

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>DISH NETWORK, L.L.C</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>JOHN W. SUTHERS, Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General JEFFREY M. LEAKE, 38338 Assistant Attorney General Ralph L. Carr Judicial Center 1300 Broadway, 7th Floor Denver, CO 80203 Telephone: (720) 508-6000 FAX: (720) 508-6040 *Counsel of Record</p>	<p>Case No.</p>
<p>COMPLAINT</p>	

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, §§ 6-1-101 *et seq.*, C.R.S. (2014) (“CCPA”), to enjoin and restrain Defendant from engaging in certain unlawful deceptive trade practices, for restitution to injured consumers, for statutorily mandated civil penalties, for disgorgement, and other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly-elected Attorney General of the State of Colorado and is authorized under C.R.S. § 6-1-103 to enforce the provisions of the CCPA.

3. Defendant DISH Network L.L.C. is a Colorado limited liability company with its principal place of business located at 9601 S. Meridian Blvd., Englewood, CO 80112.

ACTS OF AGENTS

4. Whenever reference is made in this Complaint to any act or practice of Defendant, such allegation shall be deemed to mean that the principals, owners, employees, independent contractors, agents, and representatives of such Defendant performed, directed, or authorized such act or practice on behalf of said Defendant, while actively engaged in the scope of their duties.

JURISDICTION AND VENUE

5. Pursuant to C.R.S. §§ 6-1-103 and 6-1-110, this Court has jurisdiction to enter appropriate orders prior to and following an ultimate determination of liability.

6. The violations alleged herein occurred, in part, in Denver County. Therefore, venue is proper in Denver County, Colorado, pursuant to C.R.S. § 6-1-103 and Colo. R. Civ. P. 98 (2014).

RELEVANT TIMES

7. This action is timely brought pursuant to C.R.S. § 6-1-115 in that it is brought within three years of the date on which Defendant engaged in false, misleading, and deceptive acts which violate the CCPA, and the Defendant continues to engage in false, misleading acts and practices which violate the CCPA.

PUBLIC INTEREST

8. Through the unlawful practices of their business or occupation, Defendant has deceived, misled, and financially injured numerous consumers. Therefore, these legal proceedings are in the public interest and are necessary to safeguard citizens from Defendant's unlawful business activities.

GENERAL ALLEGATIONS

9. DISH Network, L.L.C. (hereafter "DISH") is a satellite-television provider with over 14 million customers subscribing to its services.

10. DISH charges consumers a monthly rate based on the programming package selection of the consumer. The programming package is a set of specific television channels that the consumer has agreed to pay for on a monthly basis. The most basic programming packages include local channels and pay channels. More expensive programming packages may include movie or "premium" and/or additional sports packages.

11. DISH prominently features the price of its programming packages in its advertisements. Consumers state that the price is of critical importance to them when deciding whether to subscribe to satellite TV and in deciding whether to contract with DISH or one of its competitors.

12. The typical DISH contract requires the consumer to commit to two years of monthly payments. Of DISH's fourteen million subscribers, roughly four million, at any given time, are under a two-year contract. The remaining subscribers, those outside of their initial two-year contract, operate under month-to-month contracts.

13. DISH's contract ("Digital Home Advantage Plan Agreement") contains a provision which DISH relies upon to raise the negotiated agreed-upon contract-price at any time. The provision reads "[w]e reserve the right to change any and all prices, packages and programming at any time, including without limitation, during any term commitment to which you have agreed." Relying on this provision, DISH has raised prices every year (normally in January/February) since 2003.

14. When DISH raises its prices, it gives an off-setting credit to consumers who are still in the first year of their contract. Consumers in the second year of their contracts (and all consumers in a month-to-month contract) are subject to the price increase.

15. Consumers cannot refuse these price increases or terminate their contracts without paying an “early termination fee.” The “early termination fee” is \$17.50 for each remaining month on the contract.

16. Despite the unilateral contractual power generated by DISH’s “price subject to change” clause, DISH’s sales procedures fail to ensure that the consumer has fully agreed to this provision, and is fully aware of the risk of a price increase.

I. In 2010, DISH removed the disclosure “price is subject to change” from its sales script.

17. DISH trains its sales representatives to follow a sales script, or “call flow,” during sales calls.

18. The script instructs the sales representative to determine what programming the consumer wishes to purchase and then makes a programming and equipment “pitch.”

