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IN THE EIGHTH JUDICIAL DISTRICT COURT
UINTAH COUNTY, VERNAL DIVISION, STATE OF UTAH

RODNEY J. AYCOCK, DIRECTV, INC., and DISH NETWORK LLC, Plaintiffs, vs. UTAH STATE TAX COMMISSION and STATE OF UTAH, Defendants.	**AMENDED COMPLAINT** **(JURY DEMAND)** Case No. 100801622 Judge Clark A. McClellan

Plaintiffs Rodney J. Aycock, DIRECTV, Inc. ("DIRECTV") and DISH Network LLC ("DISH") (collectively "Plaintiffs") allege, upon information and belief, against Defendants the Utah State Tax Commission and the State of Utah as follows:

INTRODUCTION

1. Nearly 750,000 Utah families subscribe to pay television ("pay TV"). They receive similar programming and watch many of the same shows, movies, and sporting events. These 750,000 families are also subject to the same 6.25% tax, which the State of Utah imposes on the purchase of all "multichannel video services" within the state—regardless of who provides those services and how they are delivered.

2. Yet less than half of these 750,000 Utah families pay the full amount of the tax. Since January 1, 2008, the Utah legislature has provided 390,000 families with a tax credit that relieves those families from paying up to 40% of the tax. The remaining 360,000 families are not so fortunate. They are required to pay the entire 6.25% tax on their monthly pay TV bill.

3. The difference in tax treatment between these two groups boils down to a single geographic factor: ***Whether the family receives its pay TV programming from a business that uses ground distribution equipment located in the state—and more specifically, in the public rights of way—to transmit its programming signals to subscribers.***

4. As a practical matter, the only families in Utah who are eligible for the tax credit are those who receive their pay TV programming from a cable TV company, like Comcast or Bresnan Communications. Families who receive their pay TV programming from a satellite TV company, like DIRECTV or DISH, are required to pay the full amount of the tax.

5. The difference in tax treatment is not based on any difference in the service that cable and satellite TV companies offer to consumers in Utah or in how those companies obtain their programming content. To the contrary, cable and satellite TV companies have the same basic business model when it comes to distributing pay TV programming to subscribers—with one exception.

6. That exception—and the sole basis for the difference in tax treatment—is how the two types of businesses transmit their programming signals to subscribers in Utah. Satellite TV providers transmit their programming directly to subscribers' homes in Utah from satellites located tens of thousands of miles above the Earth's equator and, obviously, not within Utah's geographic boundaries. Cable providers, on the other hand, transmit their programming through a vast physical infrastructure of buildings and wires that are located under and over the state's public rights-of-way.

7. By granting a tax credit of up to 40% to Utah customers who receive their pay TV service from a local cable TV operator—but not a national satellite TV provider—Utah rewards the pay TV service that generates substantial economic benefits for the state in the form of jobs, infrastructure investment, and rental payments to municipalities and counties for the use of the public rights-of-way. At the same time, the law penalizes the pay TV service that beams its signals directly to subscribers' homes, without having to construct a single building, or lay a web of cables, or pay a franchise fee to use a public right-of-way in the state.

8. The story behind this curious regime is a textbook case of parochial protectionism. For decades, cable companies were entrenched monopolies in the market for

subscription television service. Then came satellite TV, with its high-powered satellites transmitting programming directly to the subscriber's home. Satellite TV threatened cable's monopoly by giving consumers a real choice for the first time.

9. Beginning in 2004, local cable operators and their lobbyists urged the Utah Legislature to enact a tax regime for pay TV providers that rewarded companies that contribute to the state economy and penalize like services that do not. Cable's message to legislators was simple: Cable companies should be rewarded with favorable tax treatment because they are "the local providers in the local communities in Utah," have a substantial presence in the state, and employ hundreds of Utah residents. Satellite TV, in comparison, has little to no presence in the state, employs few Utah residents, and takes all of their revenues out of state.

10. The Utah legislature answered the call of the local cable industry in January 2008 by granting a tax credit against the 6.25% tax on all multichannel video services "in an amount equal to 50% of the total amount of county or municipal franchise fees" paid by a multichannel video provider during the relevant period. In other words, the only businesses that are eligible for the state's 40%[1] tax credit are businesses that place their ground distribution equipment in the public rights-of-way and pay rent in the form of a "franchise fee" for the right to access this public property.

