

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PLUMBERS LOCAL UNION NO. 519  
PENSION TRUST FUND; AND CITY OF  
STERLING HEIGHTS POLICE AND FIRE  
RETIREMENT SYSTEM, DERIVATIVELY  
ON BEHALF OF NOMINAL DEFENDANT  
DISH NETWORK CORPORATION,

Appellants,

vs.

CHARLES W. ERGEN; JAMES DEFRANCO;  
CANTEY M. ERGEN; STEVEN R.  
GOODBARN; DAVID K. MOSKOWITZ; TOM  
A. ORTOLF; CARL E. VOGEL; GEORGE R.  
BROKAW; JOSEPH P. CLAYTON; GARY S.  
HOWARD; DISH NETWORK  
CORPORATION, A NEVADA  
CORPORATION; AND SPECIAL  
LITIGATION COMMITTEE OF DISH  
NETWORK CORPORATION,

Respondents.

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Clerk of Supreme Court  
Supreme Court No. 81704

District Court No.  
A-17-763397-B

**JOINT APPENDIX**

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**[JA000001-JA000143]**

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32	DISH DNC: Summary of Interview of Amir Ahmed, dated October 5, 2018, DISH_SCL_Production_00 09084-92														
33	Letter from Reji Musso to Alex Teranchi at Satellite														

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SLC Demonstrative Exhibit 111, Interviews Conducted by the SLC	76	JA017434	07/06/20
Unanimous Written Consent in Lieu of a Special Meeting of the Board of Directors of Dish Network Corporation as of April 11, 2018  <b>Evidentiary Hearing SLC Exhibit 107</b>	4	JA000714- JA000720	04/11/18
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# EXHIBIT 50

JA000001

# ANTHONY M. FEDERICO

## SUMMARY OF QUALIFICATIONS

- Significant product development experience with emphasis in the software, electronics, and printing areas. Several years of experience in Information Technology, General Management, and Process Re-engineering.

## EXPERIENCE

**2002 - 2006** Corporate Officer and Vice President, Production Systems Platform Development

- Managed the development, and maintenance for all significant production products with a direct team of 1700 people and a direct budget of \$350M.
- Prevented the uncontrolled slip of the flagship color iGen3 Printing Press, launched on schedule.
- Launched the mono Nuvera Production Printer.
- Started and launched the High Light Color DocuTech Production Printer.
- Significantly improved organizational responsiveness to both sales and service issues by moving to a direct engagement model and leveraging my personal customer and field contacts.
- Established Crown Jewel management structure with competency centers and program teams, leveraging strategy and governance functions.
- Established cross functional and technical program management process with direct participation by all organizations of the firm.
- Through an intense Lean Six Sigma program reduced expenses sufficiently to fund development for the expensive launch phase of iGen3 and Nuvera as well as the entire development of High Light Color DocuTech.

**2000 - 2002** Corporate Officer and Vice President, General Manager, Production Solutions Business

- General Manager of Xerox Document Technology Center business inside Xerox's outsourcing division.
- Established the first P&L for the collection of production Work Flow and Solutions activities.
- Reduced the \$35M annual loss to \$5M.
- Established synergy with the production products sufficient to merge into the Production Business.

**1998-2000** Corporate Officer and Vice President, Chief Engineer of Xerox

Managed the development and execution of Xerox's program management process with a portfolio of over 200 products and a budget of over \$1.1B.

- Programs are managed and tracked by a web-based tool through a series of standardized phase gates from inception to end-of-life.
- All programs are assessed annually against a standard risk profile that utilizes historical performance, market opportunity and strategic value to disposition program budgets for the following year.
- Problems and best practices are collected on a yearly basis and utilized to continuously refine the base process.



JA000002

# ANTHONY M. FEDERICO

**1996–1997** Vice President, Xerox, Market to Collection & North American Information Management

Managed the reset of the largest process re-engineering / information system redesign in Xerox's history.

- Reset the existing "big bang" strategy and established a new strategy based on 6-month "time-boxes" and legacy transition.
- Working back from the customer, 3 major process/system upgrades were fully deployed that assisted with ordering, networking, and pricing for all Xerox products.
- \* Each deliverable was shown to have returned its initial investment in under 1-year.

Managed the Information Management Systems for all of Xerox's North American Customer Operations.

- Managed the day-to-day operation of over 125 major legacy telecommunications/computing systems.
- Managed a site budget of \$36M with an accountability spend of \$258M.
- \* Managed numerous subcontractors and our mainframe-outsourcing provider.

JA000003

# ANTHONY M. FEDERICO

*1994-1995* Vice President, General Manager, Xerox Document Production and Technology  
General Manager of Xerox Document Technology Center business inside Xerox's outsourcing division.

- Converted internal print shops and non-profitable outsourcing contracts into the Document Technology Center business.
- In under 2 years went from a series of businesses that annually were losing over \$2M on \$12M of revenue to a \$23M 45% gross margin business that was growing at 20% per year.
- Established several new start, technology based businesses, designed to leverage the internet and the digital document.
- Established a customer quality process that did not lose a single customer while driving their contracts to profitability.
- Established Xerox first official internet web site.
- Started "Internet Document Services" business, hosting customer's home pages.

*1982 - 1993* Vice President, Xerox Document Production Systems & Technology  
Chief Engineer of the Xerox flagship product, the multi-billion dollar "Network DocuTech". Through the following actions, I managed a team of 1000 cross-functional people, stopped the uncontrolled schedule slip and launched the product on schedule.

- Weekly team meetings with worldwide marketing, global module engineering, manufacturing, global sales and launch managers, to reach consensus on all aspects of product development and readiness.
- Weekly problem management process to focus individual teams on their top problems.
- Weekly meetings with marketing to reach concurrence on brand positioning and key achievable features.
- Daily meetings with engineering managers to focus on test results.
- Process/planning meetings to optimize our process to achieve schedule.
- Architecture team meetings to address strategic issues and explore breakthrough technical solutions.

System Software Manager for DocuTech.

- Managed 200 engineers in the development of 3 million lines of object oriented software.
- Managed 100 engineers in the development of 300,000 lines of real-time machine controls.
- Managed 20 engineers in the development of 5000 lines of micro-code, running on over 30 separate processors.
- Managed 80 engineers in the integration of all electrical, mechanical and software subsystems and initial unit testing.

Managed system architecture and integration establishing the base architecture and proof of concept for DocuTech.

- Managed 20 engineers developing the architecture for all electrical and software systems.
- Established the industry's first successful system reprographic production architecture.
- Established the industry's first concurrent production system reprographic architecture.
- Managed all hardware and software conversion and integration of the first light lens copier for the DocuTech engine.

JA000004



# ANTHONY M. FEDERICO

**1968 – 1982** Xerox, Software & Electronics Engineer and Manager

Quickly promoted through a variety of engineering and engineering management positions, I participated in the design and development of several of Xerox's most successful products.

- Received 21 patents for my designs in the areas of control's architecture, operating systems, imaging, crash & job recovery, paper handling, etc.
- Managed the design, development, and integration of the real-time, multi-microprocessor, networked operating system and control's architecture that ultimately was used across Xerox's entire 10 and 50 series copiers, duplicators, and printers.
- Designed and developed Xerox's first microprocessor based operating system kernel. This multi-tasking, real-time, operating system was used for several mid-range copiers and printers.
- Designed the electronic control's hardware for Xerox's first automated duplex copier.
- Developed mainframe software simulations, data acquisition and automatic test systems for several of Xerox's most advanced copiers and duplicators.
- Developed mainframe, real-time, data acquisition tests and performed a variety of analyses to solve some of the most complicated electrical and mechanical copier and duplicator machine problems Xerox faced.

## EDUCATION

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Numerous executive courses most notably at Harvard and Indiana University

1977 Graduate Studies in Electrical Engineering, Rochester Institute of Technology

1974 BS Math/Electrical Engineering, University of Rochester

664 Admiralty Way, Webster, New York 14580  
585-721-6636 Cell 585-787-9429 Home

[Anthony.Federico@hotmail.com](mailto:Anthony.Federico@hotmail.com)  
January 3, 2006

JA000005

OMSJ02016

# ECHOSTAR

## Board of Directors





OMSJ02016

**Anthony M. Federico**

Director

Mr. Federico serves as a member of our board of directors, and is a member of our Audit, Nominating and Executive Compensation Committees. Mr. Federico currently serves as Vice President, Chief Engineer, and Graphic Communications Executive Liaison of Xerox Corporation. Mr. Federico joined Xerox in 1968, and has held various product and general management positions, as well as numerous engineering, solutions, information management, and process re-engineering positions.

