

FILED

2007 SEP 20 AM 11:16

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

1 BLECHER & COLLINS, P.C.  
2 MAXWELL M. BLECHER (State Bar No. 26202)  
3 DAVID W. KESSELMAN (State Bar No. 203838)  
4 515 South Figueroa Street, 17<sup>th</sup> Floor  
5 Los Angeles, California 90071-3334  
6 Telephone: (213) 622-4222  
7 Telecopier: (213) 622-1658  
8 Email: [mblecher@blechercollins.com](mailto:mblecher@blechercollins.com)  
9 Email: [dkesselman@blechercollins.com](mailto:dkesselman@blechercollins.com)

10 Attorneys for Plaintiffs

▶ CV07-06101 PA VDK

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION

14 ROB BRANTLEY, DARRYN COOKE,  
15 WILLIAM and BEVERLEY  
16 COSTLEY, CHRISTIANA HILLS,  
17 MICHAEL B KOVAC, MICHELLE  
18 NAVARRETTE, TIMOTHY J.  
19 STABOSZ and JOSEPH VRANICH,  
20 individually and on behalf of all  
21 others similarly situated,

22 Plaintiffs,

23 vs.

24 NBC UNIVERSAL INC., VIACOM  
25 INC., THE WALT DISNEY  
26 COMPANY, FOX ENTERTAINMENT  
27 GROUP, INC., TIME WARNER INC.,  
28 TIME WARNER CABLE INC.,  
COMCAST CORPORATION,  
COMCAST CABLE  
COMMUNICATIONS, INC., COX  
COMMUNICATIONS, INC., THE  
DIRECTV GROUP, INC.,  
ECHOSTAR SATELLITE L.L.C.,  
CHARTER COMMUNICATIONS,  
INC., and CABLEVISION SYSTEMS  
CORPORATION,

Defendants.

CASE NO.

CLASS ACTION

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR  
VIOLATIONS OF THE SHERMAN  
ANTITRUST ACT  
(15 U.S.C. §§ 1, 2)

JURY DEMANDED

BLECHER & COLLINS  
A FIRM OF ATTORNEYS AT LAW

1 BLECHER & COLLINS, P.C.  
 2 MAXWELL M. BLECHER (State Bar No. 26202)  
 3 DAVID W. KESSELMAN (State Bar No. 203838)  
 4 515 South Figueroa Street, 17<sup>th</sup> Floor  
 5 Los Angeles, California 90071-3334  
 Telephone: (213) 622-4222  
 Telecopier: (213) 622-1656  
 Email: [mblecher@blechercollins.com](mailto:mblecher@blechercollins.com)  
 Email: [dkesselman@blechercollins.com](mailto:dkesselman@blechercollins.com)

6  
 7 Attorneys for Plaintiffs

8  
 9  
 10 UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 12 WESTERN DIVISION

13 ROB BRANTLEY, DARRYN COOKE,  
 14 WILLIAM and BEVERLEY  
 15 COSTLEY, CHRISTIANA HILLS,  
 16 MICHAEL B. KOVAC, MICHELLE  
 NAVARRETTE, TIMOTHY J.  
 STABOSZ and JOSEPH VRANICH,  
 individually and on behalf of all  
 others similarly situated,

17 Plaintiffs,

18 vs.

19 NBC UNIVERSAL INC., VIACOM  
 20 INC., THE WALT DISNEY  
 COMPANY, FOX ENTERTAINMENT  
 21 GROUP, INC., TIME WARNER INC.,  
 TIME WARNER CABLE INC.,  
 22 COMCAST CORPORATION,  
 COMCAST CABLE  
 23 COMMUNICATIONS, INC., COX  
 COMMUNICATIONS, INC., THE  
 24 DIRECTV GROUP, INC.,  
 ECHOSTAR SATELLITE L.L.C.,  
 25 CHARTER COMMUNICATIONS,  
 INC., and CABLEVISION SYSTEMS  
 CORPORATION,

26 Defendants.  
 27  
 28

CASE NO.

