THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

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

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SC Court of Appeals

DIRECTV, Inc. and its Subsidiaries, ... Petitioner,

v.

South Carolina Department of Revenue, ... Respondent.

APPENDIX
VOLUME III OF IV

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Appellate Case No. 2015-001509

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

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South Carolina Department of Revenue,..... Respondent.

AMENDED RECORD ON APPEAL

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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.

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

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

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 --

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.

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

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

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

'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.

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

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

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

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.

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?

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.

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.

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

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

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.)

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.

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

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

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

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 -- list?

A: Correct.

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

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?

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

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?

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.

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

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

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?

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

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

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

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.

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,

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

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

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."

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.

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,

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

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

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,

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

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

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

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

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

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?"

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

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

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

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,

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

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

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."

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

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*."

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

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.

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:

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.

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

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.

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

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

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

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?

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

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?

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

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

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.

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

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.

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?

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

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?

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

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.

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

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.

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

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.

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

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

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

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

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

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

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

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,

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

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.

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

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

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

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

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

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

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

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

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

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?

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?

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.

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

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"

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

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?

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

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

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

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

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,

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

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

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

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

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.)

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.

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

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,

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.

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

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,

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

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,

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

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.

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

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

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

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

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 ...

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

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

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.

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.

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.

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

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

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

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,

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

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

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.

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

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.

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

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

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

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

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.

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?

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

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

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.

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

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,

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

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

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

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 --

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

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 --

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

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

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.

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,

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

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

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

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

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.

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?

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

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

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.

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

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.

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.

(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

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.

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.

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?

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?

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,

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

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

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

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

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,

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

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

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

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

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.

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?

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.

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

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

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 -

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

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

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

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

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

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

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.

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.

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

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

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

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

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,

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

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

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

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

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

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

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

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?

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

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 --

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

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

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

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 --

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,

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

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

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

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

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

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.

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

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.

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

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

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.)

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

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(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.

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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

ROA_00687

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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DIRECTV EQUIPMENT LEASE ADDENDUM

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. **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.).

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

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.).

PARTS 1 & 2 OF 4 **DTV000009**

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

FILED 2:19 PM



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

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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,

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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

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 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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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 and charge

(c) Administra customers, only to the exclusive, charge ad **the less permitte**

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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

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.

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.

CON MI FIRMA, AUTORIZO Y CONVENGO QUE DIRECTV PUEDE, A SU EXCLUSIVA OPCIÓN, DEBITAR LOS CARGOS AQUÍ DESCRIPTOS. DECLARO TENER 18 AÑOS O MÁS Y MANIFIESTO QUE TODA LA INFORMACIÓN PROPORCIONADA POR MÍ O SOBRE MI PERSONA ES EXACTA. ESTOY DE ACUERDO CON LOS TÉRMINOS Y CONDICIONES PRECEDENTES.

Firma del Cliente_____ Nombre Impreso _____ Fecha _____

White copy: HSP Office Yellow copy: Customer
Copia blanca: Oficina de HSP Copia amarilla: Cliente

CLA (0511)

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D. Termination

These Terms are effective until terminated. You may terminate these Terms by returning the Receiver 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 Receiver to DIRECTV or your supplier.

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F. Third Party Beneficiaries

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G. Additional Information

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.

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Attention: Vice President, STB Engineering
DIRECTV, LLC.
2230 E. Imperial Highway
El Segundo, CA 90245

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Version 2, June 1991

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c) If the modified program normally reads commands interactively when run, you must cause it, when started running for such interactive use in the most ordinary way, to print or display an announcement including an appropriate copyright notice and a notice that there is no warranty (or else, saying that you provide a warranty) and that users may redistribute the program under these conditions, and telling the user how to view a copy of this License. (Exception: if the Program itself is interactive but does not normally print such an announcement, your work based on the Program is not required to print an announcement.)