March 24, 2017

-  Independent Director
-  Member of the Audit Committee
-  Chair of the Nominating and Governance Committee
-  Member of the Executive Compensation Committee

OMSJ02016

JA000006

DISH\_SLC\_Production\_0024583

CONFIDENTIAL

INFORMATION TECHNOLOGY SECTOR » TECHNOLOGY HARDWARE, STORAGE &amp; PERIPHERALS INDUSTRY » XRX

## Xerox Corp (XRX:New York)

XRX On Other Exchanges

[Snapshot](#) [News](#) [Charts](#) [Financials](#) [Earnings](#) [People](#) [Ownership](#) [Transactions](#) [Options](#)[Overview](#) [Board Members](#) [Committees](#)

### Executive Profile\*

#### Anthony M. Federico

Age	Total Calculated Compensation	This person is connected to 13 board members in 2 different organizations across 2 different industries.
69	\$109,939	

[See Board Relationships](#)

### Background\*

Mr. Anthony M. Federico served as Chief Engineer, Vice President and Graphic Communications Executive Liaison, Business Group Operations of Xerox Corporation since October 2005 and also served as its Vice President. Mr. Federico served as Corporate Vice President since December 1998. Mr. Federico served as Vice President of Platform Development, Production Systems Group of Xerox Corp. since December 2001. He has responsibility for the development and delivery of all Xerox production products including Nuvera and with special focus on DocuColor iGen3. Mr. Federico joined Xerox in 1968 and has held various general and program management positions as well as numerous engineering, solutions, information technology and process re-engineering positions. His more recent positions have been Chief Engineer Network DocuTech; Vice President, General Manager, Technology and Document Production Solutions for Xerox Business Services (XBS); and Vice President, Market To Collection and North American Information Management. In 1998, he was appointed Chief Engineer to Xerox. In 2001, he was Vice President, General Manager for the Production Solutions Business. He holds 24 patents and has been the recipient of the 1991 President's Award and the 1991 Individual Excellence Award. He is a and is a Member of the IEEE and the ACM. He has been an Independent Director of EchoStar Corporation since June 2011. He serves as a Member of the Board of Directors at Monroe Community College Association Inc. Mr. Federico earned a Bachelor of Science Degree in Mathematics and Electrical Engineering from the University of Rochester and has done graduate work in these areas at Rochester Institute of Technology.

[Collapse Detail](#)

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### Corporate Headquarters\*

201 Merritt 7  
Norwalk, Connecticut 06851

United States

### Annual Compensation\*

There is no Annual Compensation data available.

### Stock Options\*

Exercisable Options	25,000
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Phone: 203-968-3000

Fax: --

Exercisable Options Value \$255,250

Total Value of Options \$255,250

Total Number of Options 25,000

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**Board Members Memberships\*****Director**

Monroe Community College Association Inc

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**Total Compensation\***

Total Annual Cash Compensation \$69,500

Total Calculated Compensation \$109,939

2011-Present

**Director**

EchoStar Corporation

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**Education\*****Unknown/Other Education**

Harvard University

**BS**

University of Rochester

**Unknown/Other Education**

Rochester Institute of Technology

**Unknown/Other Education**

Indiana University, Bloomington

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**Other Affiliations\***

Xerox Corporation

Harvard University

University of Rochester

Rochester Institute of Technology

Indiana University, Bloomington

Monroe Community College Association Inc

\*Data is at least as current as the most recent Definitive Proxy.

**Request Profile Update**

SULLIVAN & CROMWELL LLP

March 29, 2018

Via E-mail

MEMORANDUM TO: Timothy Messner  
(DISH Network Corporation)

FROM: Scott Miller

RE: Board Committee

**Redacted**

JA000009

# Redacted

# EXHIBIT 2

JA000011



1.4 DISH Network maintains a fleet of geosynchronous communications satellites and directly sells access to this satellite system to individuals who request access to audio and video programming licensed to DISH Network from video and audio content providers.

### **Attorneys General's Position**

1.5 The Attorneys General assert that DISH Network enters into agreements with Third-Party Retailers that DISH Network authorizes, on a non-exclusive basis, to market, promote, and solicit orders from Consumers for the purchase of DISH Network Goods and/or DISH Network Services and/or to provide installation and activation services to Consumers in connection with their purchase of DISH Network Goods and/or DISH Network Services.

1.6 The Attorneys General assert that DISH Network controls the conduct, practices and procedures of its Third-Party Retailers through its DISH Network Retailer Agreement, or similar documents; through "Business Rules" that are established by DISH Network and must be followed by Third-Party Retailers; through training that DISH Network provides to its Third-Party Retailers; by requiring Third-Party Retailers to take all actions and refrain from taking any action as reasonably requested by DISH Network in connection with marketing, advertising, promotion and/or solicitation of orders; by requiring Third-Party Retailers to market, promote and describe DISH Network Goods and/or DISH Network Services in a manner approved by DISH Network; by setting all prices for its programming and related promotions and limiting its Third-Party Retailers' ability to offer and sell other goods and services to DISH Network's customers; by requiring Third-Party Retailers to perform installation services consistent with guidelines set forth in DISH Network's Installation Manual; and by requiring Third-Party Retailers to use DISH Network's trademarks, logos and service marks in connection with the retail sale of DISH Network Goods and/or DISH Network Services and otherwise controlling their appearance and conduct when interacting with consumers.

1.7 The Attorneys General assert that they have received complaints from Consumers against DISH Network that its Third-Party Retailers have made misrepresentations and material omissions of fact in connection with their marketing, promotion and sale of DISH Network Goods and/or DISH Network Services and that DISH Network has represented to Consumers that it is not responsible for the conduct of its Third-Party Retailers. The Attorneys General assert that DISH Network's Third-Party Retailers, with DISH Network's assent, are acting on DISH Network's behalf as its agents and are subject to DISH Network's control. The Attorneys General further assert that Consumers who do business with DISH Network's Third-Party Retailers reasonably believe that DISH Network's Third-Party Retailers are employees or agents of DISH Network who are acting on behalf of DISH Network and, therefore, DISH Network's Third-Party Retailers are apparent agents of DISH Network. The Attorneys General assert that, as either actual or apparent agents, DISH Network is responsible for the conduct of its Third-Party Retailers and is bound by the representations made by its Third-Party Retailers to Consumers.

1.8 The Attorneys General assert that DISH Network has failed to comply with federal, state and/or local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on federal, state, or local do-not-call lists.

1.9 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts in connection with their offer, sale and leasing of Dish Network Goods and Dish Network Services by failing to adequately disclose material terms and conditions, including, but not limited to, the terms of their Agreements, the limitations on the availability of programming, limitations on the use of satellite receivers, and limitations on the availability of rebates, credits and free offers.

1.10 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts by failing to disclose to Consumers that purchased or leased DISH Network Goods were previously used and/or refurbished.

1.11 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts by advertising prices without adequately disclosing the applicability of rebates and by making reference and comparison price offers when the goods or services that the Dish Network Goods and/or Dish Network Services were being compared to were materially different.

1.12 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts by electronically debiting Consumers' bank accounts and credit cards without providing Consumers with adequate notice and without first obtaining adequate authorization from Consumers.

### **DISH Network's Position**

1.13 DISH Network denies each allegation contained in paragraphs 1.5 through 1.12. Moreover, DISH Network asserts that it has not been deficient in any manner, legally or otherwise, in the way it and its retailers make disclosures to prospective customers, or in the advertising it uses and further asserts it has fully complied with all applicable consumer protection laws and regulations, both federally and across the several states. DISH Network asserts that it places a priority on its efforts to provide quality products and customer service and to that end has policies and procedures to provide a high level of service and fair dealing to customers. DISH Network believes its business practices exude the highest ethical conduct.

1.14 DISH Network asserts that it has cooperated with the Attorneys General during their inquiry. DISH Network values the suggestions of the Attorneys General as to ways in which it can improve its policies and procedures and is willing to agree to the obligations herein in an effort to promote customer relations. However, DISH Network asserts that by entering into this Assurance, it does so denying wrongdoing of any kind and affirmatively states that it

believes the requirements it has agreed to by signing this Assurance are policies, procedures and actions that exceed applicable legal and common law standards, and that it met all legal standards prior to the Attorneys General beginning their investigation. DISH Network asserts that by entering into this Assurance, DISH Network does not intend to create any legal or voluntary standard of care and expressly denies that any practices or policies inconsistent with those set forth in this Assurance violate any legal standard. It is DISH Network's intention and expectation that neither this Assurance nor any provision hereof shall be offered or cited as evidence of a legal or voluntary standard of care. Furthermore, DISH Network asserts that nothing in the Assurance is intended to change the existing independent contractor relationships between DISH Network and its authorized retailers who sell DISH Network products and it believes that no agency relationship is created by the agreements set forth herein. DISH Network agrees to this Assurance so that this matter may be resolved amicably without further cost or inconvenience to the states, their citizens, or DISH Network.

## **2. DEFINITIONS**

As used in this Assurance the following words or terms shall have the following meanings:

- 2.1 "Advertise," "Advertisement," or "Advertising" shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing or leasing of, impart information about the attributes of, publicize the availability of, or affect the sale, lease, or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, public-transit card, point-of-purchase display, package insert, package label, product instructions, electronic mail, website, homepage, film, slide, radio, television, cable television, program-length commercial or infomercial, or any other medium.
- 2.2 "Agreement" shall refer to all agreements by whatever name between DISH Network and a Consumer for the purpose of the sale, lease, rental, installation and/or activation of any DISH Network Goods and/or DISH Network Services.
- 2.3 "Authorized Telemarketer" shall mean a business or other entity that is hired by DISH Network to conduct Telemarketing on DISH Network's behalf in connection with the offer, sale and/or lease of DISH Network Goods and/or DISH Network Services.
- 2.4 "Billing Agent" shall mean a business or other third-party entity with which Consumers directly interact that has been retained by DISH Network to bill Consumers and/or provide DISH Network other services associated with the



billing of Consumers for DISH Network Goods and/or DISH Network Services. "Billing Agent" does not mean any third party who has been retained by DISH Network for the purposes of collecting on delinquent accounts.