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[1] The credit for 50% of franchise fees results in a credit of up to 40% on the underlying excise tax. Federal law caps at 5% the franchise fee a local government can charge cable for using public rights-of-way. *See* 47 U.S.C. § 542. The relevant Utah statue provides a tax credit of 50% of franchise fees incurred, offset against the 6.25% excise tax. *See* Utah Code Ann. § 59-26-1045. So the maximum tax credit to a Utah cable customer is 2.5% (half of the maximum 5% franchise fee) divided by the 6.25% excise tax, or 40% of the excise tax amount.

11. But this is not the only example of a local cable industry using its in-state economic leverage to enact a discriminatory tax against satellite TV subscribers. During the past 10 years, the cable industry and its army of lobbyists have used similar protectionist arguments in state legislatures across the country, including Utah's, in a desperate attempt to protect its eroding share of the pay TV market. Those arguments typically turn on the same basic theme: Cable is the in-state provider that invests in state and local government, while satellite TV is the "national company" that takes jobs and tax revenues out of the state.

12. Conditioning a tax credit on whether a business performs a specific economic activity in the state discriminates against interstate commerce in violation of the Commerce Clause of the Constitution of the United States. The purpose and effect of the discriminatory tax credit is protectionist. It confers an unfair advantage on cable companies, which transmit their programming through the use of ground distribution equipment located in Utah's public rights-of-way, and a competitive disadvantage on satellite companies, which transmit their programming directly to subscribers' homes from satellites located outside of the state.

13. The discriminatory tax credit also violates both the Utah uniform operation of laws constitutional provision, Utah Const. art. I, § 24, and the Equal Protection Clause of the United States Constitution because it serves no legitimate public purpose, there is no rational basis for discriminating between functionally equivalent or similarly situated services, and the legislature could not thereby use tax policy as a reasonable means to achieve its illegitimate objectives.

14. Plaintiffs—comprising a subscriber to satellite based multichannel video service and the two providers of satellite TV service in Utah and nationally—bring this lawsuit to obtain (a) a declaratory judgment holding that Utah Code Ann. § 59-26-104.5 violates the Commerce Clause of the United States Constitution, the Equal Protection Clause of the United States Constitution, and the uniform operation of laws provision of the Utah Constitution; and (b) an order providing an equivalent credit of up to 40% of the 6.25% state excise tax for satellite-based multichannel video providers.

THE PARTIES

15. Plaintiffs are subscribers or providers of multichannel video programming distribution ("MVPD"). The providers offer their programming through "direct broadcast satellite" service, also known as "DBS."

16. Rodney J. Aycock is an individual residing in Vernal City, Uintah County, Utah. He subscribes to TV service through DIRECTV.

17. DIRECTV is a corporation organized in the state of California and is headquartered in El Segundo, California. It provides pay TV service to approximately 190,000 households in Utah, and approximately 18 million households nationwide.

18. DISH is a limited liability company organized under the laws of the state of Colorado and headquartered in Englewood, Colorado. It provides pay TV service to approximately 160,000 households in Utah, and approximately 14 million households nationwide.

19. The Utah State Tax Commission ("Commission") is an agency established under the laws of the state of Utah. The Commission collects, administers, and enforces the taxes that are the subject of this action.

20. The State of Utah is a governmental entity within the United States of America authorized under an Act of Congress approved July 16, 1894, the Utah Enabling Act, and established by the Utah Constitution of 1895 and as thereinafter amended.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78A-5-102 (vesting district courts with original jurisdiction in all matters civil and criminal); and Utah Code Ann. § 78B-6-401 (vesting district courts with jurisdiction to declare rights, status and other legal relations);

22. Venue lies in this Court pursuant to Utah Code Ann. § 78B-3-307 (the action may be commenced and tried in any county designated by the plaintiff in the complaint.)

SUBSTANTIVE ALLEGATIONS

A. The Choice Among Similar Pay TV Alternatives

23. In choosing a pay TV service, Utah consumers have several options. They could choose a cable provider. Or they could choose between the two major satellite TV providers — Plaintiffs DIRECTV and DISH—that compete vigorously with one another, as well as with cable. And in the near future, Utah consumers might be able to replace their cable or satellite TV service with a pay TV service delivered over the Internet.

