CITY EL SEGUNDO STATE CA ZIP CODE 90245-

Check if: ☐ Amended Return ☐ Consolidated Return

Total Gross Receipts: ▶ 20099585214

Total cost of depreciable personal property in SC: ▶ 104735099

Change of: ☐ Address ☐ Accounting Period ☐ Officers

If Filing a Final Return, see General Instructions, page 8.

You MUST close your account with the SECRETARY OF STATE and complete 1149.

▶ ☐ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per federal tax return	1.	1,924,161,184
2.	Net Adjustment from line 12, Schedule A and B	2.	313,290,869
3.	Total Net Income as Reconciled (line 1 plus or minus line 2) ▶	3.	2,237,452,053
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3. ▶	4.	3,512,800
5.	LESS: South Carolina net operating loss carryover, if applicable	5.	3,512,800
6.	South Carolina Net Income subject to tax (line 4 less line 5) ▶	6.	
7.	TAX: Multiply amount on line 6 by 5% (.05)	7.	
8.	Less tax deferred on income from foreign trade receipts (see instructions) ▶	8.	
9.	Balance (line 7 less line 8)	9.	
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C) ▶	10.	( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11.	
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____	12.	
13.	Total tax and/or interest (add lines 11 and 12)	13.	
14.	Payments: (a) Tax Withheld (see instructions) ▶ _____ (b) Paid by Declaration ▶ 3,400,441		
	(c) Paid with Tentative Return ▶ _____ (d) Credit from Line 29b ▶ _____		
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f)	15.	3,400,441
16.	Balance of Tax and/or Interest Due (line 13 less line 15) ▶	16.	
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total ▶	17.	
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) BALANCE DUE	18.	
19.	OVERPAYMENT (line 15 less line 13) 3,400,441 To be applied as follows:		
	(a) Estimated Tax ▶ 3,399,519 (b) License Fee ▶ 922 (c) REFUNDED ▶		

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid In Surplus (Multi-State Corporations See Schedule E) ▶	20.	906,732
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	21.	922
22.	Credit Carryover ▶ _____ Credit taken this year from SC1120TC, Part II, Column C ▶	22.	( )
23.	Balance (line 21 less line 22)	23.	922
24.	Payments: (24a) Paid with Tentative Return ▶ _____ (24b) Credit from line 19b ▶ 922		
25.	Total Payments (add line 24a and 24b)	25.	922
26.	Balance of Fee Due (line 23 less line 25) ▶	26.	
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total ▶	27.	
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) BALANCE DUE	28.	
29.	OVERPAYMENT (line 25 less line 23) _____ To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶		
30.	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) EFT ☐ ▶	30.	

Make check payable to: SC Department of Revenue. Include Business Name, FEIN and SC File Number.
Go to www.sctax.org and look for the DOR ePay logo for other payment options.

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S.C. DEPT. OF REVENUE SEP 21 2011

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SC1120 Page 2

SCHEDULE A AND B ADDITIONS TO FEDERAL TAXABLE INCOME

1. Taxes on or Measured By Income	1.	12,990,367	
2. Federal Net Operating Loss	2.		
3.	3.		
4.	4.		
5. Other Additions (attach schedule) Stmt 1	5.	300,300,502	
6. Total Additions (add lines 1 through 5)			6. 313,290,869

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7. Interest On Obligations Of The U.S.	7.		
8.	8.		
9.	9.		
10. Other Deductions (attach schedule)	10.		
11. Total Deductions (add lines 7 through 10)			11.
12. Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120			12. 313,290,869

SCHEDULE C SUMMARY OF INCOME TAX CREDITS (FROM SC1120-TC)

1. Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 16)	1.	
2. Enter Total Credits from SC1120-TC, Column B, line 16. SC1120-TC must be attached to return.	2.	
3. Total Credits (add lines 1 and 2)	3.	
4. Tax (line 9, Part 1, SC1120)	4.	
5. Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE Should agree to SC1120-TC, Column C, line 16.)	5.	
6. Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 16.)	6.	
7. Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 16.)	7.	

REFUND NOTE: Income tax refunds of less than $100 and license fee refunds of less than $100 will be applied to the next year's estimated tax unless indicated here. Initial here for refund to be sent. _____

I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return.

Please Sign Here

Signature of officer BRIAN E. PAPERNY Date 9/14/11 Title SR. VP, TAX Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐ Preparer's Printed Name

Paid Preparer's Use Only

Preparer's signature | Date | Check if self-employed ☐ | Preparer's Telephone Number

Firm's name (or yours if self-employed) and address | FEIN or PTIN | ZIP Code

If this is a corporation's final return, signing here authorizes the Department of Revenue to disclose that information with the Secretary of State. You must close with the Secretary of State as well as the Department of Revenue and complete I-349.

Taxpayer's Signature Date

635479-036

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SC1120

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS.

1. Name DIRECTV, INC
2. Incorporated under the laws of the State of CA
3. Location of the Registered Office of the Corporation in the State of South Carolina is 1703 LAUREL STREET
   In the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 2
   Nature of principal business in SC TV PROGRAM DISTRIBUTOR
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are: (If additional space is necessary, attach separate schedule).

NAME	TITLE	BUSINESS ADDRESS
Michael D. White	President	2250 E. Imperial Hwy. El Segundo CA, 902
Michael W. Palkov	Vice President	2250 E. Imperial Hwy. El Segundo CA, 902
J. William Little	Treasurer	2250 E. Imperial Hwy. El Segundo CA, 902
Keith U. Landenbe	Secretary	2250 E. Imperial Hwy. El Segundo CA, 902

8. Date incorporated 10/30/1990 Date commenced business in the State of South Carolina was 6/20/1995
9. Date of this report 09/13/2011 FEIN [redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
    Located at (street address) See Statement 2
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount) . . . . . $
    B. Total paid in Capital Surplus (cannot be a negative amount) . . . . . $ 577,536,594
    C. Total amount of stated Capital (cannot be a negative amount) . . . . $ 577,536,594

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SC1120

ONLY MULTI-STATE CORPORATIONS MUST COMPLETE SCHEDULES E, F, G, AND H

SCHEDULE E — COMPUTATION FOR LICENSE FEE - MULTI-STATE CORPORATIONS

1. Total Capital and Paid-In-Surplus at end of Year	$ 577,536,594
2. SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate) OR enter amount from Schedule H-4, Part II. Also enter on line 20, Part II	$ 906,732

SCHEDULE F — INCOME SUBJECT TO DIRECT ALLOCATION

	Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1. Interest not connected with business						
2. Dividends received						
3. Rents						
4. Gains/losses on real property						
5. Gains/losses on intangible pers. prop.						
6. Investment income directly allocated						
7. TOTAL INCOME DIRECTLY ALLOCATED						
8. INCOME DIRECTLY ALLOCATED TO SC						
9. TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G — COMPUTATION OF TAXABLE INCOME FOR CORPORATIONS CLAIMING MULTI-STATE OPERATIONS

1. Total net income as reconciled. Enter amount from line 3, Page 1	1.	2,237,452,053
2. Less: Income subject to direct allocation to SC and other states from Schedule F, line 7	2.	
3. Total net income subject to apportionment (line 1 less line 2)	3.	2,237,452,053
4. Multiply amount on line 3 by appropriate ratio from Schedule H-1, H-2, or H-3 and enter result here OR enter amount from Schedule H-4, Part I	4.	3,512,800
5. Add: Income subject to direct allocation to SC from Schedule F, line 8	5.	
6. Total SC Net Income (sum of lines 4 and 5 above) also enter on line 4, Part I of Page 1	6.	3,512,800

SCHEDULE H-1 — COMPUTATION OF FOUR FACTOR APPORTIONMENT RATIO

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land				
2. Buildings				
3. Machinery and Equipment				
4. Inventories				
5. Other Property				
6. Exclusions				
7. TOTAL (add lines 1-5, subtract line 6)				

	1. Within SC	2. Total Everywhere	3. Ratio
8. Avg. of Beginning and Ending Period (add line 7a and b and divide by 2)			
9. Rental or Lease Value			
10. TOTAL Property Add lines 8 and 9; (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
11. GROSS Payroll			
12. Less: Officer's Compensation and Exclusions			
13. TOTAL Payroll (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
14. TOTAL Sales (Col. 1 ÷ Col. 2 and enter ratio in Col. 3)			%
15. TOTAL Sales (same as line 14)			%
16. TOTAL of Ratios (add Column 3 - lines 10, 13, 14 and 15)			%
17. Arithmetical Average of Ratios			%

SCHEDULE H-2 — COMPUTATION OF GROSS RECEIPTS RATIO

	1. In SC	2. Total Everywhere	3. Ratio
1. Total Gross Receipts	31,565,700	20,099,585,214	
2. Less: Exclusion (see instructions)			
3. Gross Receipts (for ratio)	31,565,700	20,099,585,214	
4. Ratio of Gross Receipts (line 3, Col. 1 ÷ line 3, Col. 2)			0.1570%

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SCHEDULE H-3 COMPUTATION OF RATIO FOR PUBLIC SERVICE CORPORATIONS

	Amount	Ratio
1. Total Within South Carolina		
2. Total for System		
3. Ratio (South Carolina ÷ Total System)		%

SCHEDULE H-4 COMPUTATION OF SINGLE FACTOR APPORTIONMENT

SINGLE FACTOR APPORTIONMENT RATIO SCHEDULE:

	Amount	Ratio
1. Total Sales Within South Carolina		
2. Total Sales Everywhere		
3. Ratio (South Carolina ÷ Everywhere)		

Note: If there are no sales anywhere, enter 100% on Line 3, if South Carolina is the principal place of business OR enter 0% on Line 3 if principal place of business is outside SC.

PART I COMPUTATION OF SC NET INCOME SUBJECT TO TAX FOR MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Enter amount from Sch G, Line 3	1.	2,237,452,053
2. Enter Ratio from Sch H-1, Line 17	2.	%
3. Multiply Line 2 by Line 1	3.	
4. Enter Ratio from Line 3 of single factor apportionment schedule	4.	%
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3, Schedule H-4, Part I on Schedule G, Line 4	5.	
6. Line 3 minus Line 5	6.	
7. For tax year 2010, multiply amount on Line 6 by 80% (.80). This is the amount of reduction in SC taxable income allowed this year	7.	
8. Line 3 minus Line 7. Enter this amount on Sch G, Line 4	8.	