- 2.5 "Clear and Conspicuous" or "Clearly and Conspicuously," when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner. Audio disclosure shall be delivered in a volume and cadence sufficient for a Consumer to hear and comprehend it. Visual disclosure shall be of a size and shade and appear on the screen for a duration sufficient for a Consumer to read and comprehend it. In a print Advertisement or promotional material, including, but without limitation, point of sale display or brochure materials directed to Consumers, the disclosures shall be in a type size and location sufficiently noticeable for a Consumer to read and comprehend it, in a print that contrasts with the background against which it appears.
- 2.6 "Complaint" shall refer to a specified problem that a Consumer expresses that represents dissatisfaction with DISH Network Goods and/or DISH Network Services and requests a remedy. It does not include an inquiry or general grievance or concern.
- 2.7 "Consumer" shall have the same meaning as that term is defined in the Consumer Protection Acts identified in paragraph 2.8 of this Assurance. However, in the event that the Consumer Protection Acts identified herein do not define the term "consumer," then it shall have the same meaning as the term "Person" as defined in the Consumer Protection Acts, or other identifying individual or entity term, as defined by the Consumer Protection Acts.<sup>4</sup>
- 2.8 "Consumer Protection Act" shall refer to the respective state consumer protection statutes.<sup>5</sup>

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<sup>4</sup> In Virginia the "Consumer" shall have the same meaning as "consumer transaction" as defined in the Virginia statute cited in paragraph 2.8.

<sup>5</sup> ALABAMA - Deceptive Trade Practices Act, AL ST 8-19-1, 13A-9-42, 8-19-8; ALASKA - Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50, *et seq.*; ARIZONA - Arizona Consumer Fraud Act, A.R.S. 44-1521, *et seq.*; ARKANSAS - Deceptive Trade Practices, AR ST 4-88-101, *et seq.*; COLORADO - § 6-1-101, *et seq.*, CRS; CONNECTICUT - Connecticut Unfair Trade Practices Act section 42-110a, *et seq.*; DELAWARE - Delaware Consumer Fraud Act, Del. Code Ann. tit. 6, 2511 to 2527; FLORIDA - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; GEORGIA - Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; HAWAII - Hawaii Rev. Stat. Chap. 480-2(a); IDAHO - Consumer Protection Act, Idaho Code §§ 48-601, *et*

- 2.9 “Covered Marketer” means a Third-Party Retailer (1) who can: directly enter sales into DISH Network’s order/entry application system (“O/E Retailer”); or (2) whose business operations have resulted in, on average, over 51 DISH Network service activations per month during the previous calendar year.
- 2.10 “DISH Network Goods” shall mean the equipment and other goods that DISH Network offers, leases and/or sells to Consumers, directly and/or through Third-Party Retailers, that enable customers to receive DISH Network Services.
- 2.11 “DISH Network Services” shall mean the audio and video programming that DISH Network offers, leases, and/or sells to Consumers, directly and/or through Third-Party Retailers, including, but not limited to, the installation, service, activation and/or delivery of DISH Network satellite television programming, equipment, and/or other goods.
- 2.12 “Electronic Fund Transfer” or “EFT” shall mean an “electronic fund transfer,” as that term is defined in the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*

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*seq.*; INDIANA - Deceptive Consumer Sales Act, Ind. Code Ann. §§ 24-5-0.5-1 to 24-5-0.5-12; IOWA - Consumer Fraud Act, Iowa Code § 714.16; KANSAS - Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; KENTUCKY - Kentucky Consumer Protection Act, Kentucky Revised Statutes (KRS) 367.110, *et seq.*; LOUISIANA - Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401 *et seq.*; MAINE - Maine Unfair Trade Practices Act, 5 M.R.S. sections 205-A *et seq.*; MARYLAND - Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated 13-101, *et seq.*; MASSACHUSETTS - Mass. Gen. Laws c. 93A, §§ 2 and 4; MICHIGAN - Michigan Consumer Protection Act, MCL 445.901, *et seq.*; MINNESOTA - Minn. Stat. §§ 325F.68 - 325F.70 (Prevention of Consumer Fraud Act), Minn. Stat. § 325F.67 (False Advertising Act), Minn. Stat. §§ 325D.43 - 325D.48 (Uniform Deceptive Trade Practices Act); MISSISSIPPI - Miss. Code Ann. Section 75-24-1, *et seq.*; MISSOURI - MO ST §407.010 to 407.130; MONTANA - Mont. Code Ann. § 30-14-101 *et seq.*; NEBRASKA - Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.*, 87-301; NEVADA - Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; NEW HAMPSHIRE - Regulation of Business Practices for Consumer Protection, NH RSA 358-A; NEW JERSEY - Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*; NEW MEXICO - New Mexico Unfair Practices Act, NMSA 57-12-1, *et seq.*; NEW YORK - Executive Law § 63(12) and General Business Law §§ 349 and 350; NORTH DAKOTA - N.D.C.C. §§ 51-15-01, *et seq.*; OKLAHOMA - Oklahoma Consumer Protection Act, 15 O.S. 751, *et seq.*; OREGON - Unlawful Trade Practices Act ORS 646.605 *et seq.*; PENNSYLVANIA - Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1, *et seq.*; RHODE ISLAND - Rhode Island Gen. Laws Sec. 6-13.1, *et seq.*; SOUTH CAROLINA - South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*; SOUTH DAKOTA - South Dakota Deceptive Trade Practices and Consumer Protection, SD ST 37-24-1, 37-24-6, 37-24-23, 37-24-31, 22-41-10; TENNESSEE - Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*; TEXAS - Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code 17.41, *et seq.*; UTAH - Consumer Sales Practices Act, Utah Code Ann. \*\* 13-11-1 through 23; VERMONT - Consumer Fraud Act, 9 V.S.A. §§ 2451 to 2466; VIRGINIA - Virginia Consumer Protection Act, Va. Code §§ 59.1-196 through 59.1-207; WASHINGTON - Washington Consumer Protection Act, RCW §§ 19.86, *et seq.*; WEST VIRGINIA - West Virginia Consumer Credit and Protection Act, WV Code § 46A-1-102, *et seq.*; WISCONSIN, Deceptive Trade Practices Act, Wis. Stat. 100.18(1); and WYOMING - Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101, *et seq.*

- 2.13 “Telemarketing” shall mean “telemarketing” as that term is defined in the Federal Trade Commission’s Telephone Sales Rule, 16 C.F.R. §310.2(cc), and in other federal, state, or local laws defining that term. However, nothing herein shall be construed to affect, restrict, limit, waive, or alter the definition of “telemarketing” under the laws and statutes of the states, and nothing herein shall be construed to limit the authority of the Attorneys General to enforce states’ laws and statutes, including those regarding telemarketing.
- 2.14 “Telemarketing Acts” shall mean: ALABAMA - Telemarketing Act, Ala. Code § 8-19A-1, *et seq.*; ALASKA - AS 45.63, *et seq.*; ARIZONA - A.R.S. sec. 44-1271 thru 44-1282.; ARKANSAS - Consumer Telephone Privacy Act, Arkansas Code Annotated § 4-99-401, *et seq.*, Consumer Protection statute A.C.A. §§ 4-88-101, *et seq.*; COLORADO - § 6-1-901, *et seq.*, CRS; CONNECTICUT – Conn. Gen. Stat. sec 42-288a; DELAWARE – 6 Del. C § 25A; FLORIDA – Consumer Protection Fla. Stat. Ch. 501.059; GEORGIA - O.C.G.A. 46-5-27; HAWAII – Hawaii Rev. State. Section 481P-1 *et seq.*; IDAHO - Idaho Code § 48-1001, *et seq.*; INDIANA - Ind. Code 24-47-1 to -5; IOWA - Consumer Fraud Act, Iowa Code § 714.16; KANSAS - KSA 50-670 and K.S.A. 670(a); KENTUCKY - KRS 367.46951 to 367.46999; LOUISIANA -LSA-R.S. 45:844.11 *et seq.*, the Telephone Solicitation Relief Act of 2001; MAINE – Telephone Solicitations, 10 M.R.S. section 1499-B; MARYLAND - Telephone Consumer Protection Act, Md. Code Ann., Com. Law §§ 14-3201 through 14-3202; MASSACHUSETTS - Mass. Gen. Laws chapter 159C, and 201 Code of Mass. Regulations 12 *et seq.*; MICHIGAN - MCL 445.111, *et seq.* and 445.903(1)(gg); MINNESOTA – Minn. Stat. §§ 325E.311-325E.316 – Minnesota Do Not Call Act; MISSISSIPPI - Miss. Code Ann. Section 77-3-701, *et seq.* - Mississippi Telephone Solicitation Act; Miss. Code Ann. Section 77-3-601, *et seq.* - Unsolicited Residential Telephonic Sales Calls Law; MISSOURI - Telemarketing No-Call List, Mo. Rev. Stat. 407.1095 through 407.1110; MONTANA - Mont. Code Ann. §§ 30-14-1601 to -1606; NEBRASKA - Neb. Rev. Stat. §§ 59-1601, *et seq.*, 87-301; NEVADA - Nevada Revised Statutes 228.500., *et seq.*; NEW HAMPSHIRE - NH RSA 359-E; NEW JERSEY - Telemarketing Do Not Call Law, N.J.S.A. 56:8-119, *et seq.*; NEW MEXICO - NMSA 1978, S 57-12-22; NEW YORK – General Business Law §§ 396-m, 399-p, 399-pp and 399-z; NORTH DAKOTA - N.D.C.C. § 51-28-01, *et seq.*; OKLAHOMA - Commercial Telephone Solicitation Act, 15 O.S. 775A.1, *et seq.*; OREGON – Unlawful Telephone Solicitations Act ORS 646.561 to ORS 646.576; PENNSYLVANIA - Pennsylvania Telemarketer Registration Act, 73 P.S. § 2241, *et seq.*; RHODE ISLAND - Rhode Island Gen. Laws Sec. 6-13.1, *et seq.*; SOUTH CAROLINA – S.C. Code Ann. § 16-17-445 and 446; SOUTH DAKOTA - SDCL ch. 49-31; TENNESSEE – Tenn. Code Ann. § 65-4-405; TEXAS - Texas Telemarketing Disclosure and Privacy Act, Tex. Bus. and Com. Code §§ 304, *et seq.*; UTAH – Telephone and Facsimile Solicitation Act, Utah Code Ann. \*\* 13-25a-101 through 111 and the Telephone Fraud Prevention Act, Utah Code Ann. \*\* 13-26-1 through 11; VERMONT - 9 V.S.A. §2464a(b); VIRGINIA – Virginia Telephone Privacy Protection Act, Va. Code §§ 59.1-510 through 59.1-518; WASHINGTON - Commercial Telephone Solicitation Act, RCW 19.158.110(2)(a) and (b); WEST VIRGINIA – West Virginia Code § 46A-6F-101, *et seq.*; WISCONSIN Stat. § 100.52(4) and Wis. Admin. Code § ATCP 127; WYOMING – Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101, *et seq.*

