

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

Civil Action No.: 93-CIV-3913

Filed: June 9, 1993

PRIMESTAR PARTNERS, L.P.;  
ATC SATELLITE, INC.;  
COMCAST CORPORATION;  
COMCAST DBS, INC.;  
CONTINENTAL CABLEVISION, INC.;  
CONTINENTAL SATELLITE COMPANY, INC.;  
COX ENTERPRISES, INC.;  
COX SATELLITE, INC.;  
GE AMERICAN COMMUNICATIONS, INC.,  
GE AMERICOM SERVICES, INC.;  
NEWHOUSE BROADCASTING CORPORATION;  
NEW VISION SATELLITE;  
TELE-COMMUNICATIONS, INC.;  
TCI K-1, INC.;  
TIME WARNER INC.;  
UNITED ARTISTS K-1 INVESTMENTS, INC.;  
VIACOM INC.;  
VIACOM K-BAND, INC.; AND  
WARNER CABLE SSD, INC.,

Defendants.

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COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, in order to prevent and restrain the continuing violation by the

defendants, as hereinafter alleged, of Section 1 of the Sherman Act, 15 U.S.C. § 1, as amended.

2. Each of the defendants transacts business and is found in the Southern District of New York within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

## II.

### DEFINITIONS

3. "DBS" or "Direct Broadcast Satellite" is a multichannel subscription television service in which video signals are transmitted directly to consumers' receiving dishes by a medium-power or high-power satellite.

4. "High-power DBS" is DBS provided by satellites transmitting in the higher frequency, broadcast service portion of the Ku-band frequency spectrum, between 12.2 and 12.7 megahertz (MHz), at power levels of 120 watts and above.

5. "Medium-power DBS" is DBS provided by satellites transmitting in the fixed service portion of the Ku-band frequency spectrum, between 11.7 to 12.2 MHz, at power levels generally between 20 and 60 watts.

6. "MSO" or "multiple systems operator" means an operator of more than one local cable television franchise.

7. "MSO defendants" are Comcast Corporation; Continental Cablevision, Inc.; Cox Enterprises, Inc.; Newhouse Broadcasting Corporation; Tele-Communications, Inc.; Time Warner, Inc.; and Viacom Inc. "MSO defendants" does not include GE Americom

Services, Inc.; GE American Communications, Inc.; and Primestar Partners, L.P.

8. "Multichannel subscription television" means a service providing multiple channels of video programming to consumers by any of various methods, and for which a periodic subscription fee is charged.

9. "Partnership Agreement" is the Limited Partnership Agreement of K Prime Partners, L.P., entered into on or about February 8, 1990, including any subsequent amendments, additions, or deletions.

### III.

#### THE DEFENDANTS

10. Primestar Partners, L.P. ("Primestar") is made a defendant herein. Primestar is a partnership organized and existing under the laws of the State of Delaware, with its principal office in Bala Cynwyd, Pennsylvania. Primestar is a joint venture partnership which was formed by ten partners, all of which are subsidiaries of defendant GE American Communications, Inc. and of the MSO defendants. Primestar was formed on or about February 8, 1990, under the name K Prime Partners, L.P. On February 13, 1991, the Certificate of Limited Partnership of K Prime Partners, L.P. was amended to change the name of the partnership to Primestar Partners, L.P.

11. TCI K-1, Inc. is made a defendant herein. TCI K-1, Inc. is a subsidiary of TCI Investments, Inc., which in turn is a subsidiary of Tele-Communications, Inc. TCI K-1, Inc. is

organized and exists under the laws of the State of Colorado, with its principal office in Denver, Colorado, and is a partner in Primestar Partners, L.P.

12. United Artists K-1 Investments, Inc. is made a defendant herein. United Artists K-1 Investments, Inc. is a subsidiary of United Artists Entertainment Company, which is a subsidiary of Tele-Communications, Inc. United Artists K-1 Investments, Inc. is organized and exists under the laws of the State of Colorado, with its principal office in Denver, Colorado, and is a partner in Primestar Partners, L.P.

13. Tele-Communications, Inc. is made a defendant herein. Tele-Communications, Inc. is the parent of TCI K-1, Inc. and United Artists K-1 Investments, Inc. Tele-Communications, Inc. is organized and exists under the laws of the State of Delaware, with its principal office in Denver, Colorado. Tele-Communications, Inc. is the largest MSO in the United States in terms of the number of subscribers.

14. ATC Satellite, Inc. is made a defendant herein. ATC Satellite, Inc. is a subsidiary of American Television and Communications Corporation, which is a subsidiary of Time Warner Inc. ATC Satellite, Inc. is organized and exists under the laws of the State of Delaware, with its principal offices in Stamford, Connecticut, and is a partner in Primestar Partners, L.P.