**CLASS ACTION**

COMPLAINT FOR DAMAGES AND  
 INJUNCTIVE RELIEF FOR  
 VIOLATIONS OF THE SHERMAN  
 ANTITRUST ACT  
 (15 U.S.C. §§ 1, 2)

**JURY DEMANDED**

1 Plaintiffs, on their own behalf and on behalf of all others similarly  
2 situated, file this Complaint seeking damages and injunctive relief pursuant  
3 to 15 U.S.C. §§ 15 and 26, based on violations of Sections 1 and 2 of the  
4 Sherman Act (15 U.S.C. §§ 1, 2), and complain and allege as follows:

5 I.

6 NATURE OF THE CASE

7 1. This class action challenges the collective conduct of defendants  
8 which has eliminated, in material part, competition among and between (1)  
9 the content providers and/or programmers for cable/satellite television  
10 distribution and (2) the cable and satellite providers by the practice of  
11 offering only prepackaged tiers of bundled programs and refusing to offer  
12 cable programming to consumers on an "a la carte" basis.

13 2. The programmer defendants, NBC Universal, Inc., Viacom Inc.,  
14 The Walt Disney Company, Fox Entertainment Group, Inc., Time Warner  
15 Inc., and Comcast Corporation (collectively "programmer defendants"), are  
16 media entities that collectively control broadcast (free) television  
17 distribution and to a major extent the programs exhibited on such  
18 broadcast channels. These same programmer defendants also collectively  
19 control the dominant cable channels and the programs exhibited on such  
20 cable channels. These programmer defendants, therefore, effectively  
21 control both broadcast and cable programming in the United States.

22 3. The named cable providers, Time Warner Cable, Inc., Comcast  
23 Cable Communications, Inc., Charter Communications, Inc., Cablevision  
24 Systems Corporation, and Cox Communications, Inc., are the entities that  
25 collectively dominate the distribution of programs, mainly produced by the  
26 programmer defendants, for exhibition on cable channels which are also  
27 effectively controlled by these programmer defendants. The two satellite  
28 providers, The DIRECTV Group, Inc., and EchoStar Satellite L.L.C. (DISH)

1 are the two largest providers of broadcast and cable television via satellite  
2 in the United States. The provider defendants collectively control access  
3 to the majority of the homes in the United States that have television  
4 programming directly from a cable or satellite provider.

5       4. In part to avoid competing with each other and in part to extract  
6 premium prices, the programmer defendants, knowing that each operates  
7 in the same fashion, only offer to sell and/or license programming to cable  
8 and satellite providers on a "bundled" basis. In turn, the cable and satellite  
9 providers, to avoid competitive pressure and to maximize revenues and  
10 profits, offer to consumers only prepackaged bundled tiers and have  
11 refused to offer cable and satellite channels to consumers on an "a la  
12 carte" or individual choice basis.

13       5. The result of this vertically integrated structure and series of  
14 written contractual restraints is that the level of competition among  
15 programmers for access to cable providers has been substantially  
16 suppressed and eliminated and the competition among cable providers for  
17 access to cable channels and cable programs has similarly been  
18 substantially suppressed and eliminated, so that there exists a monopoly  
19 or cartel of cable television exhibition in the United States which has  
20 deprived consumers of choice, caused them to pay inflated prices for cable  
21 television and forced them to pay for cable channels they do not want and  
22 do not watch. A recent study by the Federal Communications Commission  
23 concludes that the practices described in this Complaint have cost the  
24 cable television consumers hundred of millions in payments for unwanted  
25 programming.

26       6. This class action seeks to terminate the practice of offering  
27 consumers only bundled or prepackaged bundled tiers and to require  
28

1 programmers and cable providers to offer channels on an "a la carte" or  
2 individual choice basis.

3 II.

4 PARTIES

5 Plaintiffs and Class Representatives

6 7. Plaintiff ROB BRANTLEY resides in Arlington, Virginia. During  
7 the period covered by this Complaint, plaintiff BRANTLEY has been and  
8 continues to be a subscriber of cable programming services provided by  
9 defendant COMCAST CORPORATION. Plaintiff BRANTLEY does not  
10 desire all of the channels that he is required to buy from defendant  
11 COMCAST CORPORATION and would prefer to purchase specific  
12 channels a la carte.