- 2.15 "Third-Party Retailer" shall mean one or more independent persons, a corporation, a partnership, or any other type of entity, as the case may be, that is authorized by DISH Network to offer, lease, sell, service, Advertise, and/or install DISH Network Services and/or DISH Network Goods.

### **3. APPLICATION OF ASSURANCE TO DISH NETWORK AND ITS SUCCESSORS**

3.1 DISH Network's duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to DISH Network and all of its subsidiaries, parents, affiliates, predecessors, successors and assigns of all of the foregoing, and the officers, directors, employees, shareholders, agents, servants, and assigns. DISH Network shall provide a copy of this Assurance to its subsidiaries, parents, affiliates, predecessors, successors and assigns of all of the foregoing to whom this Assurance applies, and the officers, directors, employees, shareholders, agents, servants, and assigns who have managerial-level responsibilities for performing the obligations outlined in this Assurance.

3.2 For the purposes of paragraphs 4.9, 4.15, 4.16, 4.28, 4.29, 4.30, 4.33, 4.38, 4.39, 4.40, 4.41, 4.42, 4.43, 4.47, 4.48, 4.49, 4.50, 4.51, 4.55, 4.56, and all of Section 5, the term Consumer shall not include any person or entity that purchases or leases any DISH Network Good and/or DISH Network Service solely for a commercial purpose. Nothing herein shall be construed to limit the authority of the Attorneys General to enforce state laws and statutes, including those regarding commercial and/or non-commercial contracts.

3.3 DISH Network shall require its Third-Party Retailers to comply with the terms and conditions of this Assurance.

### **4. TERMS OF ASSURANCE**

Upon execution of this Assurance, DISH Network shall be bound from directly or indirectly engaging in the practices set forth herein and shall be required to directly or indirectly satisfy the affirmative requirements set forth herein.

#### **General Consumer Protection Provisions**

4.1 DISH Network shall not commit any unfair or deceptive trade practices as defined by any Consumer Protection Act.

4.2 DISH Network shall not misrepresent, expressly or by implication any term or condition of an offer to sell and/or lease any DISH Network Goods and/or DISH Network Services.

4.3 DISH Network shall not make any material omissions of fact regarding any term or condition of an offer to sell and/or lease any DISH Network Goods and/or DISH Network Services.

4.4 DISH Network shall not represent or imply that goods or services have characteristics, uses or benefits that they do not have.

4.5 DISH Network shall not offer, Advertise, lease, or sell any goods or services unless, at the time of the offer, Advertisement, lease, or sale, it is able to provide Consumers with a good or the service that complies with any representations that are made in connection with the offer, Advertisement, lease, or sale.

4.6 DISH Network shall not use any statements or illustrations in any Advertisement or representations made to Consumers that create a false impression of the grade, quality, quantity, make, value, age, size, color, usability, or origin of any goods or services or which may otherwise misrepresent the nature, quality and/or characteristics of any DISH Network Goods and/or DISH Network Services.

#### **Material Terms/No Fine Print**

4.7 In any Advertisement promoting the availability of DISH Network Services and/or DISH Network Goods, DISH Network shall Clearly and Conspicuously disclose any limitations on the availability of DISH Network Services.

4.8 In any Advertisement promoting a benefit that requires any commitment or minimum term of service, DISH Network shall Clearly and Conspicuously disclose any commitment to a minimum term of service required to accept the offer and whether the offer is subject to payment of cancellation fees, termination fees, and any other fines, fees or penalties if Consumers terminate an Agreement prior to the expiration of the commitment period.

4.9 DISH Network shall Clearly and Conspicuously disclose to Consumers at the point of sale or lease prior to scheduling activation or installation of DISH Network Goods and/or DISH Network Services all material terms and conditions of the offer, including, but not limited to: **(i)** any known limitations on the availability of DISH Network Services; **(ii)** costs, fees, penalties or other payment terms Consumers must pay, excluding taxes or other fees required by a governmental entity if they are not known, to receive DISH Network Goods and/or DISH Network Services and to return and/or cancel any DISH Network Goods and/or DISH Network Services; **(iii)** any commitment to a minimum term of service required to accept any offer for DISH Network Goods and/or DISH Network Services; and **(iv)** all cancellation fees, termination fees, and any other fines, fees or penalties that Consumers may be asked to pay if they terminate an Agreement or cancel their service.

4.10 DISH Network shall not fail to Clearly and Conspicuously disclose any material term or condition of an offer to sell or lease any DISH Network Goods and/or DISH Network Services, including, but not limited to, failing to Clearly and Conspicuously disclose terms or conditions of an offer by using fine or small print or an inaudible broadcast.

### **Equipment Offers**

4.11 DISH Network shall Clearly and Conspicuously disclose in all of its Advertisements and other representations it makes to Consumers offering DISH Network Goods involving the use of more than one satellite television receiver, all material terms and limitations regarding the use of multiple satellite television receivers in connection with the broadcast of DISH Network Services, including, but not limited to, any additional charges that must be paid in connection with the use of more than one satellite television receiver.

4.12 DISH Network shall not sell to Consumers any previously used and/or refurbished DISH Network Goods, including, but not limited to, any satellite television receivers, unless, prior to the sale, it Clearly and Conspicuously discloses to Consumers that the DISH Network Good has been previously used and/or refurbished.

4.13 DISH Network shall promptly replace any leased DISH Network Goods that cease to operate when such cessation is not caused or attributable to improper installation by Consumers or misuse or abuse of the equipment at no cost to Consumers other than the actual cost to ship the replacement good to Consumers.

### **Programming Availability**

4.14 When Advertising or offering local channels, if local channels are not or may not be available in all areas where the Advertisement is reasonably expected to appear, DISH Network shall Clearly and Conspicuously disclose in the Advertisement that all local channels may not be available.

4.15 When Advertising or offering DISH Network premium sports packages, DISH Network shall Clearly and Conspicuously disclose in the Advertisement that blackouts may apply or that all games may not be available.

4.16 DISH Network shall Clearly and Conspicuously disclose to Consumers at the point of sale or lease prior to activation or installation of DISH Network Goods and/or DISH Network Services all material terms and limitations concerning the availability of local channels, including, but not limited to, disclosing whether local channels are available in the Consumer's area and specifically identifying which channels are not available.

4.17 DISH Network shall Clearly and Conspicuously disclose to Consumers who order sports packages and channels, at the point of sale or lease prior to activation or installation of

DISH Network Goods and/or DISH Network Services, all material terms and limitations concerning the availability of sports packages and channels, including, but not limited to, specifically disclosing whether the sports channels are available in the Consumer's area and that blackouts may apply or that all games may not be available.

4.18 DISH Network shall not represent that DISH Network Services are or may be available in a certain area when they are not.

#### **Rebates, Credits and Free Offers**

4.19 DISH Network shall Clearly and Conspicuously disclose in all of its Advertisements and other representations it makes to Consumers that include the offer of a rebate, credit, or other discount, all material terms, limitations, and conditions associated with the offer and obtaining the benefit of the offer.

4.20 DISH Network shall not disclose the price for any DISH Network Goods and/or DISH Network Services less any rebate, credit, discount or other amount to Consumers unless DISH Network Clearly and Conspicuously discloses in any Advertisements or representations any material qualifications or limitations for obtaining the rebate, credit, discount or other amount.

4.21 DISH Network shall Clearly and Conspicuously disclose in all of its Advertisements and other representations it makes to Consumers concerning the offer of a free good or service all terms and conditions of the offer.