24. These pay TV competitors are all in the same business, referred to in the industry as "multichannel video programming distribution," or "MVPD." They all offer subscribers a wide menu of comparable programming packages. They all offer local broadcast stations, basic channels (such as CNN, ESPN, and C-SPAN), premium channels (such as HBO and Showtime), and pay-per-view shows. In short, while the programming services are delivered via different technologies, consumers view the services as similar and to a large degree substitutable.

25. Since all pay TV providers offer the same basic services and compete for the same consumers, it should be no surprise that they operate in the same basic way. They all secure the raw materials—TV programs—the same way. They also all negotiate with the owners of programming content—such as CNN, ESPN, and HBO—to secure rights to distribute such program content.

26. The only significant difference between the two categories of pay TV providers cable and satellite TV—is the means by which the program signal travels from a satellite (or other source) to the individual subscriber's TV, or as some have characterized it, the "final leg of the distribution process."

27. The typical cable provider in Utah obtains its programming packages from various networks by satellite. The satellite beams these packages back down to terrestrial distribution points called "headends"—most, if not all, of which are located in the state. There are scores of cable headends in Utah, each of which is a building of some sort, typically with its own "antenna farm" and studio equipment, and often staffed with its own complement of employees.

28. At each headend, the local cable operator merges the packages of programming with content from the local broadcast channels. The cable employees at the headend then dispatch the completed package of programming into a web of physical fiber optic cables or coaxial cables laid in trenches along public roads or hung from electric utility poles. The signals course first through massive "trunk" lines and from there to "feeder" or distribution lines. These lines connect a massive network of cable "hub" and "node" installations across Utah, which must be installed and maintained on a neighborhood-by-neighborhood basis—often, if not exclusively, in the public rights-of-way.

29. Ultimately, the programming signals reach each subscriber via a "drop" line running from the feeder line to the subscriber's home. No cable subscriber in the state could get his or her final package of programs if the cable company had not invested in building an intricate web of veins and capillaries from a headend on the ground to that subscriber.

30. Satellite providers have a different distribution system. They do not have or use headends—or terrestrial distribution centers of any sort. Satellite providers have no antenna farms, buildings, or employees in local neighborhoods. They have no intricate web of cables running under the ground or on telephone poles along local rights-of-way. They do not tear up roads, or tie up traffic, or deploy hundreds of service trucks to maintain a system of cables. Instead, satellite providers beam the signal directly from satellites orbiting the Earth to an antenna—a pizza-sized receiving dish—at each individual subscriber's home.

31. Regardless of delivery vehicle, the subscriber sees the same basic programs on TV. The Jazz, Cougars, or Utes game looks the same whether the signal reaches the pay TV

subscriber via the headend-trunk-line-feeder-line-drop-line route coursing under local streets or directly from a satellite beamed to the satellite dish on the subscriber's roof.

B. Cable's Massive Local Footprint Translates Into Massive Local Benefits

32. The different distribution mechanisms translate into vastly different local economic footprints. Cable companies have laid tens of thousands of miles of cable in Utah, and pumped billions of dollars into the state to build, maintain, and service their hundreds of headend buildings, web of cable, and related repair, maintenance, and distribution facilities. They employ over 1,000 Utah residents, most of them to construct, operate, and maintain those networks, and to connect and disconnect drop lines to subscribers' homes.

33. Cable's vast ground networks also translate into significant revenues for local governments: The cables that carry television signals to local neighborhoods must be placed under or alongside public roads or hang from public utility poles. Not just any business gets to dig up city streets or hang wires on utility poles, however. To do so, cable providers must secure permission from local governments to access the public property.

34. In exchange for these valuable property rights, cable providers must pay rent—so-called "franchise fees." *See* Utah State Tax Commission Private Letter Ruling No. 07-006 (April 4, 2008) (rejecting argument that franchise fees are a form of tax and opining that "franchise fee[s] . . . should be treated as another overhead charge to incorporate as part of the total charge for the services"). These fees are negotiated at arm's length between cable providers and individual local governments. The typical franchise fee is 3 to 5% of the cable provider's gross revenue from sales to customers within the given area.

35. In this sense, local governments have become cable's business partners. The governments grant cable valuable property rights essential to delivering their pay TV service in return for a cut of the revenues. In any given year, these negotiated deals funnel some $17 million into the coffers of Utah's municipalities.