PART II COMPUTATION OF LICENSE FEE - MULTI-STATE CORPORATION QUALIFYING FOR SINGLE FACTOR APPORTIONMENT

1. Total Capital and Paid-In-Surplus at the end of the year. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2	1.	577,536,594
2. Enter the ratio from Sch H-1, Line 17	2.	%
3. Multiply Line 1 by Line 2. If $10,000 or less, STOP HERE and enter on Schedule E, Line 2	3.	
4. Enter the ratio from Line 3 of single factor apportionment schedule	4.	%
5. Multiply Line 1 by Line 4. If Line 3 is less than Line 5, STOP HERE and enter amount from Line 3 on Schedule E, Line 2	5.	
6. Line 3 minus Line 5	6.	
7. For tax year 2010, multiply the amount on Line 6 by 80% (.80). This is the amount of reduction of license fee basis allowed this year	7.	
8. Line 3 minus Line 7. Enter here and on Schedule E, Line 2	8.	

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STATE OF SOUTH CAROLINA

'C' CORPORATION INCOME TAX RETURN

Return is due on or before the 15th day of the 3rd month following the close of the taxable year.
If a refund or zero return, mail to: SC DOR, Corporate Refund, Columbia SC 29214-0032
If a balance due return, mail to: SC DOR, Corporate Taxable, Columbia SC 29214-0033

SC 1120
(Rev. 12/9/11)
3091

SC FILE # 2043217-65

INCOME TAX PERIOD ENDING 12/31/2011
LICENSE FEE PERIOD ENDING 12/31/2012
FEIN [redacted]

NAME DIRECTV, INC
MAILING ADDRESS PO BOX 956, LA2-A126
CITY EL SEGUNDO STATE CA ZIP CODE 90245-0956
Change of ☐ Address ☐ Accounting Period ☐ Officers

Attach complete copy of Federal Return

County or Counties in SC Where Property is Located:
VARIOUS

City Audit Location: EL SEGUNDO State: CA

Audit Contact: JOHN SCHNEIDER Telephone Number: 310-964-0745

Check if ☐ Amended Return ▶ ☐ Consolidated Return (Complete Schedule M)
☐ Includes Disregarded LLC(s) (Complete Schedule L)

Total Gross Receipts ▶ 21615290596
Total cost of depreciable personal property in SC. ▶ 109857106

If Filing a Final Return, see General Instructions, page 6.
You MUST close your account with the SECRETARY OF STATE and complete I-349.
▶ ☒ Merged ☐ Reorganized ☐ Dissolved ☐ Withdrawn

PART I COMPUTATION OF INCOME TAX LIABILITY

1.	Federal Taxable Income per federal tax return	1.	1,543,914,649
2	Net Adjustment from line 12, Schedule A and B	2.	612,540,392
3.	Total Net Income as Reconciled (line 1 plus or minus line 2)	3.	2,156,455,041
4.	If Multi-state Corporation, enter amount from line 6, Schedule G; otherwise, enter amount from line 3	4.	6,387,420
5.	LESS: South Carolina net operating loss carryover, if applicable	5.	6,387,420
6.	South Carolina Net Income subject to tax (line 4 less line 5)	6.	
7.	TAX. Multiply amount on line 6 by 5% (.05)	7.	
8.	Less tax deferred on income from foreign trade receipts (see instructions)	8.	
9.	Balance (line 7 less line 8)	9.	
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 5, Schedule C)	10.	( )
11.	Balance of tax (line 9 less line 10). Enter the difference but not less than zero.	11.	
12.	Interest on DISC-deferred tax liability _____ ; or Foreign Trade Deferred Tax Liability _____	12.	
13	Total tax and/or interest (add lines 11 and 12)	13.	
14.	Payments: (a) Tax Withheld (Attach 1099s, I-208s, and/or W-2s, see instructions) ▶ _____		
	(b) Paid by Declaration ▶ 3,399,519 (c) Paid with Tentative Return ▶ _____		
	(d) Credit from Line 28b ▶ _____		
	Refundable Credits: (e) Ammonia Additive ▶ _____ (f) Milk Credit ▶ _____		
15.	Total Payments and Refundable Credits (add lines 14a through 14f)	15.	3,399,519
16.	Balance of Tax and/or Interest Due (line 13 less line 15)	16.	
17.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total	17.	
18.	TOTAL INCOME TAX, Interest and Penalty Due (add lines 16 and 17) BALANCE DUE	18.	
19.	OVERPAYMENT (line 15 less line 13) 3,399,519 To be applied as follows:		
	(a) Estimated Tax ▶ 3,399,519 (b) License Fee ▶ _____ (c) REFUNDED ▶ _____		

PART II COMPUTATION OF LICENSE FEE

20.	Total Capital And Paid In Surplus (Multi-State Corporations See Schedule E)	20.	1,653,682
21.	FEE DUE - Line 20 x .001, plus $15.00 (Fee cannot be less than $25.00 per taxpayer)	21.	
22.	Credit Carryover ▶ _____ Credit taken this year from SC1120TO, Part II, Column C	22.	( )
23.	Balance (line 21 less line 22)	23.	
24.	Payments: (24a) Paid with Tentative Return ▶ _____ (24b) Credit from line 19b ▶ _____		
25.	Total Payments (add line 24a and 24b)	25.	
26.	Balance of Fee Due (line 23 less line 25)	26.	
27.	Interest Due ▶ _____ Penalty Due ▶ _____ (See penalty and interest instructions.) Enter Total	27.	
28.	TOTAL LICENSE FEE, Interest and Penalty Due (add lines 26 and 27) BALANCE DUE	28.	
29.	OVERPAYMENT (line 25 less line 23) _____ To be applied as follows:		
	(a) Estimated Tax ▶ _____ (b) Income Tax ▶ _____ (c) REFUNDED ▶ _____		
30.	GRAND TOTAL: INCOME TAX and LICENSE FEE DUE (add lines 18 and 28) EFT ☐	30.	

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SC1120 Page 2

SCHEDULE A AND B — ADDITIONS TO FEDERAL TAXABLE INCOME

1.	Taxes on or Measured By Income	1. 25,624,761	
2	Federal Net Operating Loss	2.	
3.		3.	
4.		4.	
5.	Other Additions (attach schedule) Stmt. 1.	5. 586,915,631	
6.	Total Additions (add lines 1 through 5)		6. 612,540,392

DEDUCTIONS FROM FEDERAL TAXABLE INCOME

7.	Interest On Obligations Of The U.S.	7.	
8.		8.	
9.		9.	
10.	Other Deductions (attach schedule)	10.	
11.	Total Deductions (add lines 7 through 10)		11.
12.	Net Adjustment (line 6 less line 11) Also enter on line 2, Part 1, SC1120		12. 612,540,392

SCHEDULE C — SUMMARY OF INCOME TAX CREDITS (FROM SC1120-TC)

1.	Credit Carryover From Previous Year's SC1120, Schedule C (NOTE: Should agree to SC1120-TC Column A, line 16)	1
2.	Enter Total Credits from SC1120-TC, Column B, line 16. SC1120-TC must be attached to return.	2.
3.	Total Credits (add lines 1 and 2)	3.
4.	Tax (line 9, Part 1, SC1120)	4.
5.	Lesser of line 3 or 4 (enter on line 10, Part 1, SC1120) (NOTE: Should agree to SC1120-TC, Column C, line 16)	5.
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 16.)	6.
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 16.)	7.

Please Sign Here — I, the undersigned, a principal officer of the corporation for which this return is made declare that this return, including accompanying Annual Report, statements and schedules, has been examined by me and is to the best of my knowledge and belief, a true and complete return. 9/17/12

Signature of officer BRIAN R PAPERNY Date | Title SR.VP, TAX | Telephone Number

I authorize the Director of the Department of Revenue or delegate to discuss this return, attachments and related tax matters with the preparer. Yes ☐ No ☐ | Preparer's Printed Name

Paid Preparer's Use Only — Preparer's signature | Date | Check if self-employed ☐ | Preparer's Telephone Number

Firm's name (or yours if self-employed) and address | PTIN or FEIN | ZIP Code

If this is a corporation's final return, signing here authorizes the Department of Revenue to disclose that information with the Secretary of State You must close with the Secretary of State as well as the Department of Revenue and complete I-349.

Taxpayer's Signature | Date

ATTACH COMPLETE COPY OF FEDERAL RETURN

Make check payable to: SC Department of Revenue. Include Business Name, FEIN and SC File Number.
Go to www.sctax.org and look for the DOR ePay logo for other payment options.

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SC1120

SCHEDULE D ANNUAL REPORT TO BE COMPLETED BY ALL CORPORATIONS

1. Name DIRECTV, INC
2. Incorporated under the laws of the State of CA
3. Location of the Registered Office of the Corporation in the State of South Carolina is 1703 LAUREL STREET in the City of COLUMBIA Registered Agent at such address is CORPORATION SERVICE COMPANY
4. Location of principal office (street address) See Statement 2
   Nature of principal business in SC TV PROGRAM DISTRIBUTOR
5. The total number of authorized shares of capital stock, itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
6. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:
   NUMBER OF SHARES: 1,000. CLASS: COMMON SERIES:
7. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the Corporation are: (If additional space is necessary, attach separate schedule).

