

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

Richard Healy,

Plaintiff,

v.

Cox Communications, Inc.,

Defendant.

Case No. CIV-12-481-C

CLASS ACTION COMPLAINT

Plaintiff Richard Healy, on behalf of himself and a class of similarly situated individuals, brings this Class Action Complaint against Cox Communications, Inc. and alleges the following:

INTRODUCTION

1. This is a class action brought on behalf of all persons who reside in Cox's Oklahoma City market, who have purchased Premium Cable (as defined herein) from Cox, and who have been compelled to rent a set-top box distributed by Cox. Premium Cable subscribers cannot view or access all of the services to which they subscribe without a set-top box, which connects to, and is essentially an extension of, a television set. Cox abuses its substantial economic power in the market for Premium Cable by forcing subscribers, as a condition of purchasing its Premium Cable services, to rent the set-top boxes that it distributes.

2. That conduct enables Cox to severely constrain competition in the market for the sale or lease of set-top boxes and to extract supra-competitive profits from Class Members. Cox's conduct has had and continues to have substantial adverse effects upon interstate commerce and has caused and continues to cause direct economic injury to Class Members.

3. As set forth below, Cox has tied the distribution of set-top boxes to the provision of Premium Cable and has thereby unreasonably restrained trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

THE PARTIES

4. Plaintiff Richard Healy is a citizen of the State of Oklahoma who resides in Oklahoma City, Oklahoma County. At all material times, Plaintiff Healy has subscribed to Premium Cable provided by Cox.

5. Defendant Cox Communications, Inc., is a Delaware corporation with its principle place of business in Atlanta, Georgia.

6. Among other communications endeavors, Cox provides multi-channel video programming distribution through a cable network and leases set-top boxes.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337, in that Plaintiff, on his own behalf and on behalf of the Class, asserts claims under the Sherman Act, 15 U.S.C. § 1.

8. Venue is proper in this Court under 15 U.S.C. § 22 because Cox may be found here and transacts business here.

FACTUAL ALLEGATIONS

9. Cox is one of the five largest providers of cable multi-channel video programming distribution (MVPD) in the United States.

10. Cable MVPD providers tend not to compete with one another and face little, if any, competition from MVPD providers who use another format besides cable. Accordingly, Cox has substantial economic power in the areas in which it operates, including in its Oklahoma City market.

11. Cox, through the conduct described herein, abuses its economic power over cable MVPD and commits a classic tying violation. More specifically, it compels consumers who purchase its Premium Cable services to also rent a separate product that it distributes. That separate product, a set-top box, is essentially an extension of a television set that consumers must use to access the full range of Premium Cable services that they have purchased. The monthly rental fee that Cox forces consumers to pay for set-top boxes quickly adds up to more than the cost that Cox pays to purchase set-top boxes from their manufacturers.

The Tying Product: Premium Cable

12. Cox, like other cable MVPD providers, offers two cable products, Basic Cable and Premium Cable.

13. Basic Cable consists of a relatively small number of networks or channels, including local channels. For that service, Cox charges a monthly fee.

14. Premium Cable is a higher quality, more extensive and more user-friendly product than Basic Cable. It includes an interactive programming guide, which enables

subscribers to quickly navigate through their substantial array of channels and determine when and where particular programs will appear; pay-per-view, which allows subscribers to purchase special programs like live sporting events that are not otherwise broadcast; on-demand, which allows subscribers to watch certain programs whenever they choose simply by pushing a button; high-definition channels, which present programs in a crisper, more life-like format than their standard counterparts; a range of premium and specialty channels such as the History Channel and various sports channels; and a range of channels that subscribers can pay to receive such as HBO.

15. Premium Cable is a uniquely desirable product because it allows consumers, without leaving the comfort of their home and without resorting to multiple systems, to efficiently sift through a wide number of programs and find one that suits their interest at any given moment. Approximately two-thirds of Cox's Oklahoma City video customers subscribe to Premium Cable.