19. After consumers choose their programming package, DISH sales associates explain DISH’s prices as follows:

Your bill will be reduced by \$_____ per month for 12 months.....
After 12 months your programming will be billed at the normal rate
of \$_____
DISH call flow (2011)

Your bill will be reduced by \$_____ per month for 12 months.
After 12 months this package will be billed at the normal rate which
is currently \$_____
DISH call flow (2012)

Your bill will be reduced by \$_____ per month for 12 months.....
After 12 months your programming will be billed at the then-current
package price which is currently \$_____
DISH call flow (2013)

20. After hearing DISH’s explanation of monthly pricing, potential customers logically concluded that they will pay a fixed monthly price for the first twelve months of the two-year contract, and a slightly higher fixed monthly price for the second twelve months.

21. If the consumer indicates that they are interested in the offered

package, they are informed of the installation time. DISH also informs the consumer that they are agreeing to a 24-month commitment, and requests credit card and bank account information.

22. DISH charges the consumer's credit card for the first month's payment on the same day as the sales call.

23. DISH's 2008 sales script required its sales representatives to inform consumers that "pricing and programming are subject to change." The disclosure that "pricing and programming are subject to change" was required at the beginning of the sales call as part of "Pre-Sales Disclosures."

24. During this time period, DISH Quality Assurance ("QA") monitored sales representatives' calls to make sure that sales representatives disclosed that "pricing and programming are subject to change."

25. DISH's QA training materials described "pricing and programming are subject to change" as a "vital" disclosure, a disclosure that could "make or break a sale."

26. DISH sales representatives reported that consumers frequently questioned why DISH offered a programming package at a certain price, and required a 24-month commitment, while asserting a right to change its prices at any time. The price change disclosure caused consumer "pushback" and resulted in lost sales. **Exhibit A**, *Former DISH Employee Affidavits*, p.1 at ¶12.

27. In 2010, DISH removed the "Pre-sales Disclosures" and all reference to its prices being subject to change from its sales scripts.

28. The new sales scripts required DISH's sales representatives to disclose numerous other contractual terms including the 24 month commitment period, the early termination fee, authorization to charge the consumer's credit card, a requirement to maintaining certain programming levels in order to receive discounts, and an unreturned equipment fee.

29. In the new script, however, DISH did not inform consumers that DISH's monthly prices were subject to change. After negotiating a price, setting up an installation time, allowing their credit card to be charged for the first month of service, and listening to DISH's disclosures, consumers could reasonably conclude that DISH had disclosed all material terms of the contract. Consumers could logically assume that the price they negotiated would be the price during the term of their contract.

II. In 2011, DISH raised its prices.

30. In February of 2011, DISH raised the monthly prices for its programming packages.

31. Following this price increase, the Colorado Attorney General's Office and the Better Business Bureau received complaints from DISH customers.

32. Consumers reported that they had been told they would pay a fixed guaranteed price for the first year of their two-year contract, followed by a slightly higher fixed guaranteed price for the second year of their contract. Consumers were told that the second year price was "guaranteed" or "locked-in" and not subject to change. See **Exhibit B**, *Consumer Affidavits*.

33. Consumers who complained to the Better Business Bureau or directly to DISH were told by DISH's customer service representatives (aka "Dispute Resolution Team") that the DISH contract allowed DISH to raise its prices at any time. Consumers who wished to cancel their services with DISH were reminded that they would have to pay an early termination fee of \$17.50 multiplied by the number of months left in the 24-month contract.

III. Undercover calls to DISH showed that DISH sales representatives were misleading consumers about whether DISH could raise prices during the consumer's contract period.

34. In response to these consumer complaints, the Colorado Attorney General's Office made undercover calls to DISH in May of 2012. In each call, the investigator posed as a potential customer asking for clarification as to the price of programming packages and whether the price was subject to change.

35. The investigator's calls focused on whether DISH's prices were locked-in for the term of the contract.

36. In 24 out of 36 calls, the DISH sales representative made misleading statements which suggested that the consumer's second year price was locked-in and not subject to change.

37. Sales representatives repeatedly stated that the consumer's price would remain the same during the second year of the contract.

38. In response to direct questions about whether the quoted prices for the second year of the contract were guaranteed, DISH sales representatives made statements such as:

-the consumer was “safe” from price increases because they would be under contract.