15. Warner Cable SSD, Inc. is made a defendant herein. Warner Cable SSD, Inc. is a subsidiary of Warner Cable Communications, Inc., which is a subsidiary of Time Warner Inc.

Warner Cable SSD, Inc. is organized and exists under the laws of the State of Delaware, with its principal office in Stamford, Conn., and is a partner in Primestar Partners, L.P.

16. Time Warner Inc. is made a defendant herein. Time Warner Inc. is the parent of ATC Satellite, Inc.; American Television and Communications Corp.; and Warner Cable SSD, Inc. Time Warner Inc. is organized and exists under the laws of the State of Delaware, with its principal offices in New York, New York. Time Warner Inc. is the second largest MSO in the United States in terms of the number of subscribers.

17. Continental Satellite Company, Inc. is made a defendant herein. Continental Satellite Company, Inc. is organized and exists under the laws of the Commonwealth of Massachusetts, with its principal office in Findlay, Ohio, and is a partner in Primestar Partners, L.P.

18. Continental Cablevision, Inc. is made a defendant herein. Continental Cablevision, Inc. is the parent of Continental Satellite Company, Inc. Continental Cablevision, Inc. is organized and exists under the laws of the State of Delaware, with its principal offices in Boston, Massachusetts. Continental Cablevision, Inc. is the third largest MSO in the United States in terms of the number of subscribers.

19. Comcast DBS, Inc. is made a defendant herein. Comcast DBS, Inc. is a subsidiary of Comcast Cable Communication, Inc., which is a subsidiary of Comcast Corporation. Comcast DBS, Inc. is organized and exists under the laws of the State of Delaware,

with its principal office in Philadelphia, Pennsylvania, and is a partner in Primestar Partners, L.P.

20. Comcast Corporation is made a defendant herein. Comcast Corporation is the parent of Comcast DBS, Inc. Comcast Corporation is organized and exists under the laws of the Commonwealth of Pennsylvania, with its principal office in Philadelphia, Pennsylvania. Comcast Corporation is the fourth largest MSO in the United States in terms of the number of subscribers.

21. Cox Satellite, Inc. is made a defendant herein. Cox Satellite, Inc. is a subsidiary of Cox Communications, Inc., which is a subsidiary of Cox Enterprises, Inc. Cox Satellite, Inc. is organized and exists under the laws of the State of Delaware, with its principal office in Atlanta, Georgia, and is a partner in Primestar Partners, L.P.

22. Cox Enterprises, Inc. is made a defendant herein. Cox Enterprises, Inc. is the parent of Cox Satellite, Inc. Cox Enterprises, Inc. is organized and exists under the laws of the State of Delaware, with its principal office in Atlanta, Georgia. Cox Enterprises, Inc. is the fifth largest MSO in the United States in terms of the number of subscribers.

23. New Vision Satellite is made a defendant herein. New Vision Satellite is a New York general partnership owned in part (35%) by Vision Satellite, Inc., a subsidiary of Vision Cable Communications, Inc., which is a subsidiary of Advance Publications, Inc., and, in part (65%) by Newhouse Satellite,

Inc., a subsidiary of NewChannels Corporation, which is a subsidiary of Newhouse Broadcasting Corporation. Newhouse Broadcasting Corporation and Advance Publications, Inc. are under common control. New Vision Satellite has its principal office in East Syracuse, New York, and is a partner in Primestar Partners, L.P.

24. Newhouse Broadcasting Corporation is made a defendant herein. Newhouse Broadcasting Corporation is the parent of subsidiaries owning a majority interest (65%) in New Vision Satellite. Newhouse Broadcasting Corporation is organized and exists under the laws of the State of New York, with its principal office in East Syracuse, New York. Newhouse Broadcasting Corporation is one of the ten largest MSOs in the United States in terms of the number of subscribers.

25. Viacom K-Band, Inc. is made a defendant herein. Viacom K-Band, Inc. is a subsidiary of Viacom Inc. Viacom K-Band, Inc. is organized and exists under the laws of the State of Delaware, with its principal office in New York, New York, and is a partner in Primestar Partners, L.P.

26. Viacom Inc. is made a defendant herein. Viacom Inc. is the parent of Viacom K-Band, Inc., and is itself an approximately 76% owned subsidiary of National Amusements, Inc. Viacom Inc. is organized and exists under the laws of the State of Delaware, with its principal office in Dedham, Massachusetts. Viacom Inc. is one of the fifteen largest MSOs in the United States in terms of the number of subscribers.