36. Because satellite providers beam their signals directly to subscribers' homes, their local economic footprint pales in comparison to cable TV's footprint. They do not invest in an infrastructure of buildings, cables, and related facilities within the state. They do not hire armies of Utah workers. And since satellite TV's distribution system does not touch ground en route from the satellite to the subscriber's dish, satellite providers do not need to bargain for rights-of-way to lay cable—or pay local governments rent for the privilege of doing so.

C. Cable Lobbies for Protectionist Legislation Based on the Different Distribution System

37. Before January 1, 2008, all multichannel video services were subject to a uniform state excise tax of 6.25%. Utah Code Ann. § 59-26-103. It did not matter if the service was delivered to the customer from a $25 million headend facility located in Salt Lake City through the use of hundreds of miles of coaxial cable located in the city's public rights-of-way. Nor did it matter that the extent of the provider's operations in the state consisted of a few racks of equipment and a hundred employees, all of whom were responsible for installing dishes and set-top boxes at the customers' home. The 6.25% excise tax was applied uniformly on all purchases of multichannel video service.

38. All of those things, however, mattered a lot to the local cable industry. From the 1970s until the mid-1990s, the cable industry had a monopoly over the market for pay TV service in the state. But then satellite TV entered the picture, luring away cable customers in droves—to the point where the two major satellite TV providers became the biggest threats to cable's market dominance. In fact, by the time cable persuaded the Utah legislature to grant it a tax credit that would reduce the state excise tax for its customers—but not satellite TV customers, nearly 45% of Utah pay TV customers subscribed to satellite TV.

39. Rather than compete against satellite TV in the marketplace, the local cable industry turned to the legislature. Cable's pitch to legislators was pure parochial protectionism. The local cable industry and its lobbyists insisted discriminatory tax treatment was justified because one service contributed heavily to the local economy while the other did not. Their message was as simple as it was brazen: Without some type of tax credit that would mitigate the franchise fees that cable companies pay to place their headend facilities and cables in the public rights-of-way—a business expense that satellite TV does not have due to its more innovative technology—local cable operators would have to downsize their operations in the state.

40. To give legislators a sense of just how important the cable industry was to Utah's economy relative to satellite TV, cable lobbyists prepared the following chart for members of the Revenue & Taxation Interim Committee:

WHO PAYS	CABLE	SATELLITE
Utah employees	800+	**MINIMAL**
Utah franchise fees	Over $6 million annually	**NOTHING**
Utah capital investment	Over $110 million '03	**NOTHING**
Utah property taxes	Over $3 million annually	**NOTHING**
Fee service to Utah schools and libraries and dedicates channels for public, educational and government use.	YES – Over 420 schools ($155.000)	**NO**
Utah programs, sponsorships, in-kind donations, etc.	YES – Over $270,000	**?**

41. Based on these differing contributions to the local economy, and cable's rapidly dwindling share of the Utah pay TV market, Utah legislators introduced a bill in January 2007 (SB 145) that would allow multichannel video service providers to discount the 6.25% state excise tax by up to 40% so long as (1) they placed their cables in the public rights-of-way, and (2) paid a fee to a county or municipality for the right to use this public property for their own commercial benefit.

42. The intent of the bill, which was drafted by the local cable trade association, was to provide a competitive advantage to those businesses, like cable, that used ground distribution equipment in the state's public rights-of-way to deliver their programming signals to Utah households. Businesses that used equipment outside of the state to deliver this same programming, like Plaintiffs DIRECTV and DISH, were not eligible for a tax credit and were required to charge their customers the full amount of the 6.25% state tax.

43. Ignoring the constitutional infirmities with the proposed measure, the Utah legislature granted cable the discriminatory tax credit that it sought. On March 14, 2007, Governor Huntsman signed into law a new section of the Utah Code, section 59-26-104.5, which allows multichannel video providers to claim a tax credit in an "amount equal to 50% of the total amount of county or municipality franchise fees" and use that credit to lower the state excise tax charged to subscribers for the purchase of multichannel video services. *Id.*

44. This protectionist theme has become a mantra for local cable industry trade associations across the country, including in Utah. In 2002, for instance, the Ohio Cable Telecommunications Association ("OCTA") engaged in a massive lobbying effort to persuade the state legislature to enact a satellite-only sales tax. The OCTA's message: Local cable companies should not be taxed because of the breadth of their economic activity in the state:

> Unlike satellite or other wireless providers of [television] services . . cable operators must construct and maintain an interconnected network of cables and other physical system assets which cross the state . . . [C]able operators and telephone companies must make and maintain a significant investment in [the State] in terms of tangible property, equipment and employees, whereas other service providers such as wireless and satellite companies require virtually no investment in [the State] in order to compete.