NAME	TITLE	BUSINESS ADDRESS
Michael W. Palkov	Vice President	2250 E. Imperial Hwy El Segundo CA, 9024
Janet L. Williams	Secretary	2250 E. Imperial Hwy. El Segundo CA, 902
J. William Little	Treasurer	2250 E. Imperial Hwy. El Segundo CA, 902
Michael White	President	2250 E. Imperial Hwy El Segundo CA, 9024

8. Date Incorporated 10/31/1990 Date commenced business in the State of South Carolina was 06/20/1995
9. Date of this report 09/13/2012 FEIN [redacted]
10. If Foreign Corporation, the date qualified to do business in the State of South Carolina is
11. Was the name of the Corporation changed during the year? NO Give old name
12. The Corporation's books are in the care of JOHN SCHNEIDER
    Located at (street address) See Statement 2
13. If filing consolidated, complete and attach Schedule J for each Corporation included in the consolidation.
14. The total amount of stated capital per balance sheet is:
    A. Total paid in Capital Stock (cannot be a negative amount). . . . . $ 26,492
    B. Total paid in Capital Surplus (cannot be a negative amount). . . . . $ 558,272,730
    C. Total amount of stated Capital (cannot be a negative amount). . . . . $ 558,299,222

	1. Property Within South Carolina		2. Total Property Everywhere	
	(a) Beginning Period	(b) Ending Period	(a) Beginning Period	(b) Ending Period
1. Land			6,291,580	6,491,580
2. Buildings			61,701,953	71,940,155
3. Machinery and Equipment	104,735,099	109,857,106	5,338,193,719	5,666,823,393
4. Inventories		39,991	174,109,512	248,790,383
5. Other Property			119,603,789	208,867,800
6. Exclusions	< >	< >	< >	< >
7. TOTAL (add lines 1-5; subtract line 6)	104,735,099	109,897,097	5,699,900,553	6,202,913,311

SC1120 Page 4

ONLY MULTI-STATE CORPORATIONS MUST COMPLETE SCHEDULES E, F, G, AND H

SCHEDULE E COMPUTATION OF LICENSE FEE OF MULTI-STATE CORPORATIONS

1.	Total Capital and Paid-in-Surplus at end of Year	$ 558,299,222
2.	SC PROPORTION: (line 1 X ratio from Schedule H-1, H-2 or H-3, as appropriate). Also enter on line 20, Part II	$ 1,653,682

SCHEDULE F INCOME SUBJECT TO DIRECT ALLOCATION

		Gross Amounts 1	Less: Related Expenses 2	Net Amounts Allocated Direct. to SC and Other States 3	Net Amounts Allocated Directly to SC 4	Payrolls to be Excluded from Payroll Factor 5	Property to be Excluded from Property Factor 6
1	Interest not connected with business						
2.	Dividends received						
3.	Rents						
4.	Gains/losses on real property						
5.	Gains/losses on intangible pers. prop.						
6.	Investment income directly allocated						
7.	TOTAL INCOME DIRECTLY ALLOCATED						
8.	INCOME DIRECTLY ALLOCATED TO SC						
9	TOTALS TO APPORTIONMENT FACTORS						

SCHEDULE G COMPUTATION OF TAXABLE INCOME OF MULTI-STATE CORPORATIONS

1.	Total net income as reconciled. Enter amount from line 3, Page 1	1. 2,156,455,041
2.	Less: Income subject to direct allocation to SC and other states from Schedule F, line 7	2.
3.	Total net income subject to apportionment (line 1 less line 2)	3. 2,156,455,041
4.	Multiply amount on line 3 by appropriate ratio from Schedule H-1, H-2, or H-3 and enter result here	4 6,387,420
5.	Add: Income subject to direct allocation to SC from Schedule F, line 6	5.
6.	Total SC Net Income (sum of lines 4 and 5 above) also enter on line 4, Part 1 of Page 1	6. 6,387,420

SCHEDULE H-1 COMPUTATION OF SALES RATIO

	Amount	Ratio
1 Total Sales Within South Carolina (see instructions)		
2. Total Sales Everywhere (see instructions)		
3. Sales Ratio (line 1 ÷ line 2)		%

Note: If there are no sales anywhere: Enter 100% on Line 3, if South Carolina is the principal place of business OR
Enter 0% on Line 3, if principal place of business is outside South Carolina.

SCHEDULE H-2 COMPUTATION OF GROSS RECEIPTS RATIO

	Amount	Ratio
1. South Carolina Gross Receipts	64,028,184	
2. Amounts Allocated to South Carolina on Schedule F	< >	
3. South Carolina Adjusted Gross Receipts (line 1 – line 2)	64,028,184	
4. Total Gross Receipts	21,615,290,596	
5. Total Amounts Allocated on Schedule F	< >	
6. Total Adjusted Gross Receipts (line 4 – line 5)	21,615,290,596	
7. Gross Receipts Ratio (line 3 ÷ line 6)		0.2962%

SCHEDULE H-3 COMPUTATION OF RATIO FOR SECTION 12-6-2310 COMPANIES

	Amount	Ratio
1. Total Within South Carolina (see instructions)		
2. Total Everywhere		
3. Taxable Ratio (line 1 ÷ line 2)		%

Form **1120** 8512-148 **U.S. Corporation Income Tax Return**

Department of the Treasury
Internal Revenue Service

For calendar year 2011 or tax year beginning _____, ending _____

▶ See separate instructions.

OMB No 1545-0123

2011

A Check if:
1a Consolidated return (attach Form 851) ☐
b Life/nonlife consolidated return ☐
2 Personal holding co (attach Sch. PH) ☐
3 Personal service corp. (see instructions) ☐
4 Schedule M-3 attached ☒

TYPE OR PRINT

Name: DIRECTV, INC

Number, street, and room or suite no. If a P.O. box, see instructions: 2250 E. IMPERIAL HWY, PO BOX 956, CA-LA2-A126

City or town, state, and ZIP code: EL SEGUNDO, CA 90245-0957

B Employer identification number: [redacted]

C Date incorporated: 12/11/1995

D Total assets (see instructions): $ 6,052,615,404.

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

Income	1a	Merchant card and third-party payments. For 2011, enter -0-	1a	
	b	Gross receipts or sales not reported on line 1a (see instructions)	1b	21,615,290,596.
	c	Total. Add lines 1a and 1b	1c	21,615,290,596.
	d	Returns and allowances plus any other adjustments (see instructions)	1d	
	e	Subtract line 1d from line 1c		1e 21,615,290,596.
	2	Cost of goods sold from Form 1125-A, line 8 (attach Form 1125-A)		2 10,189,925,413.
	3	Gross profit. Subtract line 2 from line 1e		3 11,425,365,183.
	4	Dividends (Schedule C, line 19)		4
	5	Interest See Statement 1		5 475,011.
	6	Gross rents		6
	7	Gross royalties		7
	8	Capital gain net income (attach Schedule D (Form 1120))		8
	9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)		9 -55,644,113.
	10	Other income (see instructions - attach schedule) See Statement 1		10 65,214,917.
	11	Total income. Add lines 3 through 10 ▶		11 11,435,410,998.
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers from Form 1125-E, line 4 (attach Form 1125-E) ▶		12 4,413,601.
	13	Salaries and wages (less employment credits)		13 464,307,900.
	14	Repairs and maintenance		14 2,096,863.
	15	Bad debts		15 256,720,038.
	16	Rents		16 13,502,232.
	17	Taxes and licenses See Statement 2		17 66,243,371.
	18	Interest See Statement 2		18 522,904.
	19	Charitable contributions See Statement 3		19 398,847.
	20	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)		20 1,666,256,347.
	21	Depletion		21
	22	Advertising		22 503,679,370.
	23	Pension, profit-sharing, etc., plans		23 22,379,163.
	24	Employee benefit programs		24 65,677,200.
	25	Domestic production activities deduction (attach Form 8903)		25 75,910,373.
	26	Other deductions (attach schedule) See Statement 3		26 6,749,388,140.
	27	Total deductions. Add lines 12 through 26 ▶		27 9,891,496,349.
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		28 1,543,914,649.
	29a	Net operating loss deduction (see instructions) 29a		
	b	Special deductions (Schedule C, line 20) 29b		
	c	Add lines 29a and 29b		29c
Tax, Refundable Credits, and Payments	30	Taxable income. Subtract line 29c from line 28 (see instructions)		30 1,543,914,649.
	31	Total tax (Schedule J, Part I, line 11)		31 NONE
	32	Total payments and refundable credits (Schedule J, Part II, line 21)		32 NONE
	33	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ ☐		33
	34	Amount owed. If line 32 is smaller than the total of lines 31 and 33, enter amount owed		34
	35	Overpayment. If line 32 is larger than the total of lines 31 and 33, enter amount overpaid		35
	36	Enter amount from line 35 you want: Credited to 2012 estimated tax ▶ Refunded ▶		36

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ▶ Date ▶ Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☐ Yes ☐ No

Paid Preparer Use Only

Print/Type preparer's name | Preparer's signature | Date | Check ☐ if self-employed | PTIN

Firm's name ▶ | Firm's EIN ▶

Firm's address ▶ | Phone no.

PRO FORMA

For Paperwork Reduction Act Notice, see separate instructions.

JSA 1C1110 2.000 0002J1 712M 09/11/2012 15:13:00 V11-5.5 [redacted]

Form **1120** (2011)

15

Schedule C Dividends and Special Deductions (see instructions)	(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1 Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2 Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3 Dividends on debt-financed stock of domestic and foreign corporations			
4 Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5 Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6 Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7 Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8 Dividends from wholly owned foreign subsidiaries		100	
9 **Total.** Add lines 1 through 8. See instructions for limitation			
10 Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11 Dividends from affiliated group members		100	
12 Dividends from certain FSCs		100	
13 Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14 Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15 Foreign dividend gross-up			
16 IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17 Other dividends			
18 Deduction for dividends paid on certain preferred stock of public utilities			
19 **Total dividends.** Add lines 1 through 17. Enter here and on page 1, line 4 ▶			
20 **Total special deductions.** Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ▶			

Form 1120 (2011)

Schedule J Tax Computation and Payment (see instructions)

Part I - Tax Computation

1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120)) ▶ ☐			
2	Income tax Check if a qualified personal service corporation (see instructions) ▶ ☐		2	
3	Alternative minimum tax (attach Form 4626)		3	
4	Add lines 2 and 3		4	
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credit from Form 8834, line 30 (attach Form 8834)	5b		
c	General business credit (attach Form 3800)	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d		
e	Bond credits from Form 8912	5e		
6	Total credits. Add lines 5a through 5e		6	
7	Subtract line 6 from line 4		7	
8	Personal holding company tax (attach Schedule PH (Form 1120))		8	
9a	Recapture of investment credit (attach Form 4255)	9a		
b	Recapture of low-income housing credit (attach Form 8611)	9b		
c	Interest due under the look-back method - completed long-term contracts (attach Form 8697)	9c		
d	Interest due under the look-back method - income forecast method (attach Form 8866)	9d		
e	Alternative tax on qualifying shipping activities (attach Form 8902)	9e		
f	Other (see instructions - attach schedule)	9f		
10	Total. Add lines 9a through 9f		10	
11	Total tax. Add lines 7, 8, and 10. Enter here and on page 1, line 31		11	NONE

Part II - Payments and Refundable Credits

12	2010 overpayment credited to 2011		12	NONE
13	2011 estimated tax payments		13	
14	2011 refund applied for on Form 4466		14	( )
15	Combine lines 12, 13, and 14		15	NONE
16	Tax deposited with Form 7004		16	
17	Withholding (see instructions)		17	
18	Total payments. Add lines 15, 16, and 17		18	NONE
19	Refundable credits from:			
a	Form 2439	19a		
b	Form 4136	19b		
c	Form 3800, line 17c and Form 8827, line 8c	19c		
d	Other (attach schedule - see instructions)	19d		
20	Total credits. Add lines 19a through 19d		20	
21	Total payments and credits. Add lines 18 and 20. Enter here and on page 1, line 32		21	NONE

