

STATE OF COLORADO
OFFICE OF THE ATTORNEY GENERAL

ASSURANCE OF DISCONTINUANCE
IN THE MATTER OF DIRECTV, LLC

This Assurance of Discontinuance (“Assurance”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the State” or “Attorney General”), and Respondent DIRECTV, LLC (“DIRECTV” or “Respondent”). The State and the Respondent are collectively referred to as “the Parties.” This Assurance is entered into pursuant to the Attorney General’s powers under C.R.S. section 6-1-110(2) and constitutes a settlement between the Parties regarding the allegations described below.

I. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), C.R.S. sections 6-1-101, *et seq.*

2. DIRECTV, LLC is a limited liability company with its principal place of business at 2230 E. Imperial Hwy, El Segundo, CA 90245. DIRECTV also has offices in Denver, Colorado.

II. DEFINITIONS

3. The term “Effective Date” means the first date upon which

both Parties execute this Assurance.

4. Unless otherwise specified, all definitions found in C.R.S. section 6-1-102 are incorporated herein by this reference, and any term defined in those sections shall have the same meaning when used in this Assurance.

III. COLORADO ATTORNEY GENERAL'S ALLEGATIONS

5. In September and October 2019, DIRECTV customers in Colorado were unable to watch the Altitude Sports channel because of a contract dispute between Altitude and DIRECTV. The Altitude channel provides live sports broadcasts of the Colorado Avalanche and the Denver Nuggets, whose regular seasons started in October of that year. During this same period of time, all other Regional Sports Network ("RSN") channels carried by DIRECTV (mostly sports broadcasts) were available to DIRECTV consumers in Colorado.

6. Notwithstanding the unavailability of Altitude, DIRECTV continued to charge the full RSN fee to Colorado consumers for those two months. DIRECTV provided credits to customers who called to complain but did not affirmatively provide credits to all customers who paid the RSN fee.

7. The Attorney General contends that DIRECTV's charging the full RSN fee to certain Colorado consumers during a time when live sports programming for the Nuggets and the Avalanche was not available on

Altitude violated the CCPA.

8. DIRECTV began charging the HD fee in the early 2000s, when HD Service was a new additional option, superior to standard-definition service.

9. HD service has been included in DIRECTV's programming packages since at least July 2014. Since that time, DIRECTV stopped charging new customers for HD service as a separate fee.

10. However, DIRECTV continues to charge certain Colorado consumers a separate fee of \$10 per month for HD service.

11. Most of DIRECTV's current package offerings are based on an All-Included model. Under the All-Included model, the price of the package includes monthly service and equipment fees for standard equipment that includes HD service.

12. The Attorney General alleges that DIRECTV's decision to separately charge an HD fee to certain Colorado consumers on a monthly basis violates the CCPA. Some Colorado consumers who are charged this HD fee pay more for comparable service than they would be charged under the All-Included model, where no separate HD fee is charged.

IV. STATUTORY FRAMEWORK

13. Section 6-1-105(1)(kkk) of the CCPA prohibits either knowingly or recklessly engaging "in any unfair, unconscionable, deceptive,

deliberately misleading, false, or fraudulent act or practice.”

V. CONSIDERATION

14. The Parties enter into this Assurance as a compromise and settlement of the Attorney General’s allegations herein. The Parties have consented to the entry of this Assurance without trial of any issue of fact or law. DIRECTV specifically denies it has violated any consumer protection laws, including the CCPA. Except as specifically provided herein, nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, nor shall it constitute any evidence or finding supporting any of the allegations of fact or law alleged by the Attorney General, or any violation of state or federal law, rule or regulation, or any liability or wrongdoing whatsoever.

15. Neither this Assurance, nor any negotiations, statements, nor documents related thereto, shall be offered or received in any legal or administrative proceeding or action as an admission, evidence or proof of any factual allegation, violation, liability, or wrongdoing in connection with any law, rule, or regulation, except in an action by the Attorney General to enforce the terms of this Assurance.