16. Customers who subscribe to Premium Cable must also subscribe to Basic Cable. They pay a significant additional monthly fee for Premium Cable. When subscribers access their pay-per-view service and order a particular pay-view-program they pay another fee.

17. A testament to Premium Cable's popularity, the Federal Communications Commission's ("FCC") Thirteenth Annual Report ("the Report") on video programming, indicates that in 2005, there were almost 97 million Premium Cable subscriptions in the United States.

18. The popularity of Premium Cable is shaping the entire cable MVPD industry and, as the Report notes, is one of the major factors behind the industry's projected growth to \$72.9 billion in 2006, up 11.1 percent from 2005.

19. As described in further detail below, Premium Cable subscribers cannot access Premium Cable by simply plugging Cox's MVPD cable into a television. Instead, they need an additional product to interface between the MVPD cable and a television. In contrast, Basic Cable subscribers can access Basic Cable by plugging the MVPD cable into most modern televisions, which are "cable-ready."

20. A digital receiver or digital converter, which is commonly referred to as a set-top box, is the only product that provides an interface between an MVPD cable and a television and that allows customers to access all of Cox's Premium Cable services.

21. As defined herein, Premium Cable means cable video services that subscribers cannot access merely by plugging an MVPD cable into a cable-ready television. That definition includes all of the services described above.

22. Premium Cable is the tying product.

The Tied Product: Set Top Boxes

23. A set-top box is essentially an extension of a television set that enables consumers to use and view Premium Cable.

24. Most televisions sold in the United States during the last decade are capable of receiving certain programs transmitted through a cable MVPD system. As a matter of pure technical capacity, such "cable-ready" televisions would allow consumers to access most premium channels available on Premium Cable.

25. Cable-ready televisions cannot, however, access the interactive programming guide, pay-per-view, or on-demand services that give Premium Cable much of its value. To access those services, consumers need the ability not just to receive signals from a cable MVPD system, but also to communicate with the cable MVPD system and transmit a particular selection from a range of options. It is precisely those services that allow subscribers to personalize their programming choices and that give Premium Cable much of its value and define its unique product nature.

26. A set-top box is the only product that has the required two-way communication capability that allows Cox's consumers to access the full range of Premium Cable services. Premium Cable subscribers must therefore have set-top boxes to access Cox's interactive programming guide, pay-per view and on-demand services.

27. Consumer electronics companies, such as Motorola and Scientific Atlanta, manufacture set-top boxes.

28. Consumers have demonstrated a demand for acquiring set-top boxes apart from Premium Cable. In response, internet retail vendors have sold set-top boxes. Indeed, companies such as TiVo sell set-top boxes for many hundreds of dollars.

29. As described in greater detail below, Cox forces consumers who purchase Premium Cable to rent the set-top boxes from Cox for a monthly fee. That fee is in addition to the fee subscribers pay for their Premium Cable services and is clearly marked on their bill as a fee for set-top boxes.

30. Cox's practice of tying set-top boxes to Premium Cable forecloses most of the competition in the market for set-top boxes.

31. Set-top boxes are the tied product.

Consumers Who Purchase Premium Cable From Cox Are Also Forced To Rent Set-Top Boxes From Cox

32. Cox forces consumers who purchase its Premium Cable service to rent the set-top boxes that it distributes.

33. Cox makes the tying requirement clear on its website, where it states, "In order to receive interactive programming services offered by Cox, such as the Interactive Programming Guide (IPG), On DEMAND, [or] Pay-Per-View, you must rent a digital receiver [a set-top box]." Cox website, <http://ww2.cox.com/residential/oklahomacity/tv/cox-advanced-tv.cox> (last visited April 26, 2012). That language is repeated in slight variations throughout the website.

34. When Premium Cable subscribers contact Cox regarding set-top boxes, Cox's representatives reinforce the requirement that the subscribers must rent set-top boxes from Cox. More specifically, Cox's representatives state: (1) that if subscribers do not have a set-top box, they will not be able to access the interactive programming guide, on Demand, or pay-per-view services, (2) that subscribers cannot purchase a set-top box from Cox, and (3) that if subscribers obtain a set-top box from any source other than Cox, it will not work on Cox's cable MVPD system.