4.22 DISH Network shall comply with the Federal Trade Commission (FTC) Guide Concerning Use of the Word "Free" and Similar Representations, 16 C.F.R. § 251.

4.23 DISH Network shall comply with all federal, state and local laws, rules and regulations regarding any free offers or other prize, gift, award and incentive promotions.

#### **Retroactive Changes to Guarantee/Warranty/Refund Program**

4.24 DISH Network shall not retroactively change the terms of any warranty, guarantee, refund, or similar program offered in connection with the sale or lease of any DISH Network Goods and/or DISH Network Services unless the change is being made for the benefit of Consumers, such as expanding the coverage of any warranty, broadening the scope of any refund or other program or coverage, and/or extending any deadlines or expiration dates.

#### **Reference and Comparison Prices**

4.25 In all of its Advertisements and other representations it makes to Consumers, DISH Network shall comply with the terms of the FTC's guidelines on the use of reference

prices and with all federal, state and local laws, rules and regulations regarding reference-pricing, including, but not limited to: (i) disclosing the reference price; and (ii) only offering as a reference price a price that has been actively and openly offered for a reasonable period of time.

4.26 DISH Network shall not compare the price of any of DISH Network Goods and/or DISH Network Services with a competitor's price unless the comparison is for a specifically identified item that does not materially differ in composition, grade, quality, style, design, model, name or brand, kind or variety from DISH Network's comparable product.

4.27 DISH Network shall not compare the price of any of DISH Network Goods and/or DISH Network Services to a competitor's price that includes charges to consumers for which DISH Network charges separately, unless DISH Network includes in its advertised price all charges that the competitor includes in its price.

#### **Formation of Contract: Required Procedures, Notices and Disclosures**

4.28 DISH Network shall Clearly and Conspicuously disclose the following information to all Consumers to whom it sells or leases any DISH Network Goods and/or DISH Network Services, in a written Agreement:

- (A) the length of the term of any Agreement;
- (B) a toll-free number that the Consumer may call to request an itemization of any cost that the Consumer will incur in order to purchase and/or lease or receive DISH Network Goods and/or DISH Network Services that are being offered in the Agreement;
- (C) any minimum programming requirements;
- (D) the amount and mode of calculation of any cancellation or termination fee;
- (E) equipment return policies, procedures, and fees;
- (F) the billing cycle, the amount of any late fees and the date on which any late fees will be imposed;
- (G) all additional fees for miscellaneous services, e.g., third-party billing agent fees, customer service fees, etc.; and
- (H) all payment options that are regularly offered to the Consumer.

4.29 DISH Network shall Clearly and Conspicuously disclose on the Consumer's first bill for any DISH Network Goods and/or DISH Network Services a statement informing the Consumer that if the price, or any portion thereof, is not the price which the Consumer agreed to pay, then DISH Network will either honor the price to which the Consumer agreed or allow the Consumer to cancel his or her Agreement without being charged any penalties or fees. In the event the Consumer receives DISH Network's first bill and the price, or any portion thereof, is not the price which the Consumer agreed to pay, for a period of thirty-five (35) days after the first bill is sent to the Consumer, DISH Network shall either honor the price which the Consumer



agreed to pay or allow the Consumer to cancel his or her Agreement without charging the Consumer any early-termination penalties or fees.

4.30 DISH Network shall, prior to activating DISH Network Services, orally disclose to Consumers the information contained in Paragraph 4.28's subparagraphs A, C, D, E, and G, unless the Consumer purchases DISH Network Goods and/or DISH Network Services via the Internet. If the Consumer purchases and/or leases DISH Network Goods and/or DISH Network Services via the Internet, the disclosures contained in paragraph 4.28's subparagraphs A, C, D, E, and G shall be incorporated into the Consumer's transaction by a method that requires the Consumer to acknowledge such disclosures by checking a box for the disclosures indicating that the Consumer has read and understands each disclosure contained therein, prior to completion of the Consumer's transaction.

4.31 In sales transactions conducted on the Internet, DISH Network shall not add by default or include without affirmative authorization by the Consumer any DISH Network Goods and/or DISH Network Services to the Consumer's transaction(s). Additionally, DISH Network shall not have any selection box indicating a Consumer's request for any DISH Network Service or related service(s) pre-checked during the online sales process.

4.32 If DISH Network offers its Digital Home Protection Plan (DHPP) or any similar plan at no cost to the Consumer for a period of time ("promotional period"), DISH Network shall Clearly and Conspicuously disclose to Consumers as part of its offer the terms and conditions of the offer, including, but not limited to: a) whether the consumer will be automatically billed for DHPP following the expiration of the promotional period; b) that the consumer must cancel DHPP within the promotional period to avoid being automatically billed for it; c) the cost of DHPP and the date that the consumer will be billed for it; d) the means by which the consumer may cancel DHPP during the promotional period; and e) that the offer is optional; and shall obtain the Consumer's express agreement to the offer.

4.33 DISH Network shall, prior to the installation of any DISH Network Goods and/or activation of any DISH Network Services, provide the Consumer with a copy of all Agreement(s) governing the sale, lease, and/or use of any DISH Network Goods and/or any DISH Network Services, including the Agreement containing the disclosures required by Paragraph 4.28. Prior to leaving the Consumer's residence once installation is complete, DISH Network shall provide the Consumer with a fully executed copy of such Agreement(s). For purposes of this paragraph, a fully executed Agreement shall constitute an Agreement that has been signed by the Consumer signifying his or her acceptance of the terms and conditions contained in the Agreement.

4.34 DISH Network shall Clearly and Conspicuously identify by name, mailing address, and toll-free telephone number the entity that the Consumer should contact with questions regarding: (A) billing; (B) installation; (C) equipment; and (D) service. DISH Network may provide this information in the Agreement.

4.35 In the event DISH Network assigns any Consumer's account to a third party during the term of the Agreement, DISH Network shall Clearly and Conspicuously inform the Consumer in writing of the assignment and provide the Consumer with the name, address, and the telephone number of the third party. DISH Network shall communicate such information to the Consumer at least thirty (30) days prior to such assignment.

4.36 DISH Network shall require its Third-Party Retailers to maintain and store a copy of any fully executed Agreement. DISH Network shall maintain and store a copy of all fully executed Agreements it receives from Consumers for the entire period during which the Consumer is a DISH Network customer and for a minimum period of at least one (1) year thereafter. DISH Network shall use all commercially reasonable efforts to make a copy of any fully executed Agreement available to the Consumer within fifteen (15) days of the Consumer's request for such Agreement. In the event that a Consumer requests a copy of his or her Agreement and DISH Network is unable to locate a copy of it, DISH Network shall notify the Consumer of that fact within thirty (30) days of the date of the Consumer's request.

4.37 DISH Network shall not enforce any Agreement unless it is able to provide the Consumer with a copy of his or her fully executed Agreement within (30) thirty days of receiving the Consumer's request for a copy. The provisions of this paragraph shall have no effect on a Consumer's obligation to return any DISH Network Goods at the expiration or termination of any Agreement or DISH Network's right to charge the consumer a fee subject to the provisions of this Assurance if the Consumer does not return any DISH Network Goods in a reasonable time or collect on programming charges incurred by the Consumer that remain unpaid.

### **Contract Terms**

4.38 DISH Network shall not include in its Agreements a waiver of Consumers' rights and/or remedies unless DISH Network Clearly and Conspicuously discloses the rights or remedies that the Consumers are being asked to waive. Further, DISH Network shall not include in its Agreement in connection with the sale, lease, installation or use of DISH Network Goods and/or DISH Network Services, any language requiring Consumers to waive any rights and/or remedies in contravention of any local, state or federal law.

4.39 DISH Network shall put the following terms in a box or similar design at the top half of the first page of any Agreement that DISH Network requires the Consumer to sign for the purchase or lease of any DISH Network Goods and/or DISH Network Services:

- (A) the length of the Agreement;
- (B) the terms of any early cancellation fee, including the amount and the method of calculation, *i.e.*, whether the penalty is prorated; and

- (C) the terms of any fee for a customer's failure to return equipment, including the maximum amount that may be charged for each piece of the equipment the Consumer is leasing that is not returned.

4.40 DISH Network shall use a minimum of 11-point font size in all written Agreements DISH Network enters with Consumers, directly and through Third-Party Retailers.

4.41 DISH Network shall use plain and understandable English in all Agreements DISH Network enters with Consumers, except as provided in Paragraph 4.42

4.42 DISH Network shall, when offering and/or selling DISH Network Goods and/or DISH Network Services, furnish upon request a Spanish-language version of any Agreements and other documents it provides to Consumers who seek to purchase and/or lease DISH Network Goods and/or DISH Network Services.

