

Will the FTC's Deception Evidence Fall Short? Court to Rule in DirecTV Case

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U.S. District Judge Haywood S. Gilliam Jr. said Friday that the court would pause the trial to consider whether the FTC presented sufficient evidence to support its allegations that DirecTV misled consumers by failing to adequately disclose the terms of its two-year subscription and introductory pricing offer. The judge instructed attorneys for DirecTV to file their partial judgment motion and a brief on findings of fact within two weeks. The FTC will then have two weeks to respond to the motion and submit its own findings of fact.

As we previously discussed [here](#) and [here](#), the FTC is seeking almost \$4 billion in equitable relief based on allegations that DirecTV misled consumers by 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 case involves alleged violations of the FTC Act and the Restore Online Shoppers' Confidence Act (ROSCA). Over the first ten days of trial, testimony has addressed an array of issues from the proportion of consumers who may have been misled, to the proper calculation of damages assuming they were misled.

Most recently, last Friday, attorneys for DirecTV questioned the FTC's expert, University of San Francisco economics professor Daniel Rascher, on the basis for calculating that DirecTV should pay almost \$4 billion in equitable relief. DirecTV's attorneys argued that the figure fails to account for what proportion of consumers were actually misled. Rascher countered that his role was not to analyze and interpret the ads but to calculate unjust gains based on DirecTV's customer billing data. After Rascher's testimony, the FTC rested its case and Judge Gilliam addressed DirecTV's partial judgment bid by pausing the trial and giving DirecTV two weeks to brief the issues.

We'll continue to monitor and post updates related to the case here.