- **Exhibit C**, *Transcripts of Undercover Calls* p. 1, (Track 7, 38:19-38:23).

-the price is a “set price” as long as the consumer did not change their programming.

-*Id.*, pp. 2-3, (Track 2, 5:24-6:6).

-the quoted price was for a “two-year price lock.”

-*Id.*, p. 4, (Track 5, 28:20).

-“ your prices are guaranteed during that twenty four month agreement.”

-*Id.*, p. 5, (Track 8, 20:4-20:6).

-“It’s actually written in the contract not to increase for five years.”

-*Id.*, p. 6, (Track 10, 13:8-13:9).

39. During one call, the DISH sales representative stated that DISH’s contract ensured that that DISH could not raise consumers’ prices during the second year of the contract. Referring to the two-year contract:

Investigator: What about -- and the prices during this time, they don't change – is there any change in the pricing during this time if I sign a two-year contract?

DISH Sales Rep: No. Once you sign up for the contract, your first year will be 39 -- 34.99 for that package.

Investigator: No matter what?

DISH Sales Rep: The second year will be 59.99. You're under a contract, it can't change.

Investigator: So you can't change that price if I sign a contract for two years?

DISH Sales Rep: Just like any other contract you sign.

Investigator: Okay.

DISH Sales Rep: The price -- if you have something in writing, we wouldn't do that to you. We're a Fortune 500 company, we're actually in the top 200.

Investigator: Okay.

DISH Sales Rep: And we got there by having sound business ethics. And we have a great product and we have got the best pricing out there, probably the best service and best product.

Investigator: Yes.

DISH Sales Rep: If you have something in writing from us and we changed it, we can't do that to you because you have it in writing. You have a contract.

-Exhibit C, pp. 7-8, (*Track 3, 11:15-12:18*).

40. Several DISH sales representatives stated that not only was the price guaranteed for the second year of the contract, the price would never change, including statements such as:

-the price stays "frozen" as long as the consumer stayed with DISH.

-*Id.*, p. 9, (*Track 1, 7:18-7:25*).

-unlike DirectTV, DISH's prices are guaranteed "forever."

-*Id.*, pp. 10-11, (*Track 9, 10:21-11:5*)

-DISH'S prices remain "locked" if the consumer commits to a 24 month contract.

-*Id.*, p. 12, (*Track 1, 13:12-13:21*).

41. During the majority of these undercover calls, DISH sales representatives freely provided misleading answers in response to basic non-leading questions about DISH's pricing and its contract:

Investigator: What happens at the end of the 24 months?

DISH Sales Rep: Your price will just stay the same, unless you wanted to

-- you'd be out of your commitment. So you could either, you know, continue to stay with us or you could, you know, go on. Because you're out of your contract, so you're under no obligation to, you know, stay with Dish. Say you wanted to cut off your TV services, or I don't know, just the price doesn't change after your contract.

Investigator: Okay.

DISH Sales Rep: It just stays on infinitum.

Investigator: So it would be \$59.99 forever?

DISH Sales Rep: Forever.

-*Id.*, pp. 13-14, (*Track 3, 31:25-32:15*).

IV. DISH created a work climate which encouraged sales representatives to mislead consumers in order to boost sales.

42. DISH sales representatives are paid on a commission basis and are required to close a high percentage of sales or be terminated. As part of its investigation, the Attorney General interviewed dozens of former sales representatives and managers. These individuals provided sworn affidavits which demonstrate that DISH was aware that its sales environment encouraged deceiving consumers.

43. One former sales representative stated that the sales quotas made sales representatives believe that “their jobs were at risk every moment of every day” and that he felt there was an “incentive to lie.” **Exhibit A, Former DISH Employee Affidavits**, p. 2.

44. Another former sales representative admitted that while she tried not to, she sometimes told potential customers that their programming package price would not change because she needed to keep making sales in order to keep her job. *Id.*, p. 3.

45. A former DISH sales supervisor stated “although we were told that we could not tell customers that their price would be locked in, if we heard an associate saying that we could not discipline them. Management’s approach was to turn a blind eye to the practice.” *Id.*, p. 4.

46. The sales supervisor also stated that he was taught in training to “brush off” consumer questions about price changes as “nonsensical” and to not answer the question directly. *Id.*

47. A DISH training PowerPoint from 2011 instructed sales representatives to “leverage” consumers’ concerns about price increases as a way to make sales.