27. GE Americom Services, Inc. is made a defendant herein. GE Americom Services, Inc. is a subsidiary of GE American Communications, Inc. GE Americom Services, Inc., is organized and exists under the laws of the State of Delaware, with its principal office in Princeton, New Jersey, and is a partner in Primestar Partners, L.P.

28. GE American Communications, Inc. ("GEA") is made a defendant herein. GEA, the parent of GE Americom Services, Inc., is a subsidiary of General Electric Company. GEA is organized and exists under the laws of the State of Delaware, with its principal office in Princeton, New Jersey. GEA is the owner and lessor of the K-1 satellite currently being used by Primestar to transmit a DBS service.

#### IV.

##### CO-CONSPIRATORS

29. Various persons and firms, not made defendants in this Complaint, participated as co-conspirators in the violation alleged and have performed acts and made statements in furtherance thereof.

#### V.

##### TRADE AND COMMERCE

30. Cable television service is available in nearly all urban and suburban areas in the United States, as well as many rural areas. More than 90% of the more than 91 million television households in the United States are in areas served by cable. There are cable television systems in operation in all 50



states, and there are currently more than 55 million cable subscribers.

31. Cable television service generally involves the provider installing the cable for a nominal charge and the consumer paying a monthly fee, generally \$17 to \$25, for access to a group of "basic" programs. Consumers can pay additional flat fees for access to "premium" channels. Consumers can also pay a per-event fee for certain movies or special events ("pay-per-view"). Since 1986, cable television service rates have increased substantially each year, at a rate in excess of the general inflation rate. Recent surveys estimate increases in rates for basic service at approximately 55-60% between 1986 and 1991, with a 15% increase between December 1989 and April 1991 alone.

32. Cable television service generally faces very limited competition from other types of multichannel subscription television service, including C-band satellite, Multichannel Multipoint Distribution Service ("MMDS"), and Satellite Master Antenna Television Systems ("SMATV").

33. Low-frequency C-band satellite service, which is provided via low-power satellite, requires consumers to install satellite receiving dishes 8 to 12 feet in diameter at an installed cost of about \$2,500 or more. More than 3 million C-band dishes have been sold in the United States, mostly for use in rural areas not currently served by cable television service. Because of its high installed cost and the size of the receiving

dish required, C-band satellite is a poor alternative to cable television service for most current or potential cable subscribers.

34. MMDS, which utilizes microwave technology, is currently available in fewer than 100 localities and has fewer than one million subscribers in the United States. MMDS has technological limitations, including line-of-sight requirements, that limit its availability and attractiveness as an alternative to cable television service for most current or potential cable subscribers.

35. SMATV is essentially a private cable system, typically used in apartment buildings or other high-density housing. SMATV has fewer than one million subscribers. SMATV is not an alternative to cable television service for most current and potential cable subscribers.

36. Most television households in the United States today can purchase multichannel subscription television service only from a single local cable distributor. Fewer than 0.5% of the more than 10,000 cable franchise areas have more than one cable system available to local cable subscribers. For most consumers, other means of multichannel delivery are not feasible alternatives.

37. The MSO defendants include the five largest MSOs in the United States in terms of subscribers. In aggregate, the MSO defendants serve more than 50% of the nation's cable subscribers, operating cable systems in nearly every state and providing

programming produced in various states and distributed nationally to their customers.

38. Many MSOs, including the MSO defendants, not only distribute cable programming but also produce it. Such popular cable programming services as Home Box Office, Cinemax, Showtime, The Movie Channel, MTV, VH-1, and Nickelodeon are wholly owned by one or more MSO defendants. In addition, MSO defendants have ownership interests in other programming suppliers, including Turner Broadcasting System, Inc., which operates Cable News Network (CNN), Headline News, Cartoon Channel, and TNT, and such other programming suppliers as The Discovery Channel, Black Entertainment Television, and Lifetime.

39. DBS, and in particular high-power DBS, has been widely viewed, by the defendants as well as by the communications industry generally and others, as having the potential to provide a competitive alternative to cable television service for many consumers.

40. Both medium-power and high-power DBS require smaller and substantially less expensive receiving dishes than does C-band satellite service, and thus are likely to be more attractive to consumers. Medium-power DBS requires a receiving dish of about 2½ to 5 feet in diameter, with an installed cost of less than \$900. High-power DBS will require a receiving dish only 15 to 24 inches in diameter, and is expected to have an even lower installed cost.

41. An important component of successful commercial development of DBS is obtaining a sufficient quantity of popular programming, such as that currently provided to cable subscribers.