VI. RELEASE

16. The State acknowledges by its execution hereof that this Assurance constitutes a complete settlement and release of all claims under

the CCPA on behalf of the State against DIRECTV or any of DIRECTV's subsidiaries, successors, officers, directors, managers, agents, and employees with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA for the conduct described in this Assurance, that arose prior to the Effective Date and relating to or based upon the acts or practices which are the subject of this Assurance. The terms of this Assurance apply to any and all successors of DIRECTV. The State agrees that, except as provided in this Assurance, it shall not proceed with or institute any civil action or proceeding under the CCPA against DIRECTV for any conduct or practice prior to the Effective Date which relates to the subject matter of this Assurance.

VII. MONETARY RELIEF

17. To resolve the Altitude related allegations, DIRECTV will pay the State a total amount of \$1,022,000. This amount will compensate approximately 204,360 Colorado consumers who paid the RSN fee during September and October 2019, when the Avalanche and Nuggets were unavailable to DIRECTV customers on the Altitude Sports Network.

18. In lieu of making the payment directly to the Attorney General, DIRECTV will pay \$5.00 as a credit to the accounts of eligible current customers and will mail a \$5 check to eligible former customers, within 60 days after the Effective Date of this Assurance. All checks mailed

pursuant to this Paragraph 18 must contain the language, “Check will be void after 90 days,” or similar language. Eligible customers are those Colorado customers who paid the RSN fee when the Altitude channel was unavailable in September-October 2019. Any customer who previously received a credit of at least \$5.00 connected to the loss of Altitude programming prior to December 31, 2019 is excluded.

19. DIRECTV shall be permitted to offset the \$5.00 credit against any past due amounts owed by the customer.

20. Prior to or simultaneous with the payment or account credit, DIRECTV shall provide a one-time written notification to the Colorado customers who are due a \$5.00 account credit or check.

- a. For current Colorado customers, the notice must be clearly and conspicuously provided under one of the following options: 1) on the first or separate second page of the billing statement; 2) in a separate bill insert; 3) via email (if DIRECTV has an email); or 4) by direct mail. The notice to current Colorado customers shall use the exact language as agreed to by the Parties.
- b. For former Colorado customers, DIRECTV must provide the written notice by mail to the former customer’s last known address. The notice to former customers shall use the exact language as agreed to by the Parties. This notice

must be in a cover letter in the same envelope as the check.

21. Within 30 days after completion of the payments and credits described in Paragraph 18 above, DIRECTV shall provide to the Attorney General a report of its payments under Paragraph 18. Such report shall include, at a minimum, 1) confirmation that the payments and credits have been made, and 2) sample notices to current Colorado customers and former Colorado customers.

22. If a check to a former Colorado customer is returned or not cashed within 90 days, DIRECTV shall cancel such check or stop payment and issue an aggregated check payable to the Attorney General in an amount equal to the total amount of the uncashed or unreceived checks. DIRECTV shall also identify for the Attorney General, in writing, each Colorado customer who was to receive, but did not receive, such refunds or payments. DIRECTV may redact the customers' names and account numbers and replace them with new identifying information, including a unique number for each customer. The Attorney General will accept the information in this form. However, should the Attorney General request the information in an unredacted form, the Parties agree to confer in good faith about the Colorado Attorney General's request and the applicable legal requirements.

23. Within 30 days of the Effective Date of this Assurance, DIRECTV shall pay an additional \$250,000 as compensation for the State's

investigation and as equitable relief associated with the conduct alleged above. The Parties agree and acknowledge that the amounts to be paid under this Assurance do not constitute a penalty, fine, forfeiture, or payment in lieu thereof, nor any other form of assessment for any alleged claim or offense.

24. Payments to the Attorney General under paragraphs 22 and 23 shall be in the form of a certified check, cashier's check, or money order made payable to the "Colorado Department of Law," shall reference "DIRECTV," and shall be delivered to:

Mica Moore, Program Assistant
Consumer Protection Section
Colorado Department of Law
1300 Broadway, 7th Floor
Denver, Colorado 80203

Such payments shall be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud, consumer credit or antitrust enforcement, consumer education, or public welfare purposes.

25. To resolve the allegations relating to the HD fee (which includes the standalone fee for HD service and the Advanced Receiver Service fee if it contains an HD component), DIRECTV will provide monthly credits to approximately 15,000-20,000 Colorado customers who

are currently being charged the HD fee as described above.