48. By removing “prices are subject to change” from its sales call disclosures, and instructing its sales representatives to leverage consumer concerns about price increases, DISH created an environment in which its sales representatives were freed from disclosing that prices were subject to change and could make statements that contradicted the written contract.

V. DISH raised its prices again in 2013.

49. Despite the assurances made by DISH salespeople in the recorded undercover calls, DISH raised the price of its programming packages on Jan 17, 2013, and applied the price increase to all its subscribers, including consumers who were in the second year of their contract with DISH.

50. The 2013 price increase generated complaints to the Colorado Attorney General’s Office and the Better Business Bureau.

51. DISH business records show that consumers have made thousands of complaints directly to DISH in the months following DISH’s 2013 price increase.

52. Consumers complained that they had been misled by DISH sales representatives to believe that the price of DISH services was “guaranteed” or “locked-in.”

VI. When consumers complained, DISH invoked the price change clause to hold consumers to their contracts.

53. When consumers complained to DISH about the price increases, DISH’s customer service representatives informed the consumers that they were bound to the terms of a contract.

54. DISH customer service representatives describe their response to consumers’ complaints about price increases as “educating” the consumer about the contract they signed.

55. DISH refers the consumer to the “Digital Home Advantage Plan Agreement” as evidence of this contract. The Digital Home Advantage Plan Agreement incorporates another document by reference, the “Residential Customer Agreement.”

56. DISH specifically refers the consumer to a clause in the Digital Home Advantage Plan Agreement which states: “We reserve the right to change any and all prices, packages and programming at any time, including without limitation, during any term commitment you have agreed.”

VII. DISH presented the price change clause after consumers have agreed to a price, and after consumers had been billed for the first month of DISH’s services.

57. Consumers who subscribe to DISH agree to their programming and price during the initial sales call. DISH immediately charges the consumer’s credit card for the first month of service and all other upfront costs.

58. Following DISH’s sales script, at the close of the sales call, the sales representative asks “May I please get your email address so I can send an email confirmation of your order, including your account number and installation time.” The sales representative does not state that the email will contain contract terms and disclosures.

59. DISH sends the consumer an email with a subject line, “You have ordered DISH service.” The first section of the email provides a date and time for installation. The second section provides a breakdown of billing, including monthly charges. A third section of the email contains disclosures, including the disclosure that price and other terms are subject to change.

60. A consumer who has agreed to a monthly price, listened to DISH’s phone disclosures and taken note of their installation time, may not find it necessary to even open an email confirming they have ordered DISH service.

61. DISH does not present the Digital Home Agreement to consumers until after installing the equipment in their homes. Consumers are not presented a paper copy of the contract to review; rather they are simply asked to sign the installer’s electronic keypad and are frequently unaware that they are signing a contract.

62. A former senior manager for DISH stated that DISH installers are

pressed for time, are paid for the number of completed installations, and would not instruct the customer to read the terms of the contract. **Exhibit A**, p. 5.

VI. DISH profited financially by misleading consumers to believe that their price was not subject to change during the second year of their contracts.

63. DISH profited financially from its decision to remove the “prices are subject to change” disclosure from its sales script, by advertising a price guarantee in 2011, and by instructing its sales representatives to leverage consumer concerns about price increases. DISH designed a sales process that was inherently deceptive. DISH incentivized its sales staff through commissions and then failed to adequately prevent deceptive sales such as those captured in the Attorney General’s investigation.

64. In 2013, DISH raised its monthly prices by \$5.00 on most of its 14 million subscribers. DISH has calculated that the 2013 price increase increased DISH’s annual revenue by \$593 million dollars. DISH consumers who were under contract at the time of the price increase could not walk away from their contracts without paying a substantial early termination fee.

65. DISH became aware of the Attorney General’s investigation in August of 2012. DISH revised its sales scripts on May 22, 2013 to re-insert the “price is subject to change” disclosure. In February of 2014, DISH again raised the price of its programming packages.

FIRST CLAIM FOR RELIEF

Makes false or misleading statements of fact concerning the price of goods, services, or property

(C.R.S. § 6-1-105(1))

66. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 65 of this Complaint.