Schedule K Other Information (see instructions)

		Yes	No
1	Check accounting method: a ☐ Cash b ☒ Accrual c ☐ Other (specify) ▶		
2	See the instructions and enter the:		
a	Business activity code no. ▶ 517510		
b	Business activity ▶ TV PROG DISTRIBUTION		
c	Product or service ▶ TV PROG DISTRIBUTION		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group?	X	
	If "Yes," enter name and EIN of the parent corporation ▶ DIRECTV 26-4772533		
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), trust, or tax-exempt organization own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part I of Schedule G (Form 1120) (attach Schedule G)	X	
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? If "Yes," complete Part II of Schedule G (Form 1120) (attach Schedule G)		X

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

November 29, 2011

Directv Inc and Subsidiaries
2250 E Imperial Hwy
El Segundo, CA 90245

Tax Type: Corp. Income/License
Periods: 12/31/2005-12/31/09
File #: 20453217-6
Response Date: February 29, 2012
Audit #: 00/36/7009

Attn: John Schneider

Sir or Madam:

The audit of the above referenced tax return(s) has been completed by the Audit Services Division of the South Carolina Department of Revenue. Enclosed is a "Report of Field Audit" (AS-54) which explains our "Proposed Notice of Adjustment".

If you agree with the changes detailed in the enclosed report, the balance shown to be due on Form AS-54 should be remitted to this office within thirty (30) days from the date of this letter, to avoid additional interest and penalties, if applicable. Please include a copy of the AS-54 with your check to insure proper processing.

If you agree with the Division's adjustments but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office within thirty (30) days from the date of this letter. Upon receipt of this document, a "Final Assessment" will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Division, a written protest must be submitted to this office by the response date stated above.

If you do not respond to this letter by the response date stated above, the Division will issue the "Final Assessment" and begin collection action.

Should you have any questions, please do not hesitate to call me at the number listed below.

Yours very truly,

S.C. DEPARTMENT OF REVENUE
LAW & COMPLIANCE

Tim Donovan

Tim Donovan – Non-Resident Audit Manager
(803)898-5619
(803)898-5825 (fax)

/mb
Enclosure

Form Letter AS-54-PA (Rev. 8/95)

SOUTH CAROLINA DEPARTMENT OF REVENUE
REPORT OF FIELD AUDIT: INCOME TAX & LICENSE FEE

TAXPAYER: Directv Inc and Subsidiaries
ADDRESS: 2250 E. Imperial Hwy
El Segundo, CA 90245

FEI # : 95-4321465
FILE # : 20453217-6
PERIOD: 12/31/05 - 12/31/09
DATE: 11/29/11
AUDITOR: KING

INTEREST COMPUTED TO:

INCOME TAX:

PERIOD ENDED:	INCOME TAX	INTEREST	PENALTY	TOTALS
12/31/05	$0			$0
12/31/06	$0			$0
12/31/07	$0			$0
12/31/08	$0			$0
12/31/09	$0			$0
TOTALS	$0	$0	$0	$0

LICENSE FEE:

PERIOD ENDED:	LICENSE FEE	INTEREST	PENALTY	TOTALS
12/31/07	$0			$0
12/31/08	$0			$0
12/31/09	$0			$0
12/31/10	$0			$0
TOTALS	$0	$0	$0	$0

SUMMARY:	TAX	INTEREST	PENALTY	TOTALS
INCOME TAX	$0	$0	$0	$0
LICENSE FEE	0	0	0	0
TOTALS	$0	$0	$0	$0

Less:Amount Collected	0
Balance Due	$0

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX

TAXPAYER: Directv Inc and Subsidiaries
FILE # : 20453217-6
PERIOD: 12/31/05 - 12/31/08

SCHEDULE: A
AUDITOR: KING
Henliff
Dennis
DATE: 10/20/11

PERIOD ENDED: Per Return 12/31/2005

	Directv Group, inc 52-1106564	Directv Inc 95-4321465	DTV Network Systems 52-2358833	Directv Broadband 77-0467929	HNS Clairtel - GP 52-1720111	Consolidated 12/31/05
APPORTIONABLE INCOME PER RETURN:	1,245,519,282	(870,599,263)	(205,248,365)	(1,250)	0	(1,075,848,878)
Schedule A and B - additions (per return)	4,926,764	20,271	152,227	2,390	0	174,888
Schedule A and B - deductions (per return)	(11,404,423)	(8,180,271)	(980,686)	0	0	(9,160,957)
Allocated to SC and Other States (per return)	0	0	0	0	0	0
						0
ADJUSTMENTS: PER AUDIT	0	0	0	0	0	0
APPORTIONMENT INCOME AS ADJUSTED	1,239,041,623	(878,759,263)	(206,076,824)	1,140	0	(1,084,834,947)
SC APPORTIONMENT RATIO	0.0000%	1.8960%	0.2281%	0.0000%	0.0000%	0.0000%
SC PROPORTION	0	(16,661,276)	(470,061)	0	0	(17,131,337)
ALLOCABLE TO SC						
SC NET INCOME	0	(16,661,276)	(470,061)	0	0	(17,131,337)
CORPORATE TAX REDUCTION	0	0				
SC NOL	0	0	0	0	0	0
TAXABLE INCOME	0	(16,661,276)	(470,061)	0	0	(17,131,337)
TAX RATE	5%	5%	5%	5%	5%	5%
TAX DUE	0	0	0	0	0	0
TAX CREDIT						
BALANCE	0	0	0	0	0	0
TAX PREVIOUSLY PAID	0	0	0	0	0	0
UNDERPAYMENT (OVERPAYMENT)	0	0	0	0	0	0

EXPLANATION OF ADJUSTMENTS:

SECTION 12-6-530. Corporate income tax.

An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

ROA 0472

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX

TAXPAYER:	Directv Inc and Subsidiaries	SCHEDULE:	A
FILE # :	20453217-6	AUDITOR:	KING Heniff Dennis
PERIOD:	12/31/05 - 12/31/08		
	Per Return	DATE:	10/20/11
PERIOD ENDED:	12/31/2006		

	Directv Inc 95-4321465	DTV Network Systems 52-2358833	Consolidated 12/31/06
APPORTIONABLE INCOME PER RETURN:	2,043,360,512	(180,568,462)	1,862,792,050
Schedule A and B - additions (per return)	7,916,800	(101,554)	7,815,246
Schedule A and B - deductions (per return)	(5,228,561)	0	(5,228,561)
Allocated to SC and Other States (per return)	0	0	0
			0
ADJUSTMENTS: PER AUDIT	0	0	0
APPORTIONMENT INCOME AS ADJUSTED	2,046,048,751	(180,670,016)	1,865,378,735
SC APPORTIONMENT RATIO	1.9539%	0.0000%	0.0000%
SC PROPORTION	39,977,747	0	39,977,747
ALLOCABLE TO SC			
SC NET INCOME	39,977,747	0	39,977,747
CORPORATE TAX REDUCTION	0		
SC NOL	0	0	(39,372,439)
TAXABLE INCOME	39,977,747	0	605,308
TAX RATE	5%	5%	5%
TAX DUE	1,998,887	0	30,265
TAX CREDIT			
BALANCE	0	0	30,265
TAX PREVIOUSLY PAID	0	0	(30,265)
UNDERPAYMENT (OVERPAYMENT)	0	0	0

EXPLANATION OF ADJUSTMENTS:

SECTION 12-6-530. Corporate income tax.
An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX

TAXPAYER:	Directv Inc and Subsidiaries	SCHEDULE:	A
FILE # :	20453217-6	AUDITOR:	KING
PERIOD:	12/31/05 - 12/31/08		Heniff
			Dennis
	Per Return	DATE:	10/20/11
PERIOD ENDED:	12/31/2007		

	Directv Inc 95-4321465	DTV Network Systems 52-2358833	Consolidated 12/31/07
APPORTIONABLE INCOME PER RETURN:	1,975,930,872	0	1,975,930,872
Schedule A and B - additions (per return)	13,913,135	0	13,913,135
Schedule A and B - deductions (per return)	(3,863,229)	0	(3,863,229)
Allocated to SC and Other States (per return)	0	0	0
			0
ADJUSTMENTS: PER AUDIT	0	0	0
APPORTIONMENT INCOME AS ADJUSTED	1,985,980,778	0	1,985,980,778
SC APPORTIONMENT RATIO	2.0016%	0.0000%	0.0000%
SC PROPORTION	39,751,391	0	39,751,391
ALLOCABLE TO SC			
SC NET INCOME	39,751,391	0	39,751,391
CORPORATE TAX REDUCTION	0		
SC NOL	0	0	0
TAXABLE INCOME	39,751,391	0	39,751,391
TAX RATE	5%	5%	5%
TAX DUE	1,987,570	0	1,987,570
TAX CREDIT			
BALANCE	1,987,570	0	1,987,570
TAX PREVIOUSLY PAID	(1,987,570)	0	(1,987,570)
UNDERPAYMENT (OVERPAYMENT)	(0)	0	(0)

EXPLANATION OF ADJUSTMENTS:

Directv requested refund in the amount $1,987,570. Refund denied

SECTION 12-6-530. Corporate income tax.
An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX

TAXPAYER:	Directv Inc and Subsidiaries	SCHEDULE:	A
FILE # :	20453217-6	AUDITOR:	KING
PERIOD:	12/31/05 - 12/31/08		Heniff
			Dennis
	Per Return	DATE:	10/20/11
PERIOD ENDED:	12/31/2008		

	Directv Inc 95-4321465	Consolidated 12/31/08
APPORTIONABLE INCOME PER RETURN:	1,349,412,559	1,349,412,559
Schedule A and B - additions (per return)	370,978,048	370,978,048
Schedule A and B - deductions (per return)	0	0
Allocated to SC and Other States (per return)	0	0
		0
ADJUSTMENTS: PER AUDIT	0	0
APPORTIONMENT INCOME AS ADJUSTED	1,720,390,607	1,720,390,607
SC APPORTIONMENT RATIO	2.0543%	0.0000%
SC PROPORTION	35,341,984	35,341,984
ALLOCABLE TO SC		
SC NET INCOME	35,341,984	35,341,984
CORPORATE TAX REDUCTION	0	
SC NOL	0	0
TAXABLE INCOME	35,341,984	35,341,984
TAX RATE	5%	5%
TAX DUE	1,767,099	1,767,099
TAX CREDIT		
BALANCE	1,767,099	1,767,099
TAX PREVIOUSLY PAID	(1,767,099)	(1,767,099)
UNDERPAYMENT (OVERPAYMENT)	0	0