13 8. Plaintiff DARRYN COOKE resides in Costa Mesa, California.  
14 During the period covered by this Complaint, plaintiff COOKE has been  
15 and continues to be a subscriber of cable programming services provided  
16 by defendant TIME WARNER CABLE, INC. Plaintiff COOKE does not  
17 desire all of the channels that he is required to buy from defendant TIME  
18 WARNER CABLE, INC. and would prefer to purchase specific channels a  
19 la carte.

20 9. Plaintiffs WILLIAM AND BEVERLEY COSTLEY, a married couple,  
21 reside in San Pedro, California. During the period covered by this  
22 Complaint, the COSTLEY plaintiffs have been and continue to be  
23 subscribers of broadcast satellite programming services provided by  
24 defendant ECHOSTAR SATELLITE L.L.C. Plaintiffs WILLIAM and  
25 BEVERLY COSTLEY do not desire all of the channels that they are  
26 required to buy from defendant ECHOSTAR SATELLITE L.L.C. and would  
27 prefer to purchase specific channels a la carte.

28

1           10. Plaintiff CHRISTIANA HILLS resides in San Pedro, California,  
2 During the period covered by this Complaint, plaintiff HILLS has been and  
3 continues to be a subscriber of cable programming services provided by  
4 defendant COX COMMUNICATIONS, INC. Plaintiff HILLS does not desire  
5 all of the channels that she is required to buy from defendant COX  
6 COMMUNICATIONS, INC., and would prefer to purchase specific channels  
7 a la carte.

8           11. Plaintiff MICHAEL B. KOVAC resides in Berkeley, California.  
9 During the period covered by this Complaint, plaintiff KOVAC has been and  
10 continues to be a subscriber of broadcast satellite programming services  
11 provided by defendant THE DIRECTV GROUP, INC. Plaintiff KOVAC  
12 does not desire all of the channels that he is required to buy from  
13 defendant THE DIRECTV GROUP, INC., and would prefer to purchase  
14 specific channels a la carte.

15           12. Plaintiff MICHELLE NAVARRETTE resides in Playa del Rey,  
16 California. During the period covered by this Complaint, plaintiff  
17 NAVARRETTE has been and continues to be a subscriber of broadcast  
18 satellite programming services provided by defendant THE DIRECTV  
19 GROUP, INC. Plaintiff NAVARRETTE does not desire all of the channels  
20 that she is required to buy from defendant THE DIRECTV GROUP, INC.,  
21 and would prefer to purchase specific channels a la carte.

22           13. Plaintiff TIMOTHY J. STABOSZ resides in La Porte, Indiana.  
23 During the period covered by this Complaint, plaintiff STABOSZ has been  
24 and continues to be a subscriber of cable programming services provided  
25 by defendant COMCAST CORPORATION. Plaintiff STABOSZ does not  
26 desire all of the channels that he is required to buy from defendant  
27 COMCAST CORPORATION and would prefer to purchase specific  
28 channels a la carte.

1 14. Plaintiff JOSEPH VRANICH resides in Irvine, California. During  
2 the period covered by this Complaint, Plaintiff VRANICH has been and  
3 continues to be a subscriber of cable programming services provided by  
4 defendant COX COMMUNICATIONS, INC. Plaintiff VRANICH does not  
5 desire all of the channels that he is required to buy from defendant COX  
6 COMMUNICATIONS, INC., and would prefer to purchase specific channels  
7 a la carte.

8 **Defendants**

9 15. Defendant NBC UNIVERSAL, INC. (hereinafter "NBC") is a  
10 corporation organized and existing under the laws of the State of Delaware  
11 with its principal place of business in New York, New York. Defendant  
12 NBC is a media entity engaged in, inter alia, the development and  
13 production of entertainment, news and information to a global audience in  
14 part through broadcast networks and cable television.

15 16. Defendant VIACOM INC. (hereinafter "Viacom") is a corporation  
16 organized and existing under the laws of the State of Delaware with its  
17 principal place of business in New York, New York. Viacom is a leading  
18 global entertainment company engaged in, inter alia, the development and  
19 production of cable and film programming and has a substantial interest in  
20 a number of cable channels.

21 17. Defendant THE WALT DISNEY COMPANY (hereinafter  
22 "Disney") is a corporation organized and existing under the laws of the  
23 State of Delaware with its principal place of business in Burbank,  
24 California. Defendant Disney is a media entity engaged in, inter alia, the  
25 development and production of entertainment, news and information to a  
26 global audience in part through broadcast networks and cable television.