67. Through the conduct described in this Complaint and in the course of its business, vocation, or occupation, the Defendant has knowingly made false or misleading statements of fact concerning the price of its goods and services and the existence of and amounts of price reductions.

68. DISH misled consumers to believe that they were subscribing to

satellite television services at a price that could not be raised during a two-year contract. Consumers were led to believe that they would pay a certain fixed monthly price for the first year of the contract, and then a certain fixed monthly price for the second year of the contract. DISH then raised the monthly prices for consumers who were in the second year of the contract.

69. By means of the above-described conduct, the Defendant has deceived, misled, and unlawfully acquired money from the public.

SECOND CLAIM FOR RELIEF

Employs "bait and switch" advertising, which is advertising accompanied by an effort to sell goods, services, or property other than those advertised

C.R.S. § 6-1-105(n)

70. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 69 of this Complaint.

71. Through the conduct described in this Complaint and in the course of its business, vocation, or occupation, the Defendant has knowingly made advertisements accompanied by an effort to sell services other than those advertised and on terms other than those advertised, which conduct was accompanied by:

- Accepting a deposit for the goods, property, or services, and subsequently switches to purchase order to higher-priced goods, property or services. C.R.S. § 6-1-105(n)(VI).

72. DISH misled consumers to believe that they were subscribing to satellite television services at a price that could not be raised during a two-year contract. Consumers were led to believe that they would pay a certain fixed monthly price for the first year of the contract, and then a certain fixed monthly price for the second year of the contract. DISH then raised the monthly prices for consumers who were in the second year of the contract.

73. By means of the above-described conduct, the Defendant has deceived, misled, and unlawfully acquired money from the public.

THIRD CLAIM FOR RELIEF
**Failure to disclose material information concerning goods,
services, or property**
C.R.S. § 6-1-105(u))

74. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 – 73 of this Complaint.

75. Through the conduct described in this Complaint and in the course of its business, vocation, or occupation, the Defendant has failed to disclose material information concerning goods, services, or property at the time of sale. Such failures to disclose material information were intended by the Defendant to induce consumers to enter into a transaction with the Defendant.

76. DISH failed to disclose its belief that it has the right to change the price term of its contracts at any given time. DISH deliberately removed the verbal contract disclosure that “pricing is subject to change” from the verbal disclosures that DISH reads to consumers at the time of sale in order to induce the consumer to enter into a transaction.

77. By means of the above-described conduct, the Defendant has deceived, misled, and unlawfully acquired money from the public.

FOURTH CLAIM FOR RELIEF
**Advertises goods, services, or property with intent not to
sell them as advertised**
C.R.S. § 6-1-105(i))

78. Plaintiff incorporates herein by reference all allegations contained in paragraphs 1 –77 of this Complaint.

79. Through the conduct described in this Complaint and in the course of its business, vocation, or occupation, the Defendant has advertised its services with intent not to sell them as advertised.

80. DISH’s advertisements, promotions and sales calls suggested that DISH prices were guaranteed or locked-in during the second year of the consumer’s contract with DISH. Based on its own history of raising prices on an almost annual basis, DISH was aware that it was likely to raise its prices on consumers who were in the second year of their contract.

81. By means of the above-described conduct, the Defendant has

deceived, misled, and unlawfully acquired money from the public.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendant and the following relief:

A. An order declaring the Defendant's above-described conduct to be in violation of the CCPA, C.R.S. § 6-1-105(1) (l), (n), (u) and (i).

B. An order permanently enjoining the Defendant, its officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with the Defendant with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Additional appropriate orders necessary to prevent the Defendant's continued or future deceptive trade practices.

D. A judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to § 6-1-110(1), C.R.S. (2013).

E. An order requiring the Defendant to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed \$2,000 per violation pursuant to § 6-1-112(1)(a), C.R.S. (2014), or \$10,000 per violation pursuant to § 6-1-112(1)(c), C.R.S. (2014).

F. An order requiring the Defendant to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to § 6-1-113(4), C.R.S. (2014).

G. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 2nd day of January, 2015.

JOHN W. SUTHERS
Attorney General

Jeffrey M. Leake

JEFFREY M. LEAKE, 38338*
Assistant Attorney General
JAY B. SIMONSON, 24077*
First Assistant Attorney General
Consumer Protection Section
Attorneys for Plaintiff

*Counsel of Record