26. Beginning 75 days after the Effective Date, and continuing for the subsequent 27 months, DIRECTV shall provide a recurring monthly credit to the approximately 15,000-20,000 customers who are being charged the HD fee and would save at least \$1.00 less per month under the most comparable All-Included Package, which does not have a separate invoiced fee for HD (hereinafter "HD Credit Customers"). The monthly credit shall be equal to the monthly price differential between the HD Credit Customer's current pricing construct compared to the most similar All-Included pricing construct. In no event shall the monthly credit amount be less than \$1, nor shall it exceed \$3, except as provided by Paragraph 35. DIRECTV's obligation to provide the credit expires if the service address is no longer based in Colorado, upon the termination of the current customer account, or if the customer goes into default for non-payment. DIRECTV will provide the Attorney General the information that DIRECTV used to identify the HD Credit Customers for purposes of restitution and how it calculated the cost difference stated in this Paragraph. Afterwards, the Attorney General may request, in his discretion, and DIRECTV shall timely provide additional information where necessary relating to the cost difference.

27. Within 60 days of the Effective Date of this Assurance, DIRECTV shall provide a list to the Attorney General of each and every HD

Credit Customer who will receive the credit and the amount of credit that each HD Credit Customer will receive. DIRECTV may redact the customers' names and account numbers and replace them with new identifying information, including a unique number for each customer. The Attorney General will accept the information in this form. However, should the Attorney General request the information in an unredacted form, the Parties agree to confer in good faith about the Colorado Attorney General's request and the applicable legal requirements.

28. If DIRECTV fails to issue the report referenced in paragraph 27 above within 60 days, and/or the first monthly credit to all HD Credit Customers within 106 days of the Effective Date, the number of months DIRECTV will pay the credits will increase as follows. For every 15 days after the 60-day reporting period and/or the 106-day credit issuance period, DIRECTV shall pay the credit for one additional month. For example, if DIRECTV fails to issue the first credit to all HD Credit Customers within 121 days from the Effective Date, DIRECTV shall pay the monthly credit for 28 months.

29. Concurrent with providing the first monthly credit referenced in Paragraph 26 above, DIRECTV shall provide Colorado HD Credit Customers with a one-time notice that must be clearly and conspicuously provided under one of the following options: 1) on the first or separate second page of the billing statement; 2) in a separate bill insert; 3) via

email (if DIRECTV has an email); or 4) by direct mail. The notice to former customers shall use the exact language as agreed to by the Parties, which shall include the following core elements: 1) The consumer is paying a separate monthly fee for HD service; 2) The consumer is paying more than they would under a comparable All-Included Package; 3) As a result of a settlement with Colorado Attorney General Phil Weiser, the consumer is receiving a credit of \$1-\$3 for a period of 27 months.

30. Three months prior to the expiration of the HD credit period (e.g., in month 24 if the HD credit period is not extended under Paragraph 28), DIRECTV will send an additional notice to the customers who are still receiving the HD credit, inviting them to contact DIRECTV in a manner specified in the notice, to see if they are still qualified to receive the same credit in the future. The notice must be clearly and conspicuously provided under one of the following options: 1) on the first or separate second page of the billing statement; 2) in a separate bill insert; 3) via email (if DIRECTV has an email); or 4) by direct mail. The notification shall use the exact language as agreed to by the Parties. DIRECTV's final report to the Attorney General shall include information regarding any customers who contacted DIRECTV pursuant to the terms of this Paragraph and the action DIRECTV took in response.

31. Within 45 days after the first monthly credit has been issued to all eligible customers, DIRECTV shall provide a report to the Attorney

General detailing its compliance with the obligations set forth in Paragraphs 26-29, above. Such report shall include, at a minimum, 1) a list of the customers who received the credit referenced in Paragraph 26, above; 2) the amount of the credit each customer received; 3) sample notices; and 4) copies of all emails received at the designated email address described in Paragraph 33, below. DIRECTV may redact the customers' names and account numbers and replace them with new identifying information, including a unique number for each customer. The Attorney General will accept the information in this form. However, should the Attorney General request the information in an unredacted form, the Parties agree to confer in good faith about the Colorado Attorney General's request and the applicable legal requirements.

