

DirecTV and FTC Face Off in Federal Court Over Deceptive Pricing Claims; FTC Seeking \$4 Billion in Equitable Relief

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A bench trial began this week to resolve allegations by the FTC that DirecTV misled millions of consumers about the actual costs of its subscriptions. According to the FTC, DirecTV should be required to pay \$3.95 billion dollars to compensate consumers for failing to disclose that it would raise its monthly subscription price after a consumer subscribed for three months, and then again after a year. The FTC also alleged that DirecTV failed to disclose to consumers that an early termination fee would apply if consumers tried to cancel before those increases, or any time before the initial two year contract period expired.

The FTC filed its [complaint](#) back in March 2015 in the U.S. District Court for the Northern District of California and pointed to allegedly deceptive hard copy advertisements and internet sales through DirecTV's website. The complaint alleges violations both of the FTC Act and the Restore Online Shoppers' Confidence Act (ROSCA), which imposes specific requirements on negative option offers on the internet. DirecTV filed an unsuccessful partial motion for summary judgment on the ROSCA claims, as we previously discussed [here](#).

More than two years after the initial complaint, settlement discussions fell through when FTC Commissioner Terrell McSweeney indicated she would not support an undisclosed settlement based on skepticism about the scope of equitable monetary relief and injunctive relief of the settlement. The \$3.95 billion figure espoused by FTC attorneys in the first day of the bench trial sheds some light on why earlier negotiations may have ultimately fell through.

In the second day of trial, the FTC pressed DirecTV executives -- now part of AT&T, Inc. -- regarding the percentage of consumers misled by its billing practices according to internal surveys. The executive argued that, while there was indeed some evidence of consumers being confused about pricing practices, he did not believe such confusion was related to DirecTV's subscription price increases or early termination fees.

And in the third day of trial on Thursday, DirecTV's former chief sales and marketing officer Paul Guyardo testified that he instructed his team to place the disclosure at the bottom of the page in small font. When certain team members expressed concerns, Guyardo told them to proceed because he didn't think the disclosure needed to be prominent at that point in the marketing campaign, according to his testimony. The requisite size and location of disclosures for promotional offers is at the heart of the case.

The trial is expected to last a few weeks and is being presided over by U.S. District Judge Haywood S.

Gilliam Jr.