27 18. Defendant FOX ENTERTAINMENT GROUP, INC. (hereinafter  
28 "Fox") is a corporation organized and existing under the laws of the State

1 of Delaware with its principal place of business in Los Angeles, California.  
2 Defendant Fox is a media entity engaged in, inter alia, the dissemination of  
3 entertainment, news and information to a global audience in part through  
4 broadcast networks, cable television and partial ownership of a satellite  
5 provider.

6 19. Defendant TIME WARNER INC. (hereinafter "TWI") is a  
7 corporation organized and existing under the laws of the State of Delaware  
8 with its principal place of business in New York, New York. Defendant TWI  
9 is a media entity engaged in, inter alia, the development and production of  
10 entertainment, news and information to a global audience in part through  
11 broadcast networks and cable television.

12 20. Defendant TIME WARNER CABLE, INC. (hereinafter "TWC") is  
13 a corporation organized and existing under the laws of the State of  
14 Delaware with its principal place of business in Stamford, Connecticut.  
15 TWC is the second largest operator of cable television systems in the  
16 United States.

17 21. Defendant COMCAST CORPORATION is a corporation  
18 organized and existing under the laws of the State of Pennsylvania with its  
19 principal place of business in Philadelphia, Pennsylvania. Defendant  
20 COMCAST CABLE COMMUNICATIONS, INC., is a corporation organized  
21 and existing under the laws of the State of Delaware with its principal place  
22 of business in Wilmington, Delaware (collectively "Comcast"). Comcast is  
23 the largest operator of cable television systems in the United States with  
24 approximately 24 million subscribers.

25 22. Defendant COX COMMUNICATIONS, INC. (hereinafter "Cox") is  
26 a corporation organized and existing under the laws of the State of  
27 Delaware with its principal place of business in Atlanta, Georgia. Cox is  
28

1 the third largest operator of cable television systems in the United States  
2 with approximately 6.7 million subscribers.

3 23. Defendant THE DIRECTV GROUP, INC. (hereinafter  
4 "DIRECTV") is a corporation organized and existing under the laws of the  
5 State of Delaware with its principal place of business in El Segundo,  
6 California. Defendant DIRECTV is the largest direct broadcast satellite  
7 television provider in the United States with approximately 16 million  
8 commercial and residential customers

9 24. Defendant ECHOSTAR SATELLITE L.L.C. (hereinafter  
10 "EchoStar") is a corporation organized and existing under the laws of the  
11 State of Nevada with its principal place of business in Englewood,  
12 Colorado. Defendant EchoStar (which markets its services as DISH) is the  
13 second largest direct broadcast satellite television provider in the United  
14 States with more than 13 million subscribers.

15 25. Defendant CHARTER COMMUNICATIONS, INC. (hereinafter  
16 "Charter") is a corporation organized and existing under the laws of the  
17 State of Delaware with its principal place of business in St. Louis, Missouri.  
18 Charter is the fourth largest operator of cable television systems in the  
19 United States with nearly 6 million subscribers.

20 26. Defendant CABLEVISION SYSTEMS CORPORATION  
21 (hereinafter "CSC") is a corporation organized and existing under the laws  
22 of the State of Delaware with its principal place of business in Bethpage,  
23 New York. CSC is one of the larger operators of cable television systems  
24 in the United States with approximately 3 million subscribers.

### 25 III.

### 26 JURISDICTION AND VENUE

27 27. Plaintiffs bring this action under Sections 4 and 16 of the Clayton  
28 Act, 15 U.S.C. §§ 15 and 26, for treble damages, injunctive relief, costs of

1 suit and a reasonable attorneys' fee, against defendants for the injuries  
2 sustained by plaintiffs and Class members by reason of defendants'  
3 violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2.

4 28. Jurisdiction is proper pursuant to 28 U.S.C. §§ 1331, 1332(d)  
5 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and  
6 26.

7 29. Venue is proper in this District pursuant to 15 U.S.C. §§ 15, 22  
8 and 26, and 28 U.S.C. § 1391(b) and (c) because each defendant  
9 maintains an office, may be found and/or transacts business within this  
10 District. Moreover, many of the acts alleged in this Complaint giving rise to  
11 plaintiffs' claims occurred in, were directed from, and/or had effects in, this  
12 District.