EXPLANATION OF ADJUSTMENTS:

Directv requested refund in the amount $1,767,099. Refund denied

SECTION 12-6-530. Corporate income tax.
An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX

TAXPAYER:	Directv Inc and Subsidiaries	SCHEDULE:	A
FILE # :	20453217-6	AUDITOR:	KING
PERIOD:	12/31/05 - 12/31/09		Heniff
			Dennis
	Per Return	DATE:	10/20/11
PERIOD ENDED:	12/31/2009		

	Directv Inc 95-4321465	Consolidated 12/31/09
APPORTIONABLE INCOME PER RETURN:	1,615,034,988	1,615,034,988
Schedule A and B - additions (per return)	278,074,937	278,074,937
Schedule A and B - deductions (per return)	0	0
Allocated to SC and Other States (per return)	0	0
		0
ADJUSTMENTS: PER AUDIT	0	0
APPORTIONMENT INCOME AS ADJUSTED	1,893,109,925	1,893,109,925
SC APPORTIONMENT RATIO	2.0543%	0.0000%
SC PROPORTION	38,890,157	38,890,157
ALLOCABLE TO SC		
SC NET INCOME	38,890,157	38,890,157
CORPORATE TAX REDUCTION	0	
SC NOL	0	0
TAXABLE INCOME	38,890,157	38,890,157
TAX RATE	5%	5%
TAX DUE	1,944,508	1,944,508
TAX CREDIT		
BALANCE	1,944,508	1,944,508
TAX PREVIOUSLY PAID	(1,944,508)	(1,944,508)
UNDERPAYMENT (OVERPAYMENT)	(0)	(0)

EXPLANATION OF ADJUSTMENTS:

Ratio used was estimated. The ratio used is the 12/31/2008 ratio.

Directv requested refund in the amount $1,944,508. Refund denied

SECTION 12-6-530. Corporate income tax.
An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF LICENSE FEE

TAXPAYER:	Directv Inc and Subsidiaries	**SCHEDULE:**	**C**
FILE # :	20453217-6	**AUDITOR:**	**KING**
PERIOD:	12/31/06 - 12/31/09		**Heniff**
			Dennis
		DATE:	**10/20/11**

PERIOD ENDED:	Directv Inc **95-4321465**	DTV Network Systems **52-2358833**	**Consolidated 12/31/07**
TOTAL CAPITAL & PD. IN SURPLUS	954,870,976	144,754,869	1,099,625,845
SC APPORTIONMENT RATIO	**1.9539%**	**0.0000%**	**0.0000%**
SC PROPORTION	18,657,224	0	0
LICENSE FEE RATE	0.001	0.001	0.001
LICENSE FEE DUE	18,657	0	0
ADDL. LICENSE FEE (12-20-50)	15	15	15
TOTAL LICENSE FEE ($25 MIN.)	18,672	25	18,697
LESS: LICENSE FEE PAID	(18,672)	(25)	(18,697)
TAX CREDITS			
UNDERPAYMENT (OVERPAYMENT)	0	0	0

EXPLANATION:

LICENSE FEE IS BASED ON CAPITAL STOCK AND "PAID IN SURPLUS" PER SECTION 12-20-50 (PREVIOUSLY 12-19-70) SC CODE OF LAWS. SC PROPORTION OF CAPITAL STOCK AND PAID IN SURPLUS IS DETERMINED INACCORDANCE WITH THE RATIOS PRESCRIBED FOR THE PURPOSED OF THE INCOME TAX PER SECTION 12-20-80 (PREVIOUSLY 12-19-80) SC CODE OF LAWS.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF LICENSE FEE

TAXPAYER:	Directv Inc and Subsidiaries	**SCHEDULE:**	C
FILE # :	20453217-6	**AUDITOR:**	KING
PERIOD:	12/31/06 - 12/31/09		Heniff
			Dennis
		DATE:	10/20/11

PERIOD ENDED:	Directv Inc 95-4321465	N/A	12/31/08
STOCK	0	0	0
PAID IN CAPITAL	559,872,402	0	559,872,402
TOTAL CAPITAL & PD. IN SURPLUS	559,872,402	0	559,872,402
SC APPORTIONMENT RATIO	**2.0016%**	**0.0000%**	**0.0000%**
SC PROPORTION	11,206,406	0	11,206,406
LICENSE FEE RATE	0.001	0	0.001
LICENSE FEE DUE	11,206	0	11,206
ADDL. LICENSE FEE (12-20-50)	15	0	15
TOTAL LICENSE FEE ($25 MIN.)	11,221	0	11,221
LESS: LICENSE FEE PAID	(11,221)	0	**(11,221)**
TAX CREDITS			
UNDERPAYMENT (OVERPAYMENT)	0	0	0

EXPLANATION:

LICENSE FEE IS BASED ON CAPITAL STOCK AND "PAID IN SURPLUS" PER SECTION 12-20-50 (PREVIOUSLY 12-19-70) SC CODE OF LAWS. SC PROPORTION OF CAPITAL STOCK AND PAID IN SURPLUS IS DETERMINED INACCORDANCE WITH THE RATIOS PRESCRIBED FOR THE PURPOSED OF THE INCOME TAX PER SECTION 12-20-80 (PREVIOUSLY 12-19-80) SC CODE OF LAWS.

Directv requested refund in the amount $10,753. Refund denied

SECTION 12-6-530. Corporate income tax.
An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF LICENSE FEE

TAXPAYER:	Directv Inc and Subsidiaries	**SCHEDULE:**	C
FILE # :	20453217-6	**AUDITOR:**	KING
PERIOD:	12/31/06 - 12/31/09		
		DATE:	10/20/11

PERIOD ENDED:	Directv Inc 95-4321465	N/A	12/31/09
STOCK	0	0	0
PAID IN CAPITAL	568,171,256	0	568,171,256
TOTAL CAPITAL & PD. IN SURPLUS	568,171,256	0	568,171,256
SC APPORTIONMENT RATIO	**2.0543%**	**0.0000%**	**0.0000%**
SC PROPORTION	11,671,942	0	11,671,942
LICENSE FEE RATE	0.001	0	0.001
LICENSE FEE DUE	11,672	0	11,672
ADDL. LICENSE FEE (12-20-50)	15	0	15
TOTAL LICENSE FEE ($25 MIN.)	11,687	0	11,687
LESS: LICENSE FEE PAID	(11,687)	0	**(11,687)**
TAX CREDITS			
UNDERPAYMENT (OVERPAYMENT)	(0)	0	(0)

EXPLANATION:

LICENSE FEE IS BASED ON CAPITAL STOCK AND "PAID IN SURPLUS" PER SECTION 12-20-50 (PREVIOUSLY 12-19-70) SC CODE OF LAWS. SC PROPORTION OF CAPITAL STOCK AND PAID IN SURPLUS IS DETERMINED INACCORDANCE WITH THE RATIOS PRESCRIBED FOR THE PURPOSED OF THE INCOME TAX PER SECTION 12-20-80 (PREVIOUSLY 12-19-80) SC CODE OF LAWS.

Directv requested refund in the amount $11,026. Refund denied

SECTION 12-6-530. Corporate income tax.
An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF LICENSE FEE

TAXPAYER:	Directv Inc and Subsidiaries	**SCHEDULE:**	C
FILE # :	20453217-6	**AUDITOR:**	KING
PERIOD:	12/31/06 - 12/31/09		Heniff
			Dennis
		DATE:	10/20/11

12/31/2009

PERIOD ENDED:	Directv Inc 95-4321465	N/A	12/31/09
STOCK	0	0	0
PAID IN CAPITAL	527,141,071	0	527,141,071
TOTAL CAPITAL & PD. IN SURPLUS	527,141,071	0	527,141,071
SC APPORTIONMENT RATIO	**2.0543%**	**0.0000%**	**0.0000%**
SC PROPORTION	10,829,059	0	10,829,059
LICENSE FEE RATE	0.001	0	0.001
LICENSE FEE DUE	10,829	0	10,829
ADDL. LICENSE FEE (12-20-50)	15	0	15
TOTAL LICENSE FEE ($25 MIN.)	10,844	0	10,844
LESS: LICENSE FEE PAID	(10,844)	0	**(10,844)**
TAX CREDITS			
UNDERPAYMENT (OVERPAYMENT)	0	0	0

EXPLANATION:

LICENSE FEE IS BASED ON CAPITAL STOCK AND "PAID IN SURPLUS" PER SECTION 12-20-50 (PREVIOUSLY 12-19-70) SC CODE OF LAWS. SC PROPORTION OF CAPITAL STOCK AND PAID IN SURPLUS IS DETERMINED INACCORDANCE WITH THE RATIOS PRESCRIBED FOR THE PURPOSED OF THE INCOME TAX PER SECTION 12-20-80 (PREVIOUSLY 12-19-80) SC CODE OF LAWS.

Ratio used was estimated. The ratio used is the 12/31/2009 License Fee ratio.

Directv requested refund in the amount $10,071. Refund denied

SECTION 12-6-530. Corporate income tax.
An income tax is imposed annually at the rate of five percent on the South Carolina taxable income of every corporation, other than those described in Sections 12-6-540 and 12-6-550, and any other entity taxed using the rates of a corporation for federal income tax purposes, transacting, conducting, or doing business within this State or having income within this State, regardless of whether these activities are carried on in intrastate, interstate, or foreign commerce. The terms "transacting", "conducting", and "doing business" include transacting or engaging in any activity for the purpose of financial profit or gain.