35. That set-top boxes obtained from a source other than Cox will not function on Cox's cable MVPD system is another means of requiring consumers to submit to its illegal tie. The reason those set-top boxes do not function on Cox's cable MVPD system is not because they lack a critical technology over which Cox has sole control, as all set-

top boxes utilize the same basic technology and components. Rather, Cox either instructs its cable MVPD system not to acknowledge those set-top boxes or its cable MVPD system uses a specific software and Cox refuses to download that software onto set-top boxes that it does not distribute.

36. The monthly rental fee that Cox charges consumers for set-top boxes quickly adds up to more than the price that Cox paid to purchase the set-top boxes in the first place. It is estimated that the useful life of set-top boxes runs from five to seven years. Even if Cox purchases set-top boxes for only \$200, Cox's monthly rental fee of at least \$6.99 in its Oklahoma City market will surpass \$200 in less than two years and five months, leaving Cox with a minimum of 2 ½ years of pure profits and consumers with a substantial loss.

37. Congress indicated in Section 629 of the Communications Act that it expects consumers to have choice in their selection of set-top boxes. 47 U.S.C. § 549. The FCC has interpreted Section 629 as prohibiting cable MVPD providers from taking advantage of their security concerns to require consumers to use the set-top boxes that they distribute.

38. Although cable-ready televisions have the technological capacity to receive certain Premium Cable services, cable MVPD providers, including Cox, encrypt or scramble the data they transmit through their cable MVPD systems. This security practice prevents consumers from receiving Premium Cable services to which they do not subscribe. Cable MVPD providers do not employ this security measure for Basic Cable,

which means that consumers can access and view Basic Cable with a cable-ready television.

39. Presently, consumers need a special device to descramble or unencrypt Premium Cable. Consumers who do not have such a device will not be able to access or view the Premium Cable services to which they subscribe.

40. There is no valid reason technologically or otherwise to bundle the device that performs this security function with the digital conversion and two-way communication functions of set-top boxes or to stifle innovation into new technologies by a competitive market. Nevertheless, cable MVPD providers, including Cox, have done just that and have successfully taken steps to ensure that most consumers do not receive the security device separate from a set-top box.

41. In response, the FCC prohibited cable MVPD providers from requiring consumers to use security devices that are integrated with set-top boxes. This prohibition, sometimes referred to as the "integration ban," recognizes that when cable providers succeed in creating an environment in which consumers must use the set-top boxes that they distribute, competition in the set-top box market will be drastically reduced. It also implicitly recognizes that cable providers have economic power in markets related to the provision of cable MVPD.

42. Cox has, at best, made minimal efforts to comply with the integration ban. It nominally offers a device known as a CableCARD, which can perform the required security function and which can be plugged directly into certain cable-ready televisions and, in theory, into certain non-integrated set-top boxes.

43. CableCARDS are by definition not substitutes for set-top boxes, for they do not perform two-way communication and thus do not allow Premium Cable subscribers to access valuable Premium Cable services that they have purchased. Cox is quick to acknowledge as much on its website, where it explains that customers in its Oklahoma City market may rent CableCARDS (from Cox), but that these customers must rent a set-top box from Cox if they want access to Cox's "interactive programming services" (i.e., two-way services), such as the interactive programming guide, On Demand, or pay-per-view. <http://ww2.cox.com/residential/oklahomacity/tv/cox-advanced-tv.cox> (last visited April 26, 2012).

44. Cox has taken additional measures to limit the availability and attractiveness of CableCARDS. For example, the FCC recently found that Cox changed the signal of certain popular channels to a format, "Switched Digital Video," that CableCARDS could not receive in order to make set-top boxes, which can receive that format, more attractive. *In the Matter of Cox Communications, Inc., Fairfax County, Virginia Cable System*, File No. EB-07-SE-351 (Oct. 15, 2008).

45. Among other things, Cox also requires Premium Cable subscribers to rent the CableCARDS that it distributes and charges them an installation fee. That charge is particularly egregious, as the installation simply consists of inserting a CableCARD into an open slot in a cable-ready television.