32. Every 12 months thereafter, DIRECTV shall provide reports to the Attorney General detailing its compliance with the obligations set forth in Paragraphs 26-31, above. Such reports shall include, at a minimum, 1) a list of the customers who received the credit referenced in Paragraph 26, above; 2) the amount of the credit each customer received; 3) samples of any further notices DIRECTV has provided pertaining to the credit; and 4) copies of all emails received at the designated email address described in Paragraph 33, below. DIRECTV may redact the customers' names and account numbers and replace them with new identifying information, including a unique number for each customer. The Attorney

General will accept the information in this form. However, should the Attorney General request the information in an unredacted form, the Parties agree to confer in good faith about the Colorado Attorney General's request and the applicable legal requirements.

33. DIRECTV agrees to provide a designated email address for Colorado customers who have questions about this Assurance. The designated email address will be directed to appropriate DIRECTV personnel who have been trained to answer questions about this Assurance. DIRECTV shall confirm receipt to all email inquiries within 24 hours and begin investigating and preparing a detailed response. If a customer requests to speak with a representative over the telephone, DIRECTV shall make specifically trained personnel available for a telephone call in response to the customer's request. DIRECTV shall implement appropriate procedures for routing Colorado customers who inquire about this Assurance through a general DIRECTV customer service number or through any online customer service platform to the appropriate personnel described in this Paragraph. The designated email address will be set forth in the notices described herein.

34. DIRECTV reaffirms and attests to the truthfulness, accuracy, and completeness in all material respects of all of the information DIRECTV provides and has provided to the Attorney General in connection with entry of this Assurance to the best of its knowledge.

35. In addition to all other remedies afforded under this Agreement, if the Attorney General obtains information that the price differential between any HD Credit Customer's current pricing construct compared to the most similar All-Included pricing construct is greater than the price differential that DIRECTV calculated under Paragraph 26, above, the Attorney General may make further inquiries or investigation. DIRECTV agrees to cooperate fully with any such reasonable inquiry or investigation, including but not limited to 1) responding to consumer complaints that the Attorney General forwards to DIRECTV; 2) promptly responding to reasonable requests for information made by the Attorney General; 3) making relevant DIRECTV employees available for interviews and/or Civil Investigative Demand ("CID") testimony; and 4) if necessary in the Attorney General's sole discretion, conducting an audit of DIRECTV's calculations in full cooperation with the Attorney General. If any audit or investigation shows that DIRECTV miscalculated the differential for any HD Credit Customer or group of HD Credit Customers, DIRECTV shall make up the difference for all such HD Credit Customers for the entirety of the 27-month credit period and any extension of such period under Paragraph 28.

VIII. NOTICE

36. Whenever notice must be provided to the Attorney General pursuant to the terms of this Assurance, such notice shall be made by first-

class mail, return receipt requested, or email addressed to the following:

To the Attorney General:

Mark T. Bailey
Senior Assistant Attorney General II
Mark.Bailey@coag.gov

Abigail Hinchcliff
First Assistant Attorney General
Abigail.Hinchcliff@coag.gov
Consumer Fraud Unit
1300 Broadway, 7th Floor
Denver, CO 80203
Fax: 720-508-6040

To DIRECTV:

Clayton S. Friedman
Crowell Moring
3 Park Plaza, 20th Floor
Irvine, CA 92614
Cfriedman@crowell.com

IX. GENERAL PROVISIONS

37. Scope of Assurance. This Assurance shall apply to Respondent, its successors and assigns, affiliates, and subsidiaries.

38. Preservation of Law Enforcement Action. Nothing herein precludes the Attorney General from enforcing the provisions of this Assurance or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Respondent not Released herein or any acts or practices in which Respondent engages after the Effective Date of this Assurance.

39. Enforcement. Proof by a preponderance of the evidence of a

violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with C.R.S. § 6-1-110(2).

40. Compliance with and Application of State Law. Nothing herein relieves Respondent of the duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the State or the Attorney General for Respondent to engage in acts and practices prohibited by such laws. This Assurance shall be governed by the laws of the State of Colorado.