SOUTH CAROLINA DEPARTMENT OF REVENUE

Taxpayer:	**Directv Inc and Subsidiaries**		
File#:	**20453217-6**	KING	
Period:	**12/31/05 - 12/31/08**	DENNIS	
		HENIFF	
		DATE:	10/20/11

Period Ended:	**12/31/08**	**12/31/07**
SC Sales Per Return	$354,257,512	309,904,220
Adjustments:	$0	$0
SC Sales-Adjusted:	$354,257,512	$309,904,220
Total Sales Per Return	$17,244,942,010	15,483,044,020
Adjustments:	$0	$0
Total Sales-Adjusted:	$17,244,942,010	$15,483,044,020
SC Sales Ratio Adjusted:	2.0543%	2.0016%
Sales Ratios	**2.0543%**	**2.0016%**

EXPLANATION:
TO COMPUTE THE SALES RATIO IN ACCORDANCE WITH SECTION 12-6-2280 (PREVIOUSLY 12-7-1170) SC CODE OF LAWS.

Sales[illegible]tio

ROA 0481

RECEIVED FEB 04 2014

State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

January 28, 2014

Directv Inc. and Subsidiaries
2250 E Imperial Hwy
El Segundo, CA 90245

Tax Type: Corp. Income/License
Periods: 12/31/09-12/31/11
File #: 20453217-6
Response Date: April 28, 2014
Audit #: 00/36/7380

Attn: John Schneider

Sir or Madam:

The audit of the above referenced tax return(s) has been completed by the Audit Services Division of the South Carolina Department of Revenue. Enclosed is a "Report of Field Audit" (AS-54) which explains our "Proposed Notice of Adjustment".

If you agree with the changes detailed in the enclosed report, the balance shown to be due on Form AS-54 should be remitted to this office within thirty (30) days from the date of this letter, to avoid additional interest and penalties, if applicable. Please include a copy of the AS-54 with your check to insure proper processing.

If you agree with the Division's adjustments but are unable to make full payment at this time, please complete the enclosed Waiver of Restriction on Assessment (SC 870) and return it to this office within thirty (30) days from the date of this letter. Upon receipt of this document, a "Final Assessment" will be issued.

If you disagree with any of the adjustments of tax, interest, or penalties that have been proposed by the Division, a written protest must be submitted to this office by the response date stated above.

If you do not respond to this letter by the response date stated above, the Division will issue the "Final Assessment" and begin collection action.

Should you have any questions, please do not hesitate to call me at the number listed below.

Yours very truly,

S.C. DEPARTMENT OF REVENUE
LAW & COMPLIANCE

Earle Toole

Earle Toole – Non-Resident Audit Supervisor
(803)898-5909
(803)896-0066 (fax)

/mb
Enclosure

Form Letter AS-54-PA (Rev. 8/95)

SC-870
Rev. 08/03/01-TM

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

WAIVER OF RESTRICTION ON ASSESSMENT AND COLLECTION OF ADDITIONAL TAX OR ACCEPTANCE OF OVERASSESSMENT

Taxpayer Name(s)_____
(Please type or print)

Doing Business As _____

Street Address _____

City _____ State _____ Zip Code _____

Identification Number (SSN, FEI, etc.)_____

File Number:_____

Audit #:_____

Audit periods: From _____ To _____

Increase (Decrease) in Tax, Interest and Penalties

Type of Tax _____

Tax $_____ Interest $_____ Penalty $_____ Total $_____

Total due$_____ If paid by _____ Including interest.

This information was prepared by:_____ Telephone:_____

CONSENT TO ASSESSMENT AND COLLECTION OF ADDITIONAL TAX OR ACCEPTANCE OF REFUND DETERMINATION

I have read and understand the instructions on the reverse side. I consent to the assessment and collection of any additional tax and penalties or accept any decrease in tax and penalties shown above, plus any interest provided by law. I understand that by signing this waiver, I consent to the above determination(s) and must pay the additional amounts prior to contesting this matter any further.

Taxpayer's Signature: _____ Date: _____

Spouse's Signature: _____ Date: _____

Corporation name: _____

By: _____ Title: _____ Date: _____

General Information & Instructions

IMPORTANT: By signing this form, the taxpayer (1) agrees to pay the tax, interest, and penalties stated to be due; and (2) gives up the right to appeal this matter further. Interest and applicable penalties will continue to accrue until the balance due the Department is paid in full. Signing this form does **not** affect your right to file a claim for refund and it does **not** prevent the Department of Revenue from assessing additional tax found to be due at a later date.

NOTE: If you wish to give up your right to file a claim for refund and prevent the Department of Revenue from assessing additional amounts at a later date, a Form SC870AD should be executed in lieu of this SC870.

CLAIM FOR REFUND
Executing this document does not prevent you from seeking a refund of State taxes paid. The refund claim must be filed within three years from the date the returns was filed, or two years from the date of the payment of the tax, whichever is later. See SC Information Guide OGC-25 for more information about his claim for refund procedure.

EXECUTING THIS FORM
If this waiver relates to a joint individual income tax return, both husband and wife must sign the waiver.

If the SC870 is executed on behalf of a corporation, the waiver must include the corporation's name as well as the signature and title of the corporate officer executing this document

If this waiver is associated with an income tax examination of a partnership or "S" corporation, each partner or shareholder must execute a separate form.

If this waiver is signed by a person acting in a fiduciary capacity (for example, a personal administrator or trustee) Internal Revenue Service Form 56, Notice Concerning Fiduciary Relationship, must accompany this form unless previously provided.

An Attorney , CPA, or other agent may execute this form on behalf of a client provided such authority is granted in a power of attorney. The power of attorney must accompany this form unless previously provided.

GENERAL INFORMATION
We have an agreement with the Internal Revenue Service which provides for the exchange of tax information. If this change affects your income tax return(s), amended federal return(s) may need to be filed.

If you have any questions about this waiver, please contact the preparer.

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

Protest Pursuant to Revenue Procedures Act

S.C. Code Ann. §12-60-10, et seq.

C-245
(Rev. 10/10/07)
6177

Section I: Taxpayer Identification

Taxpayer Name (s): _____
(Please type or print)

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____

Period (s) Covered: _____

Type (s) of Tax (es) or matter. Check all that apply:

- ☐ Corporate Income Tax
- ☐ Deed Recording Fee
- ☐ Employer Withholding Tax
- ☐ Individual Income Tax
- ☐ Liquor by the Drink Tax
- ☐ Motor Fuel Tax
- ☐ Partnership Income Tax
- ☐ Regulatory Violation
- ☐ Sales and Use Tax
- ☐ Other (Specify)_____

Identification Number (Social Security Number, License Number, File Number, etc.):

_____

Section II: Department of Revenue Document to be Attached

Please attach a copy of the Department of Revenue document or notice you received which led to the filing of this protest.

Section III: Reason for Protest

State all the reasons you disagree, including a statement of facts supporting your position and the law or other authority upon which you rely. (If the amount of proposed assessment is less than $2,500 you need not provide your legal authority unless you are a partnership, "S" corporation, an exempt organization or an employee plan and the proposed tax is imposed by Chapters 6, 11, or 13 of Title 12.) The law or other authority supporting your position must be furnished on all regulatory violations. Add additional sheets if necessary.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

(over)

61771028

Taxpayer's Signature _____ Date _____

Spouse's Signature _____ Date _____

Business Entity Name (if applicable) _____

By _____ Title _____
Signature of Owner/Partner/Officer/LLC Member

_____ Date _____
Print Name

INSTRUCTIONS

The purpose of this form is to reduce to writing those facts and issues with which you disagree. If more space is needed, additional sheets may accompany this form. A protest may be filed by letter rather than using this form; however, all of the information required by this form must be included in the letter and you must comply with the requirements concerning signatures. If you file a joint income tax return, both you and your spouse must sign. If the protest is for a corporation, it must include the corporation's name followed by the signature and title of the corporate officer authorized to sign. If you have any questions concerning this matter, please call the telephone number on the notice or document with which you disagree. Please return document to the Department of Revenue address shown on the notice or document with which you disagree.

Social Security Privacy Act Disclosure
It is mandatory that you provide your social security number on this tax form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act
Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

61772026

SOUTH CAROLINA DEPARTMENT OF REVENUE
REPORT OF FIELD AUDIT: INCOME TAX & LICENSE FEE

TAXPAYER: Directv Inc and Subsidiaries
ADDRESS: 2250 E. Imperial Hwy
El Segundo, CA 90245

FEI # : [redacted]
FILE # : 20453217-6
PERIOD: 12/31/09 - 12/31/11
DATE: 1/28/14
AUDITOR: KING

INTEREST COMPUTED TO: 3/3/2014

INCOME TAX:

PERIOD ENDED:	INCOME TAX	INTEREST	PENALTY	TOTALS
12/31/09	$1,993,789	$281,326	$498,447	$2,773,562
12/31/10	$2,366,106	$233,263	$591,526	$3,190,895
12/31/11	$2,253,172	$136,808	$563,293	$2,953,273
TOTALS	$6,613,067	$651,397	$1,653,266	$8,917,730

LICENSE FEE:

PERIOD ENDED:	LICENSE FEE	INTEREST	PENALTY	TOTALS
12/31/10	$10,111	997	2,528	$13,636
12/31/11	$11,308	687	2,827	$14,822
12/31/12	$11,682	344	2,920	$14,946
TOTALS	$33,101	$2,028	$8,275	$43,404

SUMMARY:	TAX	INTEREST	PENALTY	TOTALS
INCOME TAX	$6,613,067	$651,397	$1,653,266	$8,917,730
LICENSE FEE	33,101	2,028	8,275	43,404
TOTALS	$6,646,168	$653,425	$1,661,541	$8,961,134
		Less:Amount Collected		0
		Balance Due		$8,961,134

Penalties Added:
Substantial Understatement: SCCL, section 12-54-155.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF NET INCOME & TAX

TAXPAYER: Directv Inc and Subsidiaries
FILE # : 20453217-6
PERIOD: 12/31/09 - 12/31/11

SCHEDULE: A
AUDITOR: KING

DATE: 1/28/14

Per Return

PERIOD ENDED:	12/31/2011	12/31/2010	12/31/2009
APPORTIONABLE INCOME PER RETURN:	1,543,914,649	1,924,161,184	1,663,013,712
Schedule A and B - additions (per return)	612,540,392	313,290,869	278,074,937
Schedule A and B - deductions (per return)	0	0	0
Allocated to SC and Other States (per return)	0	0	0
ADJUSTMENTS: PER AUDIT	0	0	0
APPORTIONMENT INCOME AS ADJUSTED	2,156,455,041	2,237,452,053	1,941,088,649
SC APPORTIONMENT RATIO	2.0897%	2.1150%	2.0543%
SC PROPORTION	45,063,441	47,322,111	39,875,784
ALLOCABLE TO SC			
SC NET INCOME	45,063,441	47,322,111	39,875,784
CORPORATE TAX REDUCTION	0	0	0
SC NOL	0	0	0
TAXABLE INCOME	45,063,441	47,322,111	39,875,784
TAX RATE	5%	5%	5%
TAX DUE	2,253,172	2,366,106	1,993,789
TAX CREDIT			
BALANCE	2,253,172	2,366,106	1,993,789
TAX PREVIOUSLY PAID	0	0	0
UNDERPAYMENT (OVERPAYMENT)	2,253,172	2,366,106	1,993,789

EXPLANATION OF ADJUSTMENTS:

Sourcing of Receipts

It is the Department's position that Dirctv's receipts from SC customers pursuant their contract with Directv are the receipts which are the income producing activitiy. The apportionment ratio is determined on a market base sourcing of SC customer receipts over all recepts as provided by the taxpayer.