#### **Electronic Fund Transfers and Credit Card Autopay**

4.43 In all transactions, DISH Network shall:

- (A) when enrolling a Consumer in an EFT program for recurring automatic payment, obtain written or electronic authorization from the Consumer, which authorization shall include the process by which Consumers may revoke their authorization or cancel their enrollment in the EFT program, and shall otherwise comply with the requirements of the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*, for obtaining preauthorization to receive recurring electronic fund transfers from a Consumer's bank account;
- (B) when enrolling a Consumer in a Credit Card AutoPay ("CCA") program for recurring automatic payment, obtain written, electronic, or verbal authorization from the Consumer, which authorization shall include explaining to Consumers the process by which Consumers may revoke their authorization or cancel their enrollment in the CCA program;
- (C) maintain the Consumer's written or electronic authorization required under this paragraph for the duration of the Consumer's enrollment in such a program and for a period of not less than two (2) years after the Consumer terminates or revokes the authorization;
- (D) at least ten (10) days prior to effectuating an EFT or credit card charge under an EFT or CCA program, provide a written or electronic bill to the Consumer disclosing: (i) the charges and the exact amount that will be subject to an EFT or credit card charge pursuant to the EFT or CCA program in which the Consumer is enrolled; (ii) the goods or services for which the EFT or credit card charge is

being made; (iii) the date on which the recurring EFT or credit card charge will be made; and (iv) a DISH Network telephone number that Consumers may call with any inquiries related to their bills;

- (E) if DISH Network requires a credit card or debit card from a Consumer in order for the Consumer to qualify for a promotion to lease any DISH Network Goods or receive any DISH Network Services ("Qualifying Card"), Clearly and Conspicuously disclose to the Consumer, prior to the Consumer's submission of the card number, that by submitting his or her credit or debit card to qualify for a promotion to lease any DISH Network Goods or receive any DISH Network Services, he or she is authorizing DISH Network to automatically charge or debit his or her card for the cost of any unreturned equipment or for an early-termination or cancellation fee, if applicable;
- (F) when obtaining a Qualifying Card from the Consumer, confirm whether the Qualifying Card is a credit or debit card;
- (G) obtain written authorization from the Consumer to automatically charge or debit the Consumer's Qualifying Card for any penalty fees owed by the Consumer, including, but not limited to, unreturned equipment and early-termination or cancellation fees; such written authorization shall be obtained in a Clear and Conspicuous manner and in no event through a clause in an Agreement unless the clause is Clearly and Conspicuously set apart from, and more prominent than, all other clauses in the Agreement; and
- (H) promptly correct any incorrect charge or debit DISH Network makes to a Consumer's debit or credit card by restoring funds to the Consumer's bank account or refunding the amount to the Consumer's credit card. An "incorrect charge or debit" includes, but is not limited to, any amount charged to a Consumer for unreturned equipment or early cancellation of an Agreement where it is later determined that the Consumer does not, in fact, owe the amount.

4.44 In all transactions, DISH Network shall not:

- (A) use, in any Agreement with Consumers, the term "Credit Card" to refer to or mean a debit card or any other form of an Electronic Fund Transfer as that term is defined by the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*;
- (B) use a Consumer's credit or debit card or bank account provided by the Consumer to enroll in an EFT or CCA program for any charges other than the Consumer's monthly statement amount, unless the same credit or debit card was provided as the Qualifying Card;

- (C) make a one-time EFT or charge to a debit or credit card without receiving the Consumer's express prior written, electronic, or verbal authorization for the charge;
- (D) make an EFT or charge to a debit or credit card belonging to someone other than the customer named on the specific DISH Network account without obtaining the non-account-holder's prior express written, electronic, or verbal authorization for the payment;
- (E) make a charge to a debit card for any penalty payment, including, but not limited to, a cancellation or termination fee or unreturned equipment fee, without providing the Consumer with at least ten (10) days' written notice, or email notice if the Consumer has affirmatively chosen to receive his or her monthly statement electronically, of the maximum amount that will be charged or debited and the date on which the charge or debit will be made, or, in the case of unreturned equipment fees, the charge DISH Network is going to impose for each piece of unreturned equipment that the Consumer has leased, and the date the charge or debit will be made, and such notice shall include, where applicable, a description of how the Consumer can calculate his or her exact early-cancellation charge and a table showing the exact price of each piece of equipment, along with a toll-free number that the Consumer may call to inquire about the notice; and
- (F) make an automatic credit or debit from any credit or debit card for any penalty payment, including, but not limited to, an early-cancellation fee or unreturned equipment fee, from any credit or debit card other than a credit or debit card that belongs to a DISH Network account holder.

#### **Termination of Services and Equipment Return**

4.45 DISH Network shall not bill a Consumer a cancellation, termination, and/or other fee in connection with the termination of DISH Network Services and/or the return of DISH Network Goods unless it can document that it has complied with the terms of its Agreement and any representations it has made to Consumers regarding DISH Network's and/or the Consumer's obligations with respect to cancellation or termination of DISH Network Services and/or the return of DISH Network Goods.

4.46 Prior to charging any Consumer who voluntarily cancels DISH Network Services any cancellation, termination, and/or other fee in connection with the termination, and/or return of any DISH Network Goods, DISH Network shall Clearly and Conspicuously disclose to the Consumer the following information: (i) the exact amount of any cancellation or termination and/or other fee that the Consumer is being charged; (ii) if the amount of any cancellation, termination and/or other fee that the Consumer is being charged is related to the return of any DISH Network Goods, the exact pieces of equipment and the maximum charge per piece of

equipment; (iii) notification that the Qualifying Card will be debited or charged for the termination, cancellation, and/or fee related to the return of DISH Network Goods; (iv) the terms and conditions under which the Consumer must return any DISH Network Goods to DISH Network; (v) a toll-free telephone number that the Consumer may call to discuss or dispute the bill; and (vi) the procedure the Consumer may follow to avoid incurring the cancellation, termination and/or other fee, if any.

4.47 Prior to charging any Consumer whose DISH Network Services are involuntarily terminated any cancellation, termination, and/or other fee in connection with the termination, and/or return of any DISH Network Goods, DISH Network shall Clearly and Conspicuously disclose to the Consumer the following information: (i) the maximum amount of any cancellation or termination fee; (ii) if the amount of any fee that the Consumer is being charged is related to the return of any equipment, the maximum charge per piece of equipment; (iii) notification that the Qualifying Card will be debited or charged; (iv) a toll-free telephone number that the Consumer may call to discuss or dispute the bill; and (v) the procedure the Consumer may follow to avoid incurring the cancellation, termination and/or other fee, if any.

4.48 If a Consumer notifies DISH Network or one of its Third-Party Retailers of a problem regarding a recurring impairment and/or material limitation to the quality or usability of any DISH Network Services, including, but not limited to, recurring material interference of signal reception, that is not caused or attributable to improper installation by the Consumer, a change in alignment of the satellite receiving equipment that is not caused by DISH Network, misuse or abuse of the equipment, and/or other factors not within DISH Network's control, DISH Network shall either (i) allow the Consumer to cancel his or her Agreement without the imposition of a termination fee, or (ii) directly or through its Third-Party Retailer, schedule and complete an in-home service appointment to correct the problem. If DISH Network cannot correct the impairment or limitation problem within thirty (30) days of DISH Network's receipt of such Consumer's initial impairment or limitation notification, the Consumer shall have the right to cancel his or her Agreement with DISH Network without the imposition of an early-termination fee.

4.49 DISH Network shall not deactivate or otherwise terminate any Consumer's account unless it notifies the Consumer that the Consumer's DISH Network Services are to be deactivated or otherwise terminated, at least twenty (20) days prior to the deactivation or termination, and Clearly and Conspicuously discloses the upcoming deactivation or termination, the reason for the deactivation or termination and what actions or recourse, if any, the Consumer may take to avoid the deactivation or termination.

4.50 DISH Network shall not wrongfully terminate any Consumer's Agreement. For purposes of this Assurance, wrongful termination of a Consumer's Agreement shall include termination as a result of any error by DISH Network or in violation of any Agreement. In the event DISH Network wrongfully terminates any Agreement, DISH Network shall (i) refund any amount it charged the Consumer in connection with the wrongful termination and (ii) not charge

the Consumer whose Agreement was wrongfully terminated any reactivation fee or other fee to reactivate DISH Network Services. If, as a result of DISH Network's wrongful termination of any Agreement, DISH Network reports any information regarding a Consumer to any credit-reporting agency or bureau, DISH Network shall provide the bureau or credit-reporting agency with a report correcting the information it previously provided to the credit-reporting agency or bureau.

4.51 DISH Network shall not charge Consumers any fee in connection with the return of any DISH Network Goods if DISH Network fails to comply with the terms of any Agreement or any representations that it makes to Consumers in connection with the return of any DISH Network Goods.

4.52 DISH Network shall not charge any Consumer any cancellation or termination fee in connection with the termination of any DISH Network Services that exceeds the amount of the Consumer's remaining payment obligation under any Agreement.

4.53 DISH Network shall not charge any Consumer any cancellation, termination or other fee in connection with the return of any DISH Network Goods that exceeds the Manufacturer's Suggested Retail Price (M.S.R.P.).

#### **Credit Check Policies**

4.54 When conducting a credit check, DISH Network shall disclose to Consumers prior to the sale or lease of any DISH Network Goods and/or DISH Network Services, any requirement that Consumers provide DISH Network with their social security numbers in order to activate any DISH Network Services or to purchase or lease any DISH Network Goods. DISH Network shall further disclose to Consumers, prior to the sale or lease of any DISH Network Goods and/or DISH Network Services, the reason for requiring a social security number. If requested by the Consumer, DISH Network shall identify at the time of such request any third party with whom DISH Network may share the Consumer's social security number. Furthermore, DISH Network shall comply with all federal, state and local laws, regulations, and rules regarding the gathering, maintaining, storing, destruction and sharing of Consumers' social security numbers.