46. Most significantly, Cox has distributed a strikingly small number of CableCARDS. According to the National Cable and Telecommunications Association's

filings with the FCC, at the end of May 2009, Cox has less than 40,000 CableCARDs in service. By comparison, Cox has millions of set-top boxes in service.

47. Cox's conduct, along with similar tactics from other cable MVPD providers, led the Consumer Electronics Association to raise an objection with the FCC in December of 2006 detailing how cable MVPD providers were preventing consumer electronics manufacturers from selling unintegrated set-top boxes to consumers.

48. In essence, Cox is doing everything in its power to protect its illegal tie of Premium Cable to set-top boxes.

Cox Possesses Economic Power In The Tying Market

49. As numerous statistics demonstrate, Cox has the requisite economic power to force consumers to submit to its illegal tying practice.

50. Those statistics include direct evidence of Cox's consistently rising price for Premium Cable (without losing customers) and corresponding evidence of Cox's substantial market share.

Cox Regularly Increases The Price Of Premium Cable Without Losing Customers

51. One of the largest cable MVPD providers in the country, including in the Oklahoma City market, Cox has repeatedly raised the price of Premium Cable over the last ten years, including in Cox's Oklahoma City market. For instance, from 2005 to 2009, Cox raised the price of Premium Cable in its Oklahoma City market by more than 22%.

52. At the same time, Cox has gained a substantial number of Premium Cable subscribers over this time period. Again, for example, from 2005 to 2009, Cox has enjoyed a net gain of 64,658 Premium Cable subscribers in its Oklahoma City market.

53. Cox's ability in its Oklahoma City market to raise the price of Premium Cable, without losing Premium Cable customers, demonstrates that it has sufficient economic power to unlawfully tie set-top boxes to Premium Cable in its Oklahoma City market.

Cox Has A Substantial Share Of The Relevant Market

54. The relevant product is the provision of Premium Cable MVPD.

55. The Report found that the demand for Premium Cable's unique and high-quality service has consistently grown since the product's inception.

56. Approximately two-thirds of Cox's video customers subscribe to Premium Cable. In 2009, for instance, 177,916 households in Cox's Oklahoma City market subscribed to Premium Cable.

57. In Cox's Oklahoma City market, a total of 260,648 households subscribed to Premium Cable. 177,916 of those households subscribed to Cox's Premium Cable; Cox captured 68.26% of the Premium Cable market in its Oklahoma City market.

58. Cable MVPD, which consists of Premium Cable and Basic Cable, is the dominant form of MVPD. According to a 2007 Congressional research report, Cable MVPD makes up 69% of all MVPD in the United States.

59. The remaining MVPD is primarily transmitted by satellite. Satellite MVPD, however, is not reasonably interchangeable with cable MVPD. Studies have

found that MVPD users exhibit low rates of switching between cable and satellite. That is especially significant given that, in consumer surveys, satellite users express high levels of satisfaction with their service, while less than fifty percent of cable users express satisfaction with their service.

60. Along with other important distinctions, significant technological differences between cable MVPD and satellite MVPD largely explain why consumers do not consider the two products reasonably interchangeable. Indeed, again using 2009 as an example, satellite MVPD accounted for only 28% of the Oklahoma City MVPD market. (Cox, as described above, captured approximately 68.26% of the Oklahoma City MVPD market.)

61. The infrastructure supporting cable MVPD and the infrastructure supporting satellite MVPD function optimally in different settings. Cable MVPD tends to operate best in more densely populated areas where its network of wires can reach large numbers of people and justify the high cost of building the network. By contrast, satellite MVPD tends to operate best in rural areas, where there is more space to place dishes, fewer buildings such as condominiums that prohibit dishes, and more clear sight lines for dishes to access the sky. Indeed, as the Report found, the technological requirements for satellite MVPD mean that satellite MVPD penetration even varies within specific communities.