45. The OCTA provided legislators with a virtually identical chart that was given to Utah legislators. As in Utah, the chart trumpeted cable's economic connection to the state, all stemming from its ground distribution equipment, including the fact that cable employed more than 6,000 people across the state, paid more than $57 million each year in franchise fees to local governments, and over $31 million in property taxes to the state. In this same "resource kit,"

satellite TV was portrayed as an "out-of-state interest that does not care about" the state, ""[p]rovides [state residents] with very few job opportunities, [d]oesn't pay an appreciable tax of any kind anywhere in [the State] . . . [and h]as not done much of anything to support local communities."

46. Thus, cable's message in Utah and elsewhere is clear: Cable is an intensely local business that invests a tremendous amount of money in the state and local governments. If the state legislature is interested in protecting this local resource and the revenue that it generates for the state and local governments, it must enact a discriminatory tax against satellite TV services to tilt the competitive playing field in cable's advantage.

D. The Discriminatory Tax Credit Has Artificially Reduced the Number of New DBS Subscribers in the State of Utah

47. Satellite companies compete with cable companies by providing similar programming packages. In choosing between satellite TV and cable TV, consumers consider price to be a significant factor. Utah's tax regime gives a price advantage to cable companies over satellite companies such as Plaintiffs DIRECTV and DISH.

48. This advantage has already translated into a loss of customers for these Plaintiffs. This loss can be estimated from the results of a 2001 study conducted by two University of Chicago Graduate School Business professors, which concluded that every 1 percent increase in price for satellite TV service in comparison to cable TV service leads to a 3 to 5 percent decrease in demand. This study indicates that Utah's discriminatory tax credit has cost Plaintiffs

DIRECTV and DISH tens of thousands of customers since it became effective on January I, 2008.

COUNT I

(Violation of the Commerce Clause of the U.S. Constitution)

49. Plaintiffs incorporate and re-allege the allegations of paragraphs 1 through 48 as though fully set forth herein.

50. Utah's tax regime discriminates against interstate commerce in violation of the Commerce Clause of the U.S. Constitution.

51. The State of Utah is discriminating among providers of multichannel television services. It is basing that discrimination upon whether a given provider has invested in utilizing a costly infrastructure in the state that passes through the public rights-of-way. In other words, the State has made favorable tax treatment dependent on whether one element of distributing multichannel television services—specifically, the ultimate transmission of programming signals to subscribers—is conducted in such a way as to provide a significant economic benefit to the State and its residents. Satellite companies and their customers are punished because satellite television *does not* need or use the State's public rights-of-way to deliver its programming signals, while cable companies are rewarded because cable television does utilize the public rights-of-way in Utah.

52. Utah's discriminatory tax regime violates the Commerce Clause in four independent ways:

53. First, the discrimination is facial, meaning it is discernible from the face of the relevant Utah statutes. The tax credit provided in section 59-26-104.5 is only available to those multichannel video service providers that perform a specific economic activity in the state—i.e., the use of the state's public rights-of-way to deliver multichannel video service to Utah households.

54. Second, the Utah tax regime is unlawful because it has the *practical effect* of discriminating against interstate commerce. The tax credit differentiates between two types of business on the basis of whether a provider conducts a specific economic activity in the state, i.e., using ground distribution equipment in the state's public rights-of-way to deliver programming signals to subscribers—that can be performed just as efficiently outside of Utah.

55. Third, the tax credit has a discriminatory *purpose*. The cable industry drafted the original tax credit proposal and urged the State of Utah to distinguish between cable and satellite TV on the basis that cable provides substantially more economic benefits to the State and its residents than satellite TV. The Utah Legislature adopted and enacted the bill without making any material changes to the draft language proposed by the local cable industry. In doing so, the Utah Legislature adopted, as its own, the discriminatory purpose of the statute.

56. Fourth, the discriminatory tax credit violates the Commerce Clause because the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits.