#### 13 IV.

#### 14 CLASS ACTION ALLEGATIONS

15 30. Plaintiffs bring this action as a class action pursuant to Federal  
16 Rule of Civil Procedure 23 on behalf of themselves and the following Class:

- 17 a. All persons residing in the United States  
18 who subscribe to "expanded basic cable"  
19 provided by one of the cable television or  
20 direct broadcast satellite television provider  
21 defendants within four (4) years of the date  
22 of the filing of this Complaint ("Class"). Expressly  
23 excluded from the Class are defendants and  
24 their subsidiaries, affiliates, officers, directors,  
25 and employees.

26 31. Certification of the Class is appropriate pursuant to Fed. R. Civ.  
27 P. 23(a). The members of the Class are so numerous that joinder of all  
28

1 members would be impracticable. There are millions of households who  
2 subscribe to cable television or direct broadcast satellite television.

3 32. There are common questions of law or fact, among others,  
4 including:

- 5 a. Have the defendants engaged in collaborative  
6 activity to preclude cable/satellite subscribers  
7 from securing "a la carte" programming apart  
8 from "basic" cable service;
- 9 b. Whether, as a result of the antitrust violation  
10 as set forth in this Complaint, plaintiffs and  
11 the Class are entitled to damages, equitable  
12 relief or other relief, and the amount and nature  
13 of such relief;
- 14 c. Whether defendants acted on grounds  
15 generally applicable to the Class, making  
16 injunctive relief appropriate;
- 17 d. Whether a Class can be certified pursuant  
18 to Fed. R. Civ. P. 23(b)(3); and
- 19 e. Whether, alternatively, a Class can be  
20 certified pursuant to Fed. R. Civ. P. 23(b)(2).

21 33. Plaintiffs' claims are typical of the claims of the Class, because  
22 plaintiffs and all members of the Class were injured economically by the  
23 same wrongful practices of defendants described in this Complaint.  
24 Plaintiffs' claims arise from the same practices and course of conduct that  
25 gave rise to the claims of the Class members, and are based on the same  
26 legal theories. There is an economic or dollar value that can be assigned  
27 to the cable subscribers' right to choose the channels he/she wishes to  
28 buy. The economic value of this right to choose is common to all Class

1 members. The only difference between plaintiffs and individual members  
2 of the Class could be the amount of overcharge sustained, under an  
3 alternative damage analysis and this difference does not bar or in any way  
4 impair class certification.

5 34. Plaintiffs will fairly and adequately represent the interests of the  
6 members of the Class. Plaintiffs' interests are the same as, and not in  
7 conflict with, the other members of the Class. Plaintiffs' counsel is  
8 experienced in class action and complex litigation.

9 35. Questions of law or fact common to the members of the Class  
10 predominate and a class action is superior to other available methods for  
11 the fair and efficient adjudication of this lawsuit, because individual  
12 litigation of the claims of all members of the Class is economically  
13 unfeasible and procedurally impracticable. While the aggregate damages  
14 sustained by Class members are likely to be in the millions of dollars, the  
15 individual damages incurred by each Class member resulting from the  
16 wrongful conduct alleged are, as a general matter, too small to warrant the  
17 expense of individual suits. The likelihood of individual members of the  
18 Class prosecuting separate claims is remote and, even if every Class  
19 member could afford individual litigation, the court system would be unduly  
20 burdened by individual litigation of such cases. Individualized litigation  
21 would also present the potential for varying, inconsistent, or contradictory  
22 judgments and would magnify the delay and expense to all parties and to  
23 the court system resulting from multiple trials of the same factual issues.  
24 Plaintiffs know of no difficulty to be encountered in the management of this  
25 action that would preclude its maintenance as a class action and  
26 certification of the Class under Rule 23(b)(3) is proper.

27 36. Relief concerning plaintiffs' rights under the laws herein alleged,  
28 and with respect to the Class, would be proper. Defendants have acted or

1 refuse to act on grounds generally applicable to the Class, thereby making  
2 appropriate final injunctive relief or corresponding declaratory relief with  
3 regard to members of each Class as a whole and certification of the Class  
4 under Rule 23(b)(2) is proper.