62. The equipment that consumers need to access cable MVPD is distinct from the equipment they need to access satellite MVPD. Significantly, replacing cable MVPD with satellite MVPD entails switching costs—in terms of the time required to install the

new equipment, during which consumers may not have any MVPD service—the cost of new equipment and other factors.

63. Cox also maintains that satellite MVPD is not reasonably interchangeable with cable MVPD. Taking advantage of its unique relationship with its expansive customer base, Cox notes on its website that the signal on satellite MVPD is subject to disruption from such common circumstances as rain and wind. Cox website, <http://www.cox.com/facts/default.asp> (“Myth #7”) (last visited April 26, 2012).

64. Moreover, as the Report notes, cable MVPD providers offer premium services not offered by satellite, and the number of consumers who subscribe to Premium Cable continues to grow. Satellite MVPD providers also do not always carry local channels.

65. The Report offers further evidence that satellite MVPD is not a reasonable substitute for cable MVPD. It found that in the few areas where more than one cable MVPD provider operate, the price of cable services has declined by as much as 20%, but in the areas where a single cable MVPD operates, the availability of satellite MVPD has completely failed to restrain the prices of cable MVPD from rising significantly.

66. While other forms of MVPD besides cable and satellite exist, the Report found that they serve small numbers of subscribers in limited areas.

67. Most of those other forms of MVPD transmit data over a “wireline” system. Wireline system including, among other things, cable providers and fiber optic telephone lines. Wireline challengers to an incumbent cable MVPD provider are commonly referred to as “overbuilders.”

68. Potential challengers to an incumbent cable MVPD provider that transmit data through a wireline system, be it cable MVPD or another form of MVPD, face significant entry barriers. Indeed, the Report found that relatively few consumers have a second wireline alternative, whether cable MVPD or another form of MVPD.

69. The first and most basic barrier to entry is the huge cost of building a wireline MVPD system. According to the Report, cable MVPD providers have invested over \$100 billion to construct advanced two-way fiber optic networks. It is estimated that they spent \$10.6 billion on capital improvements in 2005 and \$11.1 billion in 2006. These advances allow cable MVPD providers to offer Premium Cable. An MVPD provider whose infrastructure does not allow it to offer premium services simply cannot compete with an incumbent cable MVPD provider.

70. Moreover, whereas incumbent MVPD providers faced virtually no competition when they were building their infrastructure and have been able to self-finance advanced infrastructure projects with high prices, challengers will have to charge lower, competitive prices and seek outside financing to acquire the necessary infrastructure.

71. Not surprisingly, potential challengers claim that incumbent cable MVPD providers engage in predatory pricing to drive the challengers' revenues down to levels where they cannot recoup the costs of constructing their infrastructure.

72. Incumbent cable MVPD providers thus have a classic first mover advantage and are in a unique position to maintain, and take advantage of, the necessary economies of scale and scope.

73. Second, the FCC found the franchising process in many localities is a barrier to entry. Local franchising authorities often imposed “build-out” requirements mandating that a new entrant overbuild all of the geographic area served by the incumbent cable MVPD providers. They also commonly impose “level playing field” regulations requiring a new entrant to match all of the concessions provided by the incumbent cable MVPD provider. Such requirements create daunting risks for potential challengers, as they force challengers to incur costs even when they are not justified by prevailing market conditions. In addition, the FCC found evidence of regulatory capture of the local franchising authorities by incumbent cable MVPD providers, including unreasonable delays in determining whether to grant challengers franchises and demanding in-kind payments from challengers. As a consequence, the FCC recently promulgated rules intended to limit the negative effects of local franchising authorities.

74. A third entry barrier is that incumbent cable MVPD providers offer valuable programming to which challenges do not have access. Incumbent cable MVPD providers often have exclusive contracts with key content providers, who control the programming that is most important to consumers, such as regional sports networks. In addition, incumbent cable MVPD providers own or control a number of popular content providers, and, under certain circumstances, are permitted to refuse to provide potential challengers with that content or to provide them content on discriminatory terms. This further limits potential challengers’ ability to offer competitive products.