57. In sum, by conditioning a tax credit on whether a business pays for the right to use the state's public rights-of-way discriminates against interstate commerce in violation of the

Commerce Clause of the United States Constitution. The discriminatory tax regime unlawfully lowers the cost of cable companies' service to the benefit of the Utah economy, thereby putting Plaintiffs DIRECTV and DISH at a competitive disadvantage relative to the cable companies with whom they compete for subscribers. At the same time, Plaintiff Aycock is required to pay a higher tax on his pay TV service than other Utah residents simply because he chose to receive his multi-channel video service from a business that does not build any ground distribution facilities in the state or pay Utah towns and cities a franchise fee for the right to lay its cable in the public rights of way.

COUNT II

(Violation of the Equal Protection Clause of the U.S. Constitution)

58. Plaintiffs incorporate and re-allege the allegations of paragraphs 1 through 57 as though fully set forth herein.

59. By providing a tax credit to cable pay TV services that it does not provide to satellite services, the state's regime unconstitutionally discriminates against Plaintiffs in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

60. The United States Supreme Court has held that the Equal Protection Clause forbids discriminatory state laws unless they "bear[] a rational relation to a legitimate State purpose."

61. The Utah discriminatory tax regime does not advance any legitimate state purpose. The State has no legitimate interest in discriminating between competing providers of

multichannel video programming based on whether they utilize facilities located in the public rights-of-way in transmitting their programming to subscribers. Rather, the discriminatory tax credit serves only the interest of local protectionism. As the Supreme Court has explained, such "parochial discrimination" is exactly what "the Equal Protection Clause was intended to prevent."

COUNT III

(Violation of the uniform operation of the laws requirement of the Utah Constitution)

62. Plaintiffs incorporate and re-allege the allegations of paragraphs 1 through 61 as though fully set forth herein.

63. The State's regime unconstitutionally discriminates against Plaintiffs in violation of the uniform operation of laws requirement of the Utah Constitution, by providing a tax credit to cable pay TV services that it does not provide to similarly situated satellite services.

64. The Utah Supreme Court has held that the uniform operation of laws forbids discriminatory state laws unless the classification is reasonable, the objectives of the legislative action are legitimate, and there is a reasonable relationship between the classification and the legislative purposes."

65. First, the distinction between multichannel video service providers based on whether the business utilizes a ground-based delivery system, i.e., pays a local franchise tax, is unreasonable because each provider provides functionally identical channels and programs.

66. Second, the imposition of a credit for cable's franchise taxes paid to local governments does not accomplish a legitimate government objective. The State has no

legitimate objective in discriminating between competing providers of multichannel video programming based on whether they utilize facilities located in the public rights-of-way in transmitting their programming to subscribers.[2] Rather, the discriminatory tax credit serves the improper objective of local protectionism by subsidizing a struggling cable industry as a means of protecting local interests.

67. Finally, the use of the franchise fee credit is not reasonably related to a legitimate state objective. Rather, use of the franchise fee is an improper attempt to insulate local government revenues from further decline and to support the cable industry because of its putative state economic benefits.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs Rodney J. Aycock, DIRECTV, Inc. and DISH Network LLC respectfully request that this Court:

1. Enter an order declaring that Utah Code Ann. § 59-26-104.5 violates the Commerce Clause, the Equal Protection Clause of the United States Constitution, and the uniform operation of the laws requirement of the Utah Constitution by granting a tax credit that is available to cable TV providers but not to satellite TV providers;

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[2] It goes without saying that the state's true objective is not to raise revenue (which could be a legitimate objective if enacted constitutionally), because the credit decreases state revenues by about $10 million per year. As the Utah Supreme Court has stated, a legitimate objective in tax policy could and should also be to "equalize taxation of [companies] who compete with each other," not subsidize a competitive group because its less effective delivery system offers putative economic benefits to local economies. Further, the state cannot "reasonably" have had the purpose of attempting to rectify a market inequality, because the franchise fees are related to the costs of using rights-of-way, a cost satellite providers obviously do not incur. Franchise fees are not simply an arbitrary cost imposed upon cable companies that somehow need to be rectified by the state.

2. Issue an order providing prospectively for an equivalent credit of up to 40% of the 6.25% state excise tax for DBS multichannel video providers; and

3. Award such other and further legal and equitable relief as it may deem just and appropriate.

JURY DEMAND

Plaintiffs Rodney J. Aycock, DIRECTV, Inc. and DISH Network LLC hereby demand a trial by jury on all claims which are so triable.

DATED this 13th day of April, 2011.

MAXWELL A. MILLER
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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2011, I caused to be served a true and correct copy of the foregoing **AMENDED COMPLAINT**, on the following parties by the method indicated below:

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