Statute of Limitations:

Department determined that the 12/31/2009 return has been understated of more than 20%. Pursuant 12-54-85(C) the Department may assess taxes beyond the normal 36 month statute of limitations.

SOUTH CAROLINA DEPARTMENT OF REVENUE
RECOMPUTATION OF LICENSE FEE

TAXPAYER:	Directv Inc and Subsidiaries	**SCHEDULE:**	**C**
FILE # :	20453217-6	**AUDITOR:**	**KING**
PERIOD:	12/31/10 - 12/31/12		

DATE: **1/28/14**

PERIOD ENDED:	**12/31/12**	**12/31/11**	**12/31/10**
STOCK	26,492	0	0
PAID IN CAPITAL	558,272,730	577,536,594	527,141,071
TOTAL CAPITAL & PD. IN SURPLUS	558,299,222	577,536,594	527,141,071
SC APPORTIONMENT RATIO	**2.0897%**	**2.1150%**	**2.0543%**
SC PROPORTION	11,666,779	12,214,899	10,829,059
LICENSE FEE RATE	0.001	0.001	0.001
LICENSE FEE DUE	11,667	12,215	10,829
ADDL. LICENSE FEE (12-20-50)	15	15	15
TOTAL LICENSE FEE ($25 MIN.)	11,682	12,230	10,844
LESS: LICENSE FEE PAID	0	(922)	(733)
TAX CREDITS			
UNDERPAYMENT (OVERPAYMENT)	11,682	11,308	10,111

EXPLANATION:

LICENSE FEE IS BASED ON CAPITAL STOCK AND "PAID IN SURPLUS" PER SECTION 12-20-50 (PREVIOUSLY 12-19-70) SC CODE OF LAWS. SC PROPORTION OF CAPITAL STOCK AND PAID IN SURPLUS IS DETERMINED INACCORDANCE WITH THE RATIOS PRESCRIBED FOR THE PURPOSED OF THE INCOME TAX PER SECTION 12-20-80 (PREVIOUSLY 12-19-80) SC CODE OF LAWS.

JOHN A. SWAIN
University of Arizona, Rogers College of Law
1201 E. Speedway Blvd.
Tucson, Arizona 85721-0176
(520) 621-7673
john.swain@law.arizona.edu

EDUCATION

Yale Law School, J.D., 1984.
Editor, Yale Law and Policy Review.

Dartmouth College, A.B., government, *summa cum laude*, 1978.

ACADEMIC POSITIONS

Chester H. Smith Professor of Law
The University of Arizona
James E. Rogers College of Law
(2014 to present)
Courses taught: State and Local Tax; International Tax; Federal Income Tax; Corporate Tax; Advanced Corporate Tax; Nonprofit Organizations; Estates and Trusts; Property; and Professional Responsibility.

Professor of Law
The University of Arizona
James E. Rogers College of Law
(2009 to 2014).

L.L.M. Tax Faculty
The University of Alabama School of Law
(2009 to present)
Courses taught: Corporate Tax; International Tax; Advanced Corporate Income Tax.

Associate Professor of Law
The University of Arizona
James E. Rogers College of Law
(2001-02 to 2008-09).

Associate Professor of Law
The Appalachian School of Law
(Associate professor 2000-01; assistant professor spring 1999, 1999-2000).

Adjunct Professor of Law
Arizona State University
(Fall 1997).

NON-ACADEMIC LEGAL EXPERIENCE

Partner
Streich Lang (now Quarles & Brady)
Phoenix, Arizona
(Partner 1992-1998; Associate 1987-1992).

Associate
Rodey, Dickason, Sloan, Akin & Robb
Albuquerque, New Mexico
(1984-1987).

AWARDS AND HONORS

Named to "The All-Decade State and Local Tax Team," 55 ST. TAX NOTES 127 (Jan. 11, 2010).

Leslie F. and Patricia Bell Faculty Service Award (2010-11).

EXPERT WITNESS AND RELATED EXPERIENCE

Expert Witness, Nevada Department of Revenue, 2013 (Southern California Edison v. Nevada, Case No. 09-OC-00016 1B, 1st Jud. Dist., Carson City, Nevada) (Commerce Clause discrimination remedies).

Consultant to multinational telecommunications company regarding New York telecommunications tax matter (2012-13).

Consultant and Expert Witness, South Carolina Department of Revenue 2011-12 (Duke Energy Corp. v. South Carolina Dept. of Revenue, No. 10-ALJ-17-0270-CC, S.C. Admin. Law Ct.) (income tax apportionment).

Consultant and Expert Witness, Vodafone Americas Holdings 2011-12 (Vodafone Americas Holdings, Inc. v. Farr, Docket No. 07-1860-IV, Tenn. Chancery Court, 20th Jud. Dist., Davidson Cty., Tennessee) (income tax apportionment).

Consultant and Expert Witness, Trans-Alaskan Pipeline Owners, 2010-12 (BP Pipelines (Alaska) Inc. et al. v. State of Alaska Dept. of Revenue, et al. – Superior Court for the State of Alaska, Cause No. 3AN=06-8446 CI) (property tax valuation of Alaskan Pipeline).

Consultant and Expert Witness, State of Minnesota, 2004-06 (MBNA America Bank, N.A. v. Minnesota Commissioner of Revenue, No. 7598-R; and Providian Financial Corporation and Subsidiaries v. Minnesota Commissioner of Revenue, No. C3-03-010083) (income tax nexus cases)

Consultant, State of Mississippi, 2004-05 (WorldCom bankruptcy tax claim).

SCHOLARSHIP

BOOKS

STATE TAXATION (3d ed., Warren, Gorham & Lamont 2014) (co-author, with Walter Hellerstein).

STATE AND LOCAL TAXATION: CASES AND MATERIALS (10th ed., West 2014) (co-author, with Walter Hellerstein, Kirk Stark, & Joan Youngman).

THE STREAMLINED SALES AND USE TAX (co-author, with Walter Hellerstein) (4th ed. 2007/2008).

CHAPTERS

State and Local Tax Aspects of Bankruptcy, in 1A COLLIER ON BANKRUPTCY (15th ed. 1992).

ARTICLES

State Jurisdiction to Tax Nowhere Activity, 33 VA. TAX REV. 209 (2013) (with Walter Hellerstein).

The Questionable Constitutionality of Amazon's Distribution Center Deals, 62 ST. TAX NOTES 667 (2011) (co-author, with Walter Hellerstein).

The Market State Approach to the Attribution of Receipts from Services, 59 ST. TAX NOTES 331 (2011) (co-author, with Walter Hellerstein).

Misalignment of Substantive and Enforcement Tax Jurisdiction in a Mobile Economy: Causes and Strategies for Realignment, 63 NAT'L TAX J. 925 (2010).

Classifying State and Local Taxes: Current Controversies, 54 ST. TAX NOTES 35 (2009) (co-author, with Walter Hellerstein).

Reforming the State Corporate Income Tax: A Market State Approach to the Sourcing of Service Receipts, 83 TUL. L. REV. 285 (2008).

A Comparative Look at International and State and Local Taxation, 50 ARIZ. L. REV. 111 (2008).

Town Fair Tire *and the Silliness of the Physical Presence Rule for Use Tax Collection Nexus*, 50 ST. TAX NOTES 447 (2008) (co-author, with Walter Hellerstein).

Further Thoughts on the "Subject to Tax" Exception in State Corporate Income Tax Expense Disallowance Statutes, 48 ST. TAX NOTES 597 (2008) (co-author, with Walter Hellerstein).

The Federal Role in State Taxation: A Normative Approach, 60 NAT'L TAX J. 611 (2007) (co-author, with William Fox).

The Streamlined Sales Tax Project and the Local Sourcing Conundrum, 104 J. TAX'N 230 (2006) (co-author, with Walter Hellerstein).

The Political Economy of the Streamlined Sales and Use Tax, 58 NAT'L TAX J. 605 (2005) (co-author, with Walter Hellerstein).

Piercing the Veil to Assert Personal Jurisdiction over Corporate Affiliates: An Empirical Study of the Cannon Doctrine, 84 B. U. L. REV. 446 (2004) (co-author, with Edwin Aguilar).

Third-Party Payments and Bundled Transactions, 37 ST. TAX NOTES 659 (2005) (co-author, with Walter Hellerstein).

The Streamlined Sales and Use Tax Agreement's Sourcing Rules, 34 ST. TAX NOTES 375 (2004)(co-author, with Walter Hellerstein).

State Income Tax Jurisdiction: A Jurisprudential and Policy Perspective, 45 WM. & MARY L. REV. 319 (2003).

State Sales and Use Tax Jurisdiction: An Economic Nexus Standard for the 21st Century, 38 GA. L. REV. 343 (2003).

Cybertaxation and the Commerce Clause: Entity Isolation or Affiliate Nexus?, 75 S. CAL. L. REV. 419 (2002).

The Taxation of Private Interests in Public Property: Toward a Unified Theory of Property Taxation, 2000 UTAH L. REV. 421.

Possessory Interests: A Systematic Valuation Approach, 11 J. PROP. TAX MGMT. 1 (2000) (co-author, with Joseph M. Davis).

National Nexus Program for Resolving Past State Tax Liabilities, 26 TAX'N FOR LAW. 324 (1998) (co-author, with Ronold P. Platner), reprinted in 60 TAX'N FOR ACCT. 206 (1998) and TAX IDEAS ¶ 850 (1998).

OTHER WRITINGS

It's Time to Abandon Retroactive Application of UDITPA Section 18, 73 ST. TAX NOTES *53 (2014).*

Checkpoint Catalyst Topic #1007, Sales Factor (2014) (co-author with Melissa A. Oaks).