75. Special circumstances surrounding multiple dwelling units (“MDUs”), such as apartment buildings and cooperatives, form a fourth entry barrier. Incumbent cable

MVPD providers often have long-term contracts, with automatic renewal privileges, to serve as the exclusive MVPD provider for MDUs. With 30% to 35% of the country's population living in MDUs, that means that incumbent cable providers have already locked up a significant segment of potential consumers. Furthermore, these exclusive contracts magnify the impediments created by build-out requirements, which would require potential challengers to pay to extend their wireline systems to countless MDUs where they have little hope of obtaining customers.

76. Thus, even assuming that other forms of wireline MVPD are substitutes for cable MVPD, the many substantial entry barriers have kept their market share so low that they lack the power to constrain cable MVPD providers.

77. As for potential cable MVPD challengers, the Report found that, due to these entry barriers, they cannot reasonably expect to capture more than a fraction of the incumbent cable MVPD provider's business.

78. Similarly, the Report stated that the entry barriers have led incumbent cable MVPD providers to "cluster" their systems in different areas rather than directly compete against each other.

79. In Cox Communications' 2005 10-K Annual Report, Cox notes that it has pursued this "[c]lustering" strategy.

80. Even more significantly, the 2005 10-K Annual Report acknowledges that:

the number of competing cable systems in Cox's service areas has been relatively slight, and fewer than 8% of Cox's total homes passed are overbuilt by other cable operators at this time . . . Cox believes that the current level of overbuilding has not had a material impact on its operations

81. Thus there is no product that is reasonably interchangeable with cable MVPD that has any appreciable market share or that threatens the economic power of incumbent cable MVPD providers.

82. Market data further highlights the strength of these entry barriers and the dearth of competition for incumbent cable MVPD providers. This data demonstrates that Cox has captured at least 65% of the Premium Cable market in its Oklahoma City geographic market.

83. The foregoing makes clear that Cox has sufficient economic power in all of the areas in which it operates to enforce its illegal tying scheme.

84. Indeed, Cox has such a staggering share of the potential subscribers in the areas in which it operates, including in its Oklahoma City market, that even if satellite MVPD was considered part of the relevant market, Cox would still have sufficient economic power to enforce its illegal tie.

85. Cox's economic power over the provision of cable MVPD translates into power over both Basic Cable and Premium Cable. That is because the two products are distributed over the same cable MVPD network.

86. The relevant geographic market is the area in which Cox provides Premium Cable in its Oklahoma City market.

87. As Cox's 325 Filings and other documents indicate, Cox has sufficient market power in its Oklahoma City market to impose the unlawful tie.

88. Cox also applies uniform policies throughout the areas in which it operates, including in Oklahoma City. In Cox's own words:

The fact is that while the alleged practices at issue involving the sale of premium video services, the leasing of set-top boxes, and the provision of cable cards occur at Cox's various cable systems, these practices derive by and large from business decisions that are overseen by various corporate departments at Cox's corporate headquarters in Atlanta.

(Reply to Plaintiffs' Responses to Pending Motions to Transfer Related Antitrust Actions to the Middle District of Georgia for Consolidated Pretrial Proceedings, at 7).

89. Cox possesses the requisite economic power to impose a tie, including in its Oklahoma City market, and imposes the same relevant policies in all of the areas in which it operates, including in its Oklahoma City market. Accordingly, Cox's Oklahoma City market qualifies as one geographic market for the purposes of this matter.

Cox's Illegal Tie Affects A Not Insubstantial Amount Of Commerce In The Market For Set-Top Boxes

90. Only Premium Cable subscribers will seek to acquire set-top boxes.

91. Consumers seeking set-top boxes have purchased them from retailers online and in electronics stores. Companies such as TiVo sell a single set-top box for hundreds of dollars.

92. Given the efforts of Cox and the other cable MVPD providers to control the provision of set-top boxes through the illegal tie, the fact that set-top boxes are being sold at all shows the eagerness of consumers to secure set-top boxes in an open market.