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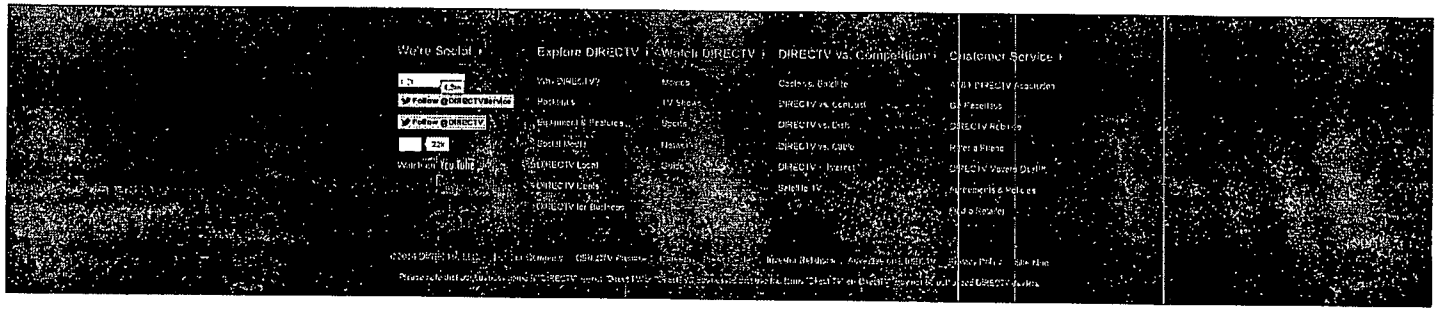
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ACADEMIC APPOINTMENTS

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).

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Lifestyles and Land Use: Providing Financial Assistance Through the Tax System, in LAND USE AND LIFESTYLES 47 (1979).

Tax-Exempt Property and the Cities: Striking a Balance, 7 J. Real Est. Tax'n 50 (1979), a revision of *Testimony Before the State Finance Committee's Subcommittee on Tax-Exempt Property*, in PROPERTY TAX EXEMPTIONS FOR NON-PROFIT INSTITUTIONS: PROBLEMS AND PROPOSALS 1 (1978), excerpted as *Some Pay . . . Some Don't: Evaluating Property Tax Exemptions*, 6 People and Taxes 4 (1978); reprinted in STATE AND LOCAL TAX REVOLT: NEW DIRECTIONS FOR THE 80'S at 178 (D. Tipps and L. Webb, eds. 1980).

The Brain Drain: A Tax Analysis of the Bhagwati Proposal, 3 World Dev. 751 (1975) (with O. Oldman), reprinted in TAXING THE BRAIN DRAIN: A PROPOSAL (J. Bhagwati and M. Partington eds. 1976).

MISCELLANEOUS

With Billions in 'Tax Expenditures,' Legislature Ignores Spending Cap, CT Mirror, December 22, 2011

Malloy's Corporate Bets On ESPN And The 'First Five', Hartford Courant, August 1, 2011

Huge Tax Grab Targeting Millstone Bad For Consumers, Business, Hartford Courant, April 24, 2011

In Memoriam: Oliver Oldman, 122 Harv. Law. Rev. 1285 (2009).

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This Corporate Tax Break Will Cost Us Jobs, Hartford Courant, April 27, 2000 (with M. Mazerov).

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Marvin Chirelstein: A Tribute, 29 Conn. L. Rev. 27 (1996).

The Disclosure of State Corporate Tax Data, NTA Forum (Summer, 1993).

Comment on *Interstate Tax Competition After the Tax Reform Act of 1986*, 12 Journal of Policy Analysis and Manag. 149 (1993).

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Don't Count on Tax Cuts to Spur the Economy and Create Jobs, Hartford Courant, August 9, 1991.

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Book Review, McIntyre, The International Income Tax Rules of the United States, 43 Tax Notes 1543 (1989).

The Tax Treatment of Involuntary Conversions, in TAX PRACTICE SERIES (1989).

Foreword, Symposium Issue on State Tax Reform, 51 Alb. L. Rev. 369 (1987).

Night of the Murdered Poets, Hartford Courant, August 14, 1987 (with N. Lande).

The Call to "Give the Windfall Back"-To Which Taxpayers?, Hartford Courant, March 17, 1987; reprinted as *Tax Reform: Is Connecticut Business Going to Pay More than its Fair Share?*, New Haven Register, April 19, 1987; and as *The 1986 Tax Reform Act: Windfall or Reparations to the State?*, The Connecticut Law Tribune, April 20, 1987.