41. No Third-Party Beneficiaries Intended. This Assurance is for the benefit of the Parties only and does not create or confer rights or remedies upon any other person, including rights as a third-party beneficiary except as otherwise provided herein. This Assurance does not create a private right of action on the part of any person or entity, whether to enforce this Assurance or otherwise, other than the Parties hereto.

42. Waiver and Amendment. No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing and agreed upon by the Parties affected by the waiver, modification, or amendment, and then only to the extent specifically set forth in such written waiver, modification, or amendment.

43. Severability. If any clause, provision, or section of this Assurance is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the

remaining provisions, clauses, or sections shall not in any way be affected or impaired, and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

44. Complete Agreement. This Assurance represents the entire agreement between the Parties hereto and a complete merger of prior negotiations and agreements. No other written or oral terms or agreements exist except for those contained in this Assurance.

45. Public Record. This Assurance shall be a matter of public record.

46. Jointly Drafted. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted jointly by all Parties and, in the event of any dispute arising out of this Assurance, shall not be construed against or in favor of any Party.

47. Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of any of the Respondent's past, present, or future business practices, and Respondent shall not make any representation to the contrary.

48. Voluntary Agreement. Respondent acknowledges that it has had an adequate opportunity to review this Assurance and consult with legal counsel in connection with the negotiation, drafting, and execution of this Assurance. Each Party and signatory to this Assurance represents

that he, she, or it freely and voluntarily enters into this Assurance without any degree of duress or compulsion.

49. Entire Agreement. Respondent agrees and represents that Respondent has read and understands this Assurance, accepts the legal consequences involved in signing this Assurance, and that there are no other representations, agreements, or understandings between Respondent and the Attorney General that are not stated in writing herein.

50. Signatures. Facsimiles of signatures and signatures provided by portable documents format (.pdf) or other electronic image format shall constitute acceptable, binding signatures for all purposes of this Assurance. This Assurance may be executed in one or more counterparts, taken together shall constitute the entire agreement. If Respondent fails to execute this Assurance, the Attorney General and the State shall not be bound by any provisions herein.

51. Except as otherwise set forth herein, any and all documents relating to the Attorney General's investigation of DIRECTV and DIRECTV's compliance with this Assurance are subject to the terms of the Attorney General's September 17, 2020 letter to Clayton S. Friedman.

52. Nothing in this Assurance shall be construed to limit or to restrict DIRECTV's right to use this Assurance to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and

settlement, accord and satisfaction, or any other legal or equitable defense in any pending or future legal or administrative action or proceeding.

53. If the Attorney General determines that DIRECTV has failed to comply with any provision of this Assurance, and if in the Attorney General's sole discretion, the failure to comply does not threaten the health, safety, or welfare of the citizens of Colorado, the Attorney General will notify DIRECTV in writing and specify the issue of noncompliance. DIRECTV shall then have fifteen (15) business days after receipt of the written notice to provide a written response to the Attorney General, which may include (a) a statement why DIRECTV believes it is in compliance with the Assurance; or (b) a statement explaining how the alleged breach occurred, and how and when it will be addressed or corrected, as necessary. Upon request by DIRECTV, a representative of the Attorney General shall meet with DIRECTV at DIRECTV's expense to discuss the alleged failure to comply and/or DIRECTV's response thereto.

Jointly approved and submitted for entry on behalf of:

STATE OF COLORADO, *ex rel.*
PHILIP J. WEISER, Attorney General

By: 

Dated: 6/1/21

Mark T. Bailey
Senior Assistant Attorney General II
Colorado Department of Law

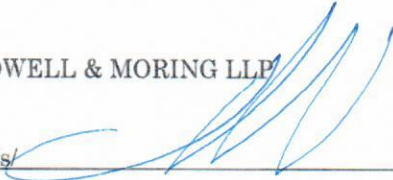
DIRECTV, LLC

By: /s/

Dated: _____

Robert B. Mullen
AVP – Senior Legal Counsel

CROWELL & MORING LLP



Dated: 6/2/21

Clayton S. Friedman
Counsel for DIRECTV, LLC