93. Consumer electronics manufacturers have noted that eagerness and objected to the FCC regarding the conduct of cable providers that restricts their ability to sell unintegrated set-top boxes to Premium Cable subscribers.

94. The fact that Premium Cable subscribers have, for the most part, succumbed to cable MVPD providers' inflated pricing of set-top boxes offers additional incentive to consumer electronics manufacturers, for it shows the high value that consumers place on Premium Cable and set-top boxes. Indeed, with their history of entering a wide range of markets and offering innovative, attractive, and successful products, the prospect for consumer electronics manufacturers to sell unintegrated set-top boxes to Premium Cable subscribers should be great.

95. If not for Cox's and the other cable MVPD providers' illegal tying practices, substantially more set-top boxes would be sold on the open market than is presently the case.

Cox's Illegal Tie Affects A Not Insubstantial Amount Of Interstate Commerce

96. Cox provides cable MVPD to millions of customers throughout the United States.

97. Many of those customers, including more than 175,000 annually in the Oklahoma City market, subscribe to Cox's Premium Cable services. Almost every single member of that group rents set-top boxes from Cox, which Cox purchases from consumer electronics manufacturers in different parts of the country.

98. The amount of money Cox generates from renting set-top boxes to its Oklahoma City market customers is certainly not insubstantial.

CLASS ACTION ALLEGATIONS

99. Pursuant to Fed. R. Civ. P. 23(b)(1), (2) and (3), Plaintiffs bring this action on behalf of themselves and all others similarly situated as members of the proposed Class. That Class is defined as follows:

All persons in Cox's Oklahoma City market who subscribed to Cox for Premium Cable and paid Cox a monthly rental fee for an accompanying set-top box.

Excluded from the Class are Cox's officers, directors or employees; any entity in which Cox has a controlling interest; the affiliates, legal representatives, attorneys, heirs or assigns of Cox; Plaintiffs' counsel; any federal, state, or local governmental agency; and any judge, justice, or judicial officer presiding over this matter and members of their immediate families and judicial staffs.

100. Plaintiffs seek certification of the Class under Federal Rules of Civil Procedure Rule 23(a) and (b)(3).

101. Numerosity: The members of the Class are so numerous that their individual joinder would be impracticable in that: (a) the Class includes thousands of individual members; (b) it would be impractical and a waste of judicial resources for each of the thousands of individual Class members to be individually represented in separate actions; and (c) the relatively small amount of damages suffered by individual Class members does not make it economically feasible for those Class members to file individual actions to protect their rights.

102. Commonality/Predominance: Common questions of law and fact predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Cox is liable to Plaintiff and the Class for violations of federal antitrust laws;
- b. Whether Cox has established an unlawful tying arrangement for the rental of set-top boxes, in violation of federal laws;
- c. Whether Cox's actions have caused damages to Plaintiff and the Class;
- d. Whether Cox should be enjoined from further violations of state and federal laws;
- e. Whether Cox is liable to Plaintiffs and the Class for treble damages as a result of its violation of federal antitrust laws.

103. Typicality: Plaintiff's claims are typical of the claims of the Class members. Plaintiff and all Class members have been injured by the same wrongful practices engaged in by Defendant. Plaintiff's claims arise from the same practices and course of conduct that gives rise to the claims of the Class members and are based on the same legal theories.

104. Adequacy: Plaintiff will fully and adequately assert and protect the interests of the Class he seeks to represent. Plaintiff has retained counsel who are experienced in class actions and complex mass tort litigation. Neither Plaintiff nor his counsel have interests contrary to or conflicting with the interests of the Class.

105. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims by each of the Class members is economically unfeasible and

impractical. While the aggregate amount of the damages suffered by the Class is in the millions of dollars, the individual damages suffered by each Class member as a result of the wrongful conduct by Defendant is too small to warrant the expense of individual lawsuits. Even if the individual damages were sufficient to warrant individual lawsuits, the court system would be unreasonably burdened by the number of cases that would be filed.

106. Plaintiff does not anticipate any difficulties in the management of this litigation. The federal courts have substantial experience in managing antitrust class actions.