China's New Foreign Tax Law: A Major Step, Asian Wall Street Journal, Dec. 22, 1981 (with T. Gelatt), reprinted as *Foreign Enterprise Income Tax Law Adopted*, 4 East Asian Executive Reports 3 (1982).

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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.,	)	CIVIL ACTION NO.
	)	14-ALJ-17-0158-CC
Petitioner,	)	
vs.	)	
South Carolina Department of Revenue,	)	
Respondent.	)	

* *

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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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,

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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

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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.

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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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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?

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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.

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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

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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
- 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.

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- "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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- "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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- "The Effects of Exchange Rate and Relative Productivity Changes on U.S. Industrial Output at the State Level," (joint with Gerald Carlino and Richard Voith) *Urban Studies* 31, No. 2 (March 1994): 219-232.
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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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- "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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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/qMor6dL0LfI 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	2,398,665.8	2,495,505.8	2,194,499.6	2,060,705.8	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.
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- 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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- "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).
- "Interaction of Customs and IRS Values: Recent Developments in Section 1059A," *The Journal of Corporate Taxation* 20, No. 4 (Winter 1994): 394-399.
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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).
- "Allocating Exchange Rate Risk has Tax Effects for Multinationals," *Journal of International Taxation* 3, No. 3 (September/October 1992): 156-159.
- "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

Checkpoint Contents
State & Local Tax Library
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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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for DIRECTV, Inc.

Charleston, South Carolina
January 12, 2015

SOUTH CAROLINA DEPARTMENT OF REVENUE

By: Nicole M. Wooten by KMK w/permission

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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] 20453217-6
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 State
EL SEGUNDO, CA

Audit Contact Telephone Number
JOHN SCHNEIDER (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)	84053753	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)	84053754	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 15 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 ▶ 28,697.00		
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 ▶ 1363 (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 This S[illegible]	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
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
J.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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THD DTV Network Systems, Inc. [redacted]

SC1120

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
Total Within South Carolina		
Total for System		
(South Carolina ÷ Total System)		%

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THO
SC1120 DTV Network Systems, Inc. [redacted] Page 3

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 for System		
3. Ratio (South Carolina ÷ Total System)		%

SCH H 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.

4 1 000

0001DD 712M 09/16/2007 15:34:00 V2006.087

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_00793

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_00794

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_00795

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_00796

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_00797

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)

ROA_00803

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

0540D1 1 000

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 &
- [ ] OSSS 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 State
EL SEGUNDO, CA

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

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

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 here ▶ _____ Date 1/30/10 ▶ 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 McGlinn Date 2/16/10 Check if self-employed ▶ ☐ Preparer's telephone number

Preparer's Firm's name (or yours if self-employed) and address ▶ DanMcGlinn, McMillen & Assoc. Inc.
296 Concord Road, Billerica, MA 01821
Telephone: (978) 262-0010

L1000 1

AMENDED FOR

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.
4. 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

L1000 2

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)		%

L1000.3

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.

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	1,860,205,368	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	7,815,246	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 [X] Amended Return ▶ [X] 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.

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.

Signature of officer B.R. PAPERNY Date 9/13/10 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

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
5. Nature of principal business in SC TV Program Distributor
6. 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:
7. 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:
8. 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) _____
   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) . . . . . $ _____

3912 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)		%

04913 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
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] 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

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
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_00823

Schedule A and B

	DIRECTV, Inc	DTV Network Systems, Inc.
	[redacted]	[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_00824

SC TAXABLE INCOME

	Combined	Adjustments	Top Con DIVG
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_00825

SC TAXABLE INCOME

	DIRECTV, Inc	DTV Network Systems, Inc.
[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_00826

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_00827

[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)

ROA_00832

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

7049111 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 loss 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) (#28T)	8.	
9.	Balance (line 7 less line 8)	9	1,987,570
10.	Credit Carryover (line 7, Schedule C) ▶ _____ Non-refundable credits (line 8, 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 _____ (4/13/64)	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 95348	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 erased)	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

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

THD
SC1120

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)
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. 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)
3096

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.. 14-0804	▶	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 &
- ☐ QSSS Election (Attach a schedule listing each member.)
- ☐ Utility or Electric Cooperative

Signature [signature] Date 3/12/08

PAID BY ACH CREDIT

30961031

7D4911 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: EL SEGUNDO, CA State:

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 (14074089)	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 8, 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

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 28 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.	