5 V.

6 NATURE OF TRADE AND COMMERCE

7 37. The relevant product market in this case is multichannel video  
8 programming services licensed and/or sold to multichannel video  
9 programming distributors including cable television providers (including  
10 those named as defendants) and direct broadcast satellite providers  
11 (including those named as defendants).

12 38. The relevant geographic market is the United States as a whole.

13 39. Cable providers and direct broadcast satellite providers may  
14 lawfully supply a bundled service known as "basic cable" which means a  
15 tier or group of programming services (channels) to which a subscription is  
16 required for access to other "tiers" of cable service offered by the cable  
17 provider and direct broadcast satellite provider defendants. Basic cable  
18 includes the retransmission of local television broadcast signals and public,  
19 educational and government access channels.

20 40. Each programmer defendant owns television program(s) and  
21 some interest in one or more television channels. For example, NBC (80%  
22 of which is owned by General Electric Company) operates the NBC  
23 broadcast network as well as cable channels Bravo, USA Network, a 24-  
24 hour news channel MSNBC and the Spanish-language network  
25 Telemundo. NBC also is a major producer of programming, including,  
26 among others, the series "Law and Order." Defendant Viacom operates  
27 MTV Networks, including MTV, MTV2, Nickelodeon, Spike, Comedy  
28 Central, BET Networks and others, and is also a major developer of

1 television programming including The Real World, SpongeBob  
2 SquarePants, South Park and others. Defendant Disney owns and  
3 operates the broadcast channel ABC Television Network and all ESPN-  
4 related cable channels and the Disney channel. Disney is also a major  
5 producer of television programming. Defendant Fox owns and operates  
6 broadcast and cable channels, including FX and Fox Sports Net. Finally,  
7 defendant TWI owns part of the broadcast channel WB Network, the  
8 leading film cable channel HBO and is also a major programmer for  
9 television.

10 41. Accordingly, there is a high degree of vertical integration in that  
11 defendants collectively own most of the significant broadcast and cable  
12 channels and are the dominant producers of television programming. For  
13 example, in Los Angeles there are about 60 channels that comprise the  
14 basic and expanded basic cable tiers. Of those 60 channels, thirteen (13)  
15 are entirely or partly owned by NBC/GE, nine (9) by Viacom, seven (7) by  
16 Fox, eleven (11) by Disney; and TWI and Liberty Media combined own  
17 another sixteen (16) channels.

18 42. Each of the programmer defendants, NBC, Viacom, Disney, Fox  
19 and TWI sells or licenses its programming or channels to cable and direct  
20 broadcast satellite providers and requires that each of its broadcast and  
21 cable channels and the bulk of its programming material be acquired by  
22 such cable and direct broadcast satellite providers. This "block booking" or  
23 "tying" requires cable providers and direct broadcast satellite providers to  
24 acquire properties which, if unbundled, either they would not acquire at all,  
25 or would separately negotiate product-by-product based upon consumer  
26 demand and, would cost them considerably less than the bundle. This  
27 practice of "block booking" or "tying" is intended to eliminate or suppress  
28

1 competition among and between the programmer defendants and these  
2 practices have actually produced that competition-lessening effect.

3 43. When required to purchase bundled channels, cable and direct  
4 broadcast satellite providers repackage these offerings and distribute them  
5 to the consuming public in bundled tiers of channels. Stated differently, so  
6 far as is known, no cable or direct broadcast satellite provider offers cable  
7 channels to consumer subscribers on an "a la carte" or channel-by-channel  
8 basis. Aside from "basic cable," many consumers are, because of this  
9 bundled tier distribution method, forced to accept channels which, if offered  
10 separately, they would decline. For example, an estimated 40% of cable  
11 subscribers have little or no interest in sports and yet are required to  
12 accept the several ESPN programming channels which constitute a  
13 significant part (and cost) of the bundled tiered package. Cable rates have  
14 more than doubled in the past ten years. Most cable channels are not  
15 actually watched by the subscriber. According to a Nielsen Media  
16 research report, the average cable subscriber is paying for 85 channels  
17 that he/she does not watch in order to obtain the approximately 16  
18 channels he/she does watch. According to an Associated Press-Ipsos  
19 poll, 78% of respondents would prefer to choose and pay for their own  
20 tailored selection of channels. The second Federal Communications  
21 Commission study on this subject calculates that consumers are charged  
22 about \$100,000,000 per year for channels which, if offered "a la carte,"  
23 they would not purchase.