4.55 DISH Network shall issue an adverse action notice pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*, to any Consumers against whom DISH Network took any adverse action based in whole or in part on any information contained in the Consumer's credit report, including, but not limited to, refusing to offer a promotional discounted price for any DISH Network Services and/or DISH Network Goods or requiring a deposit in connection with the purchase of any DISH Network Services and/or the purchase or lease of any DISH Network Goods.

### Third-Party Retailers

4.56 DISH Network shall require its Third-Party Retailers to offer, lease, Advertise, install, and/or sell DISH Network Goods and/or DISH Network Services, and to make representations to Consumers in connection therewith, in a manner consistent with the terms of this Assurance.

4.57 DISH Network shall require its Third-Party Retailers to use telemarketers who comply with the provisions of this Assurance. If DISH Network learns that any of its Third-Party Retailers are conducting any Telemarketing activities, directly or through any other telemarketer, that violate the terms of this Assurance, DISH Network shall take appropriate disciplinary action against such Third-Party Retailers. Appropriate disciplinary action may include one or more of the following remedies:

- 1) termination;
- 2) imposing monetary fines;
- 3) withholding of compensation;
- 4) suspending the right to Telemarket (directly or through a third-party) for a period of time;
- 5) prohibiting telemarketing (directly or through a third-party);
- 6) requiring the Third-Party Retailer to impose appropriate guidelines on its Telemarketing activities, such as procedures for compliance with the TCPA and/or any other federal, state or local laws regarding Telemarketing;
- 7) requiring the Third-Party Retailer to terminate a person or entity that is Telemarketing on its behalf; and/or
- 8) other appropriate and reasonable discipline under the circumstances

4.58 DISH Network shall affirmatively investigate Complaints made to it or to the Better Business Bureau by Consumers, regulatory agencies or law enforcement entities, when such Complaints are brought to the attention of DISH Network, pertaining to its Third-Party Retailers' offer, Advertisement, installation, lease, and/or sale of DISH Network Goods and/or DISH Network Services, and shall take appropriate and reasonable disciplinary action as soon as reasonably practicable, against any Third-Party Retailer it has determined to be in violation of the requirements of this Assurance. Appropriate action may include retraining and other disciplinary action, up to and including termination of the Third-Party Retailer's authority to offer, Advertise, install, lease, and/or sell DISH Network Goods and/or DISH Network Services. Upon request of an Attorney General, DISH Network shall provide the Attorney General with the following information: (i) the name, address, and phone number of the Consumer who made the allegation or complaint; (ii) a copy or description of the allegation or complaint; (iii) the name, address and phone number of the Third-Party Retailer against whom the allegation or complaint was lodged; and (iv) a description and any documentation of the specific action it took regarding the complaint or allegation. DISH Network shall maintain the information required under this paragraph for a period of not less than six (6) years including, but not limited to, any



record that refers or relates to any Complaints it receives against any Third-Party Retailers and any record that refers or relates to any investigation by DISH Network of such Complaints.

4.59 DISH Network shall be bound by and honor any representations that are made to Consumers by its Third-Party Retailers who offer, Advertise, install, lease, and/or sell DISH Network Goods and/or DISH Network Services made with DISH Network's prior authorization, approval, permission or knowledge.

4.60 Within thirty (30) days of the date of the entry of this Assurance, DISH Network shall provide each Third-Party Retailer who offers, Advertises, installs, leases, and/or sells DISH Network Goods and/or DISH Network Services with a copy of this Assurance and inform such Third-Party Retailers that in order to continue acting as authorized DISH Network Third-Party Retailers, they must abide by the applicable terms and conditions of this Assurance.

4.61 DISH Network shall not allow its Third-Party Retailers to charge any fees to Consumers for DISH Network Services and/or DISH Network Goods other than: (i) for installation or activation, if the amount and the purpose of the fees are Clearly and Conspicuously disclosed in writing to Consumers prior to their entering any Agreement with DISH Network; and (ii) any after-sale services and/or goods performed or sold by the Third-Party Retailer.

4.62 DISH Network shall require its Third-Party Retailers, when offering, installing, servicing, leasing, and/or selling any DISH Network Goods and/or DISH Network Services, to identify themselves to Consumers, including Clearly and Conspicuously disclosing their name, address and telephone number, and their relationship to DISH Network, and DISH Network shall require its Third-Party Retailers, upon receipt of any Complaint from a Consumer, to provide the Consumer with DISH Network's toll-free telephone number for resolving Complaints.

#### **Account Assignment to Third Parties**

4.63 In the event that DISH Network assigns a Consumer's account to a Billing Agent, at least forty-five (45) days in advance of such assignment, DISH Network must send the Consumer a notice Clearly and Conspicuously disclosing the following: (i) the name, address and phone number of the Billing Agent; (ii) an itemization of the amounts that have been assigned to the billing agent; and (iii) a description of the services provided for which the amounts are being billed.

4.64 DISH Network shall comply with the Fair Debt Collection Practices Act, 15 U.S.C. § 1601, *et seq.*, and all state and local collections laws.

4.65 DISH Network shall monitor and be responsible for the conduct of any Billing Agent to which it assigns any Consumer's account, including, but not limited to, receiving and

resolving Consumer complaints made against such Billing Agents in connection with the billing for any DISH Network Goods and/or DISH Network Services.

4.66 In the event that DISH Network assigns a Consumer's account to a Billing Agent, the terms of such an assignment shall include the requirement that the Billing Agent abide by any terms contained in any Agreement concerning the collection of any outstanding balance owed by the Consumer.

### **Telemarketing and Do Not Call**

4.67 DISH Network shall comply with all federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state, or local do-not-call lists unless otherwise exempted by such laws.

4.68 DISH Network shall comply with all federal, state and local laws requiring the acquisition or purchase of national and state do-not-call databases and shall not make any Telemarketing calls to Consumers in the applicable state or municipality until it has acquired or purchased all do-not-call databases required by federal, state, or local laws.

4.69 DISH Network shall not initiate an outbound Telemarketing call directly or through an Authorized Telemarketer to a person who has previously stated to DISH Network or an Authorized Telemarketer that he or she does not wish to receive a Telemarketing call made by or on behalf of DISH Network, or has expressed a desire to be placed on DISH Network's internal do-not-call list.

4.70 DISH Network shall require any and all Authorized Telemarketers during any Telemarketing calls they make to (i) provide to the Consumer the first name of the representative that is making the call and (ii) inform the Consumer that the Telemarketing call is made on DISH Network's behalf.

4.71 DISH Network shall register with any and all governmental entities or agencies as required by applicable federal, state and local laws in each jurisdiction in which it engages in Telemarketing activities.

4.72 DISH Network shall, if and to the extent that it is not already the existing practice of DISH Network, establish and implement an internal do-not-call list, as well as policies and procedures, to ensure that, subject to exemptions provided in federal, state or local law, DISH Network and any Authorized Telemarketer through which it contacts Consumers for the purpose of offering and/or selling DISH Network Goods and/or DISH Network Services, do not call any Consumers on DISH Network's internal do-not-call list or any Consumer listed on any federal, state or local do-not-call list, unless otherwise exempted by such laws. DISH Network shall monitor or retain a third-party vendor to monitor outbound telemarketing campaigns conducted by an Authorized Telemarketer to determine whether the Authorized Telemarketer is complying

with all applicable federal, state, and local do-not-call laws. Upon request from an Attorney General, DISH Network shall provide the Attorney General with a copy of such written policies and procedures.

4.73 DISH Network shall issue business rules to its Authorized Telemarketers and Covered Marketers, requiring them to comply with the terms of this Assurance.

4.74 DISH Network shall affirmatively investigate Complaints regarding alleged violations of federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state, or local do-not-call lists, unless otherwise exempted by such laws, and shall take appropriate action as soon as reasonably practicable against any Authorized Telemarketers and Covered Marketers it has determined to be in violation of the requirements of this Assurance. Upon request from an Attorney General, DISH Network shall provide the Attorney General with the following information: (i) the name, address, and phone number of the Consumer who made the allegation or Complaint; (ii) a copy or description of the allegation or Complaint; and (iii) the name, address and phone number of the Authorized Telemarketer or Covered Marketer against whom the allegation or Complaint was lodged. Further, DISH Network shall be required to notify the Attorney General of the specific action it took regarding the Complaint or allegation if so requested.

4.75 Within thirty (30) days of the date of the execution of this Assurance, DISH Network shall provide each Authorized Telemarketer and each Covered Marketer with a copy of this Assurance and inform them that in order to continue acting as DISH Network Authorized Telemarketers or Covered Marketers, they must abide by the terms and conditions of this Assurance.