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.

Signature of officer E.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

2 000256 712M 11/03/2010 18:42:38 V07-9.9A [redacted] 4

THO

SC1120 **AMENDED**

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 [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 . . . . . $ 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. _____

DIRECTV, INC [redacted]

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.

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

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

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

SC1120
(Rev. 7/25/08)
3091

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 Audit Location: EL SEGUNDO

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

[redacted]nic 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 15)	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 15.)	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

1082
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
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

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062 0001VX 712M 09/11/2009 17:40:29 V08-7.6 [redacted] 6

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 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.

80-1915 2 000 **AMENDED** 430609

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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. 7/25/08) 3091

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

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

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.

For Office Use Only

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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 | EI # | 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 1-5; 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	19,605,211	17,244,942,010	
2. Less: Exclusion (see instructions)	( )	( )	
3. 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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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

PD4935 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.

SC1120
(Rev. 8/28/09)
3091

Mail return to: SC DEPARTMENT OF REVENUE, Corporation Return, Columbia SC 29214-0100

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	Audit Location	State
EL SEGUNDO		CA

Audit Contact	Telephone Number
JOHN SCHNEIDER	310-964-0745

Check if ☐ Amended Return ▶ ☐ Consolidated Return

Total Gross Receipts.	Total cost of depreciable personal property in SC.
▶ 18586546795	▶ 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 ▶ ~~482214~~ 2,111,214		
	(c) Paid with Tentative Return ▶ ~~113000 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

For Office Use Only

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. PATERNY 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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1062 THO

State of South Carolina

"C" CORPORATION INCOME TAX RETURN

SC1120

(Rev. 9/31/10)

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

SC FILE # 2043217-65

INCOME TAX PERIOD ENDING 12/31/2010

LICENSE FEE PERIOD ENDING: 12/31/2011

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 [ ] Officers

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: [ ] Amended Return ▶ [ ] Consolidated Return

Total Gross Receipts ▶ 20099585214

Total cost of depreciable personal property in SC ▶ 104735099

If Filing a Final Return, see General Instructions, page 6.

You MUST close your account with the SECRETARY OF STATE and complete H-349.

▶ [ ] 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.

For Office Use Only

S.C. DEPT. OF REVENUE SEP 21 2011

1062. 0002FA 712M 09/13/2011 15:44:02 V10-7.4 [redacted]

RECEIVED

635479-035

THO

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 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 (-349.

Taxpayer's Signature Date

635479-036

THO
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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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 1 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 8.
You MUST close your account with the SECRETARY OF STATE and complete I-349.
▶ [X] 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 8, 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 3, 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 SC1120TC, 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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DEPT OF REVENUE

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 18)	1
2.	Enter Total Credits from SC1120-TC, Column B, line 18. 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 18.)	5.
6.	Enter Credits Lost Due to Statute (NOTE: Should agree to SC1120-TC, Column D, line 18.)	6.
7.	Credit Carryover (line 3 less lines 5 and 6) (NOTE: Should agree to SC1120-TC, Column E, line 18.)	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.

Signature of officer BRIAN R PAPERNY | Date 9/17/12 | 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.

SC1120 Page 3

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

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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 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. 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. Form **1120** (2011)

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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 6c	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

Per Return
PERIOD ENDED: 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_00892

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:	12/31/2006		

	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
Period: 12/31/05 - 12/31/08

KING
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 Ratio

ROA_00901

RECEIVED FEB 0 4 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 # : 20453217-5
PERIOD: 12/31/09 - 12/31/11

SCHEDULE: A
AUDITOR: KING

Per Return

DATE: 1/28/14

PERIOD ENDED:	12/31/2011	12/31/2010	12/31/2009
	[redacted]	[redacted]	[redacted]
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.