24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VI.  
VIOLATIONS ALLEGED  
COUNT ONE

**Violations of Section 1 of the Sherman Act (15 U.S.C. §1)**

44. Paragraphs 1- 43 are incorporated herein by reference with the same force and effect as though set forth at this point in full,

45. The foregoing series of contracts between the programmer defendants and the cable and direct broadcast satellite provider defendants constitutes a combination among and between the named defendants which unreasonably restrain trade and commerce in the relevant product market in the United States in violation of Section 1 of the Sherman Act.

46. Consumers, including the named plaintiffs and the putative Class, have been injured in their business and property because they have been deprived of choice, have been required to purchase product they do not want and have paid inflated prices for cable television programming.

47. Competition, including price competition, for cable programming services has been, and will continue to be restrained, suppressed or eliminated as a result of the contracts and combinations described herein.

48. Competitors, actual and potential, have been, and will continue to be, restrained from vigorously competing with one another for selling and acquiring cable programming services as a result of the contracts and combination described herein.

49. As a direct result of the unlawful actions of defendants, and each of them, plaintiffs and Class members have paid significantly more for cable and satellite subscriptions than they would have in the absence of the illegal agreements. As a result, plaintiffs and the Class have suffered

1 antitrust injury in an amount not presently known with precision but which  
2 is, at a minimum, millions of dollars.

3 **COUNT TWO**

4 **Conspiracy to Monopolize**

5 50. Paragraphs 1- 43 and paragraphs 46-49 are incorporated herein  
6 by reference with the same force and effect as though set forth at this point  
7 in full.

8 51. The foregoing series of written contracts between the  
9 programmer defendants and the cable and direct broadcast satellite  
10 providers constitute a combination among and between the named  
11 defendants to monopolize trade and commerce in the relevant product  
12 market in the United States in violation of Section 2 of the Sherman Act.

13 52. As a direct result of the unlawful actions of defendants, and each  
14 of them, plaintiffs and Class members have paid significantly more for  
15 cable and satellite subscriptions than they would have in the absence of  
16 the illegal agreements. As a result, plaintiffs and the Class have suffered  
17 antitrust injury in an amount not presently known with precision but which  
18 is, at a minimum, millions of dollars.

19 **Prayer for Relief**

20 WHEREFORE, plaintiffs, on behalf of themselves and others  
21 similarly situated, pray:

22 1. That this matter be certified as a class action with the Class  
23 defined as set forth above under Fed. R. Civ. P. 23(b)(3), or in the  
24 alternative Fed. R. Civ. P. 23(b)(2), and that the named plaintiffs be  
25 appointed Class Representatives and their attorneys be appointed Class  
26 Counsel,

27 2. That judgment be entered against defendants, and each of  
28 them jointly and severally, for the treble damages as a result of defendants'


1 violations of Section 1 and 2 of the Sherman Act, and that plaintiffs be  
2 awarded a reasonable attorneys' fee and the costs of suit as required by  
3 Section 4 of the Clayton Act;

4           3. That the Court enter an order requiring defendants, and  
5 each of them, to immediately cease the wrongful conduct as set forth  
6 above and specifically enjoining defendants from unlawfully bundling  
7 expanded basic cable channels and ordering defendant cable providers  
8 and direct broadcast satellite providers to notify their subscribers that they  
9 each can purchase "a la carte" (separately) except for "basic cable"; and

10           4. For such other and further relief as to the Court may seem  
11 just and proper.

12  
13 Dated: September 20, 2007

BLECHER & COLLINS, P.C.  
MAXWELL M. BLECHER  
DAVID W. KESSELMAN

14  
15 By   
16 Maxwell M. Blecher  
17 Attorneys for Plaintiffs  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury as to all issues of fact which may be tried to a jury as pled in this Complaint.

Dated: September 20, 2007

BLECHER & COLLINS, P.C.  
MAXWELL M. BLECHER  
DAVID W. KESSELMAN

By   
Maxwell M. Blecher  
Attorneys for Plaintiffs

BLECHER & COLLINS  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

#34321