COUNT I

(Violation of Section 1 of the Sherman Act for Unlawful Tying)

107. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

108. The Sherman Act makes it unlawful to enter into a contract in restraint of trade or commerce. 15 U.S.C. § 1. Congress has granted a private right of action to individuals harmed by violations of this act. 15 U.S.C. § 15.

109. Plaintiff, on his own behalf and on behalf of the Class, seeks to recover damages suffered as a result of Cox's violation of the Sherman Act.

110. Cox improperly ties its Premium Cable service to the rental of set-top boxes that it distributes. Specifically, as explained above, Cox provided Premium Cable to

Plaintiff and all Class Members on the condition that Plaintiff and all Class Members also rent the set-top boxes from Cox.

111. No Class Member can untie the two products at issue, Premium Cable and set-top boxes.

112. The market for set-top boxes is separate and distinct from the market for Premium Cable, just as a set-top box is a separate product from Premium Cable.

113. Cox has sufficient economic power in its Oklahoma City market to force Class Members to rent the set-top boxes that it distributes and to deny Class Members the opportunity to acquire set-top boxes in an open market. Indeed, Cox compels Class Members to rent set-top boxes at prices that quickly add up to more than the amount Cox paid to purchase them in the first place.

114. By forcing Class Members to rent the set-top boxes that it distributes, Cox significantly restrains the ability of consumer electronics manufacturers to sell set-top boxes, and the ability of consumers to purchase set-top boxes at retail.

115. This improper tying arrangement harms competition.

116. Cox's conduct affects a substantial amount of interstate commerce in the market for set-top boxes.

117. There is no lawful justification for that conduct, which causes direct harm to the Class Members.

118. Cox's tying arrangement is an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

COUNT II

(Violation of Oklahoma Antitrust Reform Act)

119. Plaintiff hereby incorporates by reference all allegations contained in the preceding paragraphs.

120. Defendant's wrongful acts violated the Federal Sherman Antitrust Act (15 U.S.C. §1, *et seq.*) as set forth above.

121. Defendant's same actions violated the Oklahoma Antitrust Reform Act, Okla. Stat. 79 §§ 201, *et seq.*

COUNT III

(Unjust Enrichment)

122. Plaintiffs hereby incorporates by reference all allegations contained in the preceding paragraphs.

123. Defendant has been unjustly enriched in the amount of the profits it has earned as a result of its conduct as alleged herein.

124. Defendant has been unjustly enriched at the expense of and to the detriment of the Plaintiff and each member of the Class.

125. Defendant should be ordered to disgorge the profits it has made from its wrongful and illegal conduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, demands judgment in his favor and against Cox as follows:

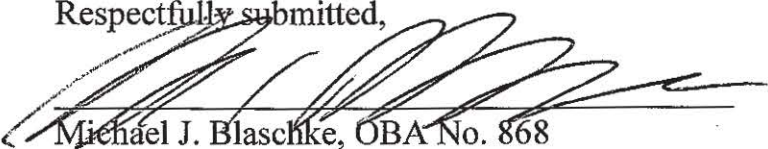
- a. For an order certifying the Class pursuant to Fed. R. Civ. P. 23, appointing Plaintiff as the Class Representative, and appointing counsel as Plaintiff's counsel for the class;
- b. For an Order that Cox violated the Sherman Act, 15 U.S.C. § 1;
- c. For an Order that Cox violated the Oklahoma Antitrust Reform Act;
- d. For an Order that Cox unjustly enriched itself at the Class' expense;
- e. For an Order enjoining Cox from continuing the practice of tying premium cable services to the rental of a set-top box from Cox;
- f. For an award of all statutory damages under the Sherman Act;
- g. For an award of all compensatory and other damages suffered by Plaintiff and the Class;
- h. For an award of all costs incurred by Plaintiff in pursuing this action;
- i. For an award of reasonable attorneys' fees;
- j. For any other relief the Court deems reasonable.

JURY DEMAND

Plaintiff demands a trial by jury of all issues triable.

Dated: April 27, 2012

Respectfully submitted,



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