State Tax Apportionment: The Role of Congress in Developing Apportionment Standards, before the Subcomm. on Admin. and Commercial Law of the House Comm. On the Judiciary, 111th Cong., 2d Sess. (May 6, 2010), reprinted in 56 ST. TAX NOTES 416.

Riverboat Gambling and Use Tax Planning: When to Hold and When to Fold, 53 ST. TAX NOTES 105 (2009).

What Jim Cramer Can Teach us About State and Local Government Finance, 51 ST. TAX NOTES 1049 (2009).

Walter Hellerstein: the Annotation is in the Grooves, 51 ST. TAX NOTES 91 (2009) (tribute).

A Brief History of UDITPA and the Corporate Income Tax Uniformity Movement, 49 ST. TAX NOTES 759 (2008).

The Pumpkin Tax, 46 ST. TAX NOTES 363 (2007).

The Sales Taxation of Customer Loyalty Programs, 45 ST. TAX NOTES 717 (2007).

The Sales and Use Tax Dichotomy and the Streamlining Movement, 43 ST. TAX NOTES 129 (2007).

The Wages of Virtue: Voluntary Registration and Jurisdiction to Tax, 42 ST. TAX NOTES 131 (2006).

Local Sales Tax Sourcing and the Streamlining Movement, 41 ST. TAX NOTES 697 (2006).

What Is a "Sale" for Sales Tax Purposes? (Part 2), 40 ST. TAX NOTES 471 (2006).

What Is a "Sale" for Sales Tax Purposes? (Part 1), 38 ST. TAX NOTES 873 (2005).

The Three Most Important Things to Know about the Streamlined Sales Tax: Amnesty, Amnesty, and Amnesty, 38 ST. TAX NOTES 137 (2005).

Federalists, State Taxation, and the Story of the 17th Amendment, 37 ST. TAX NOTES 813 (2005).

Internet Travel Companies: Taxing the Middleman, 35 ST. TAX NOTES 477 (2005).

Sausage-Making Streamlining-Style: Coupons, Rebates, and other Third-Party Payments, 33 ST. TAX NOTES 794 (2004).

H.R. 3220: A Ringing Endorsement of Factor Nexus, 33 ST. TAX NOTES 61 (2004).

Rethinking Entity Isolation: The Dangers of Pioneering, and of the Leading Case Method, 32 ST. TAX NOTES 197 (2004).

The Fox and the Chicken: 16 Tips for State Tax Administrative Practice, 31 ST. TAX NOTES 57 (2004).

Book review, *Property-Tax Exemption for Charities* (Evelyn Brody, ed.), 41 J. ECON. LIT. 1311 (2003).

State Income Tax Nexus: Making the Case for an Economic Presence Standard in Light of Quill, 9 MULTISTATE TAX REP. 965 (2002).

Reflections on the Possessory Interest Tax, Part 2: Toward a General Theory of Property Taxation, 26 ST. TAX NOTES 103 (2002).

Reflections on the Possessory Interest Tax, Part 1: Toward a General Theory of Possessory Interest Taxation, 24 ST. TAX NOTES 1189 (2002).

Real Property Tax Valuation Appeals: A Primer, 27 ARIZ. ATT'Y, Dec. 1990, at 17.

Municipal Sales and Use Taxes: Highlights of the New Model City Tax Code, 23 ARIZ. B.J., June/July 1987, at 12 (co-author, with Howard J. Kalson).

Efficacy of Illinois Vehicle Safety Inspection Program, YALE LEGIS. SERV. (1982).

PRESENTATIONS (SINCE 2000)

Panelist, *Practical and Policy Implications of the Trend Toward Single Sales Factor Apportionment* (37th Annual Advanced State and Local Tax Institute, Georgetown Law Center, Washington, DC, August 7, 2014).

Paper Presentation, State Income Taxation of Out-of-State Corporate Partners (Chapman Law Review Annual Symposium, Orange, CA Mar. 14, 2014).

Keynote Speaker, *Can this End Well? Megatrends in State Taxation* (96th Annual Arizona Tax Conference, Flagstaff, AZ Sept. 26, 2013).

Speaker, *State Taxation of Cloud Computing* (State Bar of California Annual Income Tax Seminar, University of San Diego School of Law, June 28, 2013).

Speaker, *Retroactivity and Equitable Apportionment of Business Income for State Tax Purposes* (Federation of Tax Administrators, Albuquerque, NM, June 11, 2013).

Keynote Panelist, *The Future of Amazon.com and the Implications for Traditional Retailers and E-Commerce Competitors* (Telsey Advisory Group's 5th Annual Spring Consumer Conference, New York, NY, April 8, 2013).

Paper Presentation, *State and Local Taxation of Cloud Computing: A Normative Approach* (National Tax Association Annual Conference, Providence, RI, Nov. 17, 2012).

Speaker, *Equity Challenges to Property Tax Assessments in Theory and Practice* (American Property Tax Counsel, San Francisco, CA, Oct. 13, 2012).

Speaker, *The Federal Role in State Tax Reform: Overview of the State Budget Situation and the Federal Policies that Make State Budgets Worse* (AARP National Policy Council, Santa Fe, NM, June 8, 2011).

Panelist, *Shall We Dance? Coordinating Federal and State Tax Policy* (American Bar Association, Section of Taxation, Midyear Meeting, Boca Raton, Fl., Jan. 22, 2011).

Panelist, *Taxing Internet Sales: The Battle Between States and Retailers* (Association of American Law School Annual Meeting, San Francisco, CA, Jan. 6, 2011).

Witness, H.R. Subcomm. on Admin. and Commercial Law, Judiciary, *State Tax Apportionment: The Role of Congress in Developing Apportionment Standards*, 111th Cong. (May 6, 2010).

Speaker, *Corporate Income Tax Apportionment*, (New Mexico Tax Research Institute, 7th Annual Tax Policy Conference, Albuquerque, NM, June 21, 2010).

Discussant, *Checking in on Check the Box*, paper by Heather Field (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008).

Speaker, *Walter Hellerstein: the Annotation is in the Grooves* (National Tax Association, 101st Annual Conference on Taxation, Philadelphia, PA, Nov. 21, 2008) (ceremony awarding Holland Medal to Walter Hellerstein).

Speaker, *Recent Federal Income Tax Developments* (Arizona Society of Certified Public Accountants, 24th Annual Federal Tax Institute Tax Conference, Phoenix, AZ, Nov. 7, 2008).

Paper Presentation, *State Tax Nexus Issues in a Mobile Economy: The Evolving Legal Landscape* (University of Tennessee conference on "Mobility and Tax Policy: Do Yesterday's Taxes Fit Tomorrow's Economy?", Oct. 2-3, 2008.)

Speaker and Panelist, *The Uniform Division of Income for Tax Purposes Act—Past and Present* (Multistate Tax Commission 41st Annual Meeting, Santa Fe, NM, July 31, 2008).

Speaker, *Amazon & Ecommerce: Sales Tax Overview & Potential Implications* (Oppenheimer Conference Call, July 1, 2008).

Speaker and Panelist, *Basic Constitutional Issue in State Taxation* (27th Annual State and Local Tax Conference, National Conference of State Tax Court Judges, Cambridge, Mass., Sept. 28-29, 2007).

Paper Presentation, *The Federal Role in State Taxation: A Normative Approach* (Annual Spring Symposium, National Tax Assn., Washington, D.C., May 19, 2007) (with William Fox, Ph.D.).

Moderator and Speaker, *A Cross-Border Colloquy: What State/Local and International Tax Lawyers Can Learn from Each Other* (American Bar Association, Section of Taxation, Midyear Meeting, Hollywood, Fl., Jan. 19, 2007).

Speaker, *Streamlined Sales Tax: The Fundamentals and the Future* (Annual Sales and Use Tax Symposium, Institute for Professionals in Taxation, Tucson Ariz., Sept. 27, 2006).

Paper Presentation, *The Political Economy of the Streamlined Sales Tax* (Annual Spring Symposium, National Tax Assn., Washington, D.C., May 20, 2005).

Speaker, *The Internet and the American Sales Tax* (University of Arizona Rogers College of Law and the Eller College of Management, Tucson, Ariz., November 3, 2004).

Enrichment Speaker, *Taxing Dotcom Affiliates of Brick and Mortar Retailers: The Personal Jurisdiction Analogue* (University of San Diego School of Law, San Diego, Cal., April 15, 2004).

Paper Presentation, *An Economic Nexus Standard for the 21st Century* (Tax Council Policy Institute Annual Symposium, Washington, D.C., Feb. 27, 2003).

Speaker, *Internet Taxation: Where Are We Now?* (Arizona Society of Certified Public Accountants 18th Annual Tax Conference, Phoenix, Ariz., Nov. 7, 2002).

Moderator, *Factor Presence Nexus or H.R. 2526?* (Multistate Tax Commission, Washington, D.C., Oct. 16 2002).

Presentation, *A Practical Approach to State Tax Administrative Proceedings in Arizona*, in Practical Approach to Federal and State and Local Tax Litigation (State Bar of Arizona, Phoenix, Ariz., Mar. 7, 2002).

Invited Participant, *Two-Tier Property Taxation* (Lincoln Inst. Land Policy, Cambridge, Mass., Nov. 2000).

Invited Participant, *Tax Exemptions for Charities: The War Within the States* (Urban Institute, Washington, D.C., June 2000).

SELECTED INSTITUTIONAL SERVICE

Member, University of Arizona Committee on Promotion and Tenure, 2014 (university-wide committee)
Chair, Budget Committee, 2013
Chair, Curriculum Committee, 2012-14
Chair, Peer Review Committee, 2011
Co-Chair, Strategic Planning Committee, 2009-10
Chair, Promotion and Tenure Committee, 2009-10
Member, Institutional Review Committee, 2009-2012 (university-wide committee)
Chair, Faculty Enrichment Committee, 2008-09
Member, Peer Review Committee, 2008-09
Chair, Faculty Retreat Committee, 2006-07
Chair, Awards Committee, 2006-07, 2005-06
Member, Admissions Committee, 2006-07, 2005-06
Advisor, Law School Community Service Bd., 2004-05, 2004-03, 2003-02, 2002-01
Member, Future Planning Committee, 2003-04
Member, Faculty Recruitment Committee, 2002-03, 2001-02

ADMITTED TO PRACTICE LAW

Arizona, 1987 to present.