42. On or about February 8, 1990, the defendants executed the K Prime Partnership Agreement, and related agreements, forming a partnership joint venture to offer a DBS service using GEA's K-1 satellite, a medium-power Ku-band satellite. On November 5, 1990, Primestar began to offer its multichannel subscription television service to consumers.

43. Primestar is the only DBS service in operation today in the United States. As of March 29, 1993, Primestar had approximately 53,000 subscribers.

44. One of the purposes of forming Primestar was to make it more difficult or more costly for any other medium-power or high-power DBS service to obtain popular cable programming, including both programming owned or controlled by the MSO defendants and other programming.

45. The Partnership Agreement contains a "most-favored nation" clause that requires a partner to make its programming available to Primestar on terms and conditions at least as favorable as those provided to any other DBS service. This clause also prevents the MSO defendants from providing programming to another venture on an exclusive basis. The effect of this clause is to make it more difficult for any other DBS service to obtain popular programming.

46. The activities of defendants, as alleged in this complaint, were within the flow of, and substantially affected, interstate commerce.

VI.

VIOLATION ALLEGED

47. Defendants have engaged, since about February 8, 1990, in a continuing agreement, combination and conspiracy to restrain competition in the provision of multichannel subscription television service, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). This offense is likely to continue unless the relief prayed for is granted.

48. In furtherance of this agreement, combination and conspiracy, the defendants have agreed, combined and conspired to, among other things:

a) establish Primestar Partners, L.P., with the specific purpose to delay, if not preempt, and to raise barriers to entry by other firms into DBS;

b) jointly restrain the availability, or the terms and conditions of availability, of partner-owned or controlled programming to other DBS entrants;

c) jointly discourage nondefendant programmers from making their programming available to other DBS entrants or potential DBS entrants; and

d) facilitate a coordinated retaliatory response by the MSO defendants to DBS entry by others.

VII.

EFFECTS

49. The Primestar venture reduces the ability and incentives of each MSO defendant to deal with or invest in another DBS venture, and simultaneously serves to assure each of the MSO defendants that no other MSO defendant will invest in or sell programming on attractive terms to another DBS venture.

50. The MSO defendants, through their control of access to over 50% of the nation's cable subscribers, can limit the incentives of nondefendant cable programmers to deal with competing DBS ventures by their ability to threaten or actually take retaliatory actions, such as refusing to promote the programmer's programming within their franchise areas, assigning an unfavorable service tier or channel position to the programming, charging a high price for the programming if it is a premium service, and, sometimes, refusing to carry the programming at all.

51. The Primestar venture facilitates a coordinated retaliatory response by the MSO defendants to any cable programmer that sells programming on attractive terms to a competing DBS service.

52. The agreement, combination and conspiracy has had the effects, among others, of delay, if not preemption, of potentially cable-competitive entry into DBS by imposition of unreasonable restraints on the availability of both defendant-

owned or controlled and nondefendant-owned or controlled programming to DBS entrants.

53. The aforesaid agreement, combination and conspiracy has affected a substantial amount of commerce.

PRAYER

WHEREFORE, the plaintiff prays:

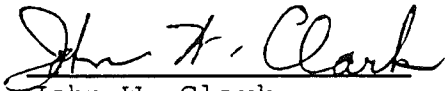
1. That the Court adjudge and decree that the defendants and co-conspirators are and have engaged in unlawful agreements, combinations and conspiracies in unreasonable restraint of interstate trade in violation of Section 1 of the Sherman Act.

2. That an injunction be issued prohibiting each of the defendants, and any person acting on behalf of any of them, from adhering to or enforcing any provision of the Partnership Agreement that affects the availability, price, terms or conditions of providing or licensing of programming to any provider of multichannel subscription television, including Primestar.

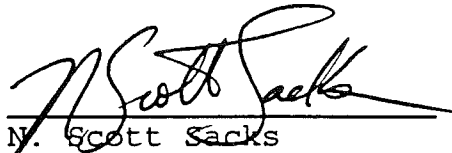
3. That an injunction be issued prohibiting each of the defendants, and any person acting on behalf of any of them, from entering into any agreement with any other defendant regarding any form of retaliation or action taken or to be taken against a provider of programming as a consequence of its licensure or provision of such programming to any provider of multichannel subscription television service.

4. That the Court impose such additional equitable relief  
as necessary.

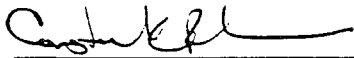
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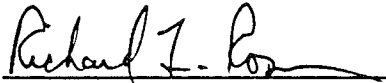
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