4.76 DISH Network shall appropriately discipline an Authorized Telemarketer if DISH Network reasonably determines that, in connection with Telemarketing DISH Network Goods and/or DISH Network Services, the Authorized Telemarketer has: (a) failed to fulfill contract requirements with respect to compliance with federal, state, or local telemarketing laws; (b) violated federal, state, or local telemarketing laws; and/or (c) failed to comply with the terms of this Assurance as they relate to this Telemarketing and Do Not Call section. Such disciplinary action shall include one or more of the following remedies:

- 1) termination;
- 2) imposing monetary fines;
- 3) withholding of compensation;
- 4) suspending the right to Telemarket for a period of time;
- 5) prohibiting Telemarketing;
- 6) requiring the Authorized Telemarketer to improve its process and procedures for compliance with the Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227, *et seq.*, and/or any other federal, state and local laws regarding Telemarketing;

- 7) requiring the Authorized Telemarketer to terminate certain employees involved in TCPA violations and/or violations of any other federal, state and local laws regarding Telemarketing;
- 8) requiring the Authorized Telemarketer to terminate Telemarketing affiliates;
- 9) requiring the Authorized Telemarketer to retrain employees in TCPA compliance and/or compliance with any other federal, state and local laws regarding Telemarketing; and/or
- 10) other appropriate and reasonable discipline under the circumstances.

In determining what disciplinary action shall be taken, DISH Network shall take into consideration the egregiousness of the Authorized Telemarketer's conduct, the number of violations, the Authorized Telemarketer's willingness to cure the problem, and whether DISH Network has previously disciplined the Authorized Telemarketer.

4.77 DISH Network shall require any Covered Marketer that Telemarkets any DISH Network Goods and/or DISH Network Services to establish written policies and procedures to comply with all federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state and local do-not-call list.

4.78 DISH Network shall monitor, directly or through a third-party monitoring service approved by DISH Network, its Covered Marketers to determine whether they are Telemarketing Consumers and, if so, to determine whether the Covered Marketer is complying with all applicable federal, state, and local do-not-call laws. Upon request from an Attorney General, DISH Network shall provide the requesting Attorney General with a copy of such written policies and procedures. DISH Network states that it has had persons pose as potential subscribers in order to engage in "sting"-type operations to determine if certain Covered Marketers are complying with its do not call policies. Among other things, DISH Network will continue engaging in such practices as part of the monitoring process described above.

4.79 DISH Network shall appropriately and reasonably discipline a Covered Marketer if DISH Network reasonably determines that, in connection with Telemarketing DISH Network Goods and/or DISH Network Services, the Covered Marketer has: (a) failed to fulfill contract requirements with respect to compliance with federal, state, or local telemarketing laws; (b) violated federal, state, or local telemarketing laws; and/or (c) failed to comply with the terms of this Assurance as they relate to this Telemarketing and Do Not Call section. Such disciplinary action shall include one or more of the following remedies:

- 1) termination;
- 2) imposing monetary fines;
- 3) withholding of compensation;
- 4) suspending the right to Telemarket for a period of time;
- 5) prohibiting Telemarketing;

- 6) requiring the Covered Marketer to improve its process and procedures for compliance with the TCPA and/or any other federal, state and local laws regarding Telemarketing;
- 7) requiring the Covered Marketer to terminate certain employees involved in TCPA violations and/or violations of any other federal, state and local laws regarding Telemarketing;
- 8) requiring the Covered Marketer to terminate Telemarketing affiliates;
- 9) requiring the Covered Marketer to retrain employees in TCPA compliance and/or compliance with any other federal, state and local laws regarding Telemarketing; and/or
- 10) other appropriate and reasonable discipline under the circumstances.

In determining what disciplinary action shall be taken, DISH Network shall take into consideration the egregiousness of the Covered Marketer's conduct, the number of violations, the Covered Marketer's willingness to cure the problem, and whether DISH Network has previously disciplined the Covered Marketer.

### **Complaint Handling**

4.80 DISH Network shall maintain all Consumer Complaints it receives and DISH Network's responses to those Consumer Complaints for a period of at least three (3) years from the date of DISH Network's receipt of the Consumer Complaint. DISH Network may maintain these Complaints electronically if it so chooses.

4.81 Within thirty (30) days of the entry of this Assurance, DISH Network shall appoint a person or persons or an entity to act as a direct contact for the Attorneys General Offices (or other state agencies responsible for Complaint mediation) for resolution of Consumer Complaints. DISH Network shall provide the Attorneys General (or other state agencies) with the name(s), address(es), telephone number(s), facsimile number(s) and e-mail address(es) of the person(s) or entity(ies) within three (3) days of his/her/its appointment.

4.82 DISH Network shall record a Consumer Complaint by including: (i) a description of the Complaint; (ii) the date DISH Network received the Complaint; (iii) a summary of relevant communications with the Consumer regarding the Complaint; and (iv) a description of the ultimate resolution of the Complaint that includes any relief provided.

## **5. RESTITUTION**

5.1 DISH Network agrees to pay restitution and/or other appropriate relief to Consumers who have Eligible Complaints. For purposes of the Restitution section of this Assurance, an Eligible Complaint is a written request or demand from a Consumer residing in the signatory Attorney General's state and that: (i) was received by DISH Network and/or one of

the Attorneys General and/or any other state agency located in one of the signatory Attorney General's states handling Consumer complaints between January 1, 2004 and the date of the entry of this Assurance, and the Complaint remains either fully or partially unresolved; or (ii) is received by DISH Network, either directly from a Consumer or through a third party such as an Attorney General's Office, any state Consumer complaint-handling agency or Better Business Bureau, within one hundred and fifty (150) days from the date of the entry of this Assurance and concerns conduct that occurred during the two-year period prior to the date of this Assurance.

5.2 Consistent with the terms of this Assurance, DISH Network shall resolve each Eligible Complaint by offering the Consumer the option of either (i) accepting restitution or some other appropriate relief offered by DISH Network or (ii) if DISH Network is unable to resolve the Complaint to the Consumer's satisfaction, using the Claim Form attached hereto as Exhibit A, DISH Network shall inform the Consumer that he/she may submit his/her Eligible Complaint to a neutral third-party (the "Claims Administrator") who shall manage and administer a complaint-resolution program pursuant to the terms of this Assurance. The selection of the Claims Administrator and any successor administrator shall be subject to the approval of the Attorneys General.

5.3 Within fifteen (15) days of receiving an Eligible Complaint, DISH Network shall attempt to resolve the Eligible Complaint by offering the Consumer who filed the Eligible Complaint restitution and/or some other appropriate relief. If, within (15) days of receiving an Eligible Complaint, DISH Network is unable to resolve the Eligible Complaint to the Consumer's satisfaction, DISH Network shall inform the Consumer of his or her ability to submit his or her complaint to the Claims Administrator for resolution by mailing the Consumer the Claim Form attached hereto as Exhibit A. The Claim Form shall describe the restitution and/or other appropriate relief that DISH Network is offering to resolve the Eligible Complaint and shall explain the procedure for accepting DISH Network's offer and for rejecting the offer and submitting the Eligible Complaint to the Claims Administrator for resolution. Acceptance by a Consumer of any relief offered by DISH Network shall not act as a release by the Consumer of any claims that he or she may have against DISH Network. However, DISH Network shall have the right to raise defenses available to it arising from the acceptance of the offer, including that the relief provided shall mitigate any damages that are asserted. If a Claim Form is returned to DISH Network as undeliverable, DISH Network shall attempt to locate the Consumer by: (i) mailing the Claim Form to any forwarding address provided by the U. S. Postal Service for the Consumer; (ii) mailing the Claim Form to any additional addresses for the Consumer contained in DISH Network's business records; and (iii) contacting the Consumer at any phone number, e-mail address, or facsimile number that is contained in DISH Network's business records regarding the Consumer for the purpose of obtaining a correct mailing address and mailing the Claim Form to the Consumer at the correct mailing address.

5.4 A Consumer may elect to have his/her Eligible Complaint decided by the Claims Administrator by submitting the Claim Form to DISH Network within forty-five (45) days of the date of the mailing of the Claim Form by DISH Network. The Consumer may return the Claim

Form to DISH Network via the U.S. Postal Service or via facsimile or other additional manner set forth by DISH Network. For purposes of this paragraph, the date on which a Claim Form is returned to DISH Network shall be either (i) the date of any postmark contained on the envelope used to return the Claim Form to DISH Network via U.S. mail; or (ii) the date on which the Claim Form is returned to DISH Network via facsimile.

5.5 DISH Network shall, within ten (10) days of its receipt of a Claim Form from a Consumer, provide the Claims Administrator a copy of: (i) the Consumer's Eligible Complaint; (ii) the Consumer's submitted Claim Form; and (iii) any other document mailed by the Consumer with either his/her Claim Form or Eligible Complaint. DISH Network shall also provide the Claims Administrator any documents transmitted by the Consumer to DISH Network prior to the Claims Administrator's resolution of the Consumer's Eligible Complaint relating to the Consumer's Eligible Complaint and any other relevant information.

5.6 DISH Network shall provide any Consumers who accept its offer of restitution and/or other appropriate relief with the restitution payment and/or any other appropriate relief that was accepted by the Consumer no later than thirty (30) days from the date the Consumer accepted DISH Network's offer of restitution and/or other appropriate relief.

5.7 Within thirty (30) days of the date of the entry of this Assurance, DISH Network shall hire the Claims Administrator. For the purpose of protecting the proprietary and customer information to be provided to him/her by DISH Network, the Claims Administrator shall enter into a contractual relationship with DISH Network consistent with the terms of this Assurance.

5.8 DISH Network shall pay the Claims Administrator and all costs associated with the complaint-resolution program provided for in this Assurance.

5.9 The Claims Administrator shall be responsible for, among other things, the collection of all Eligible Complaints and supporting documents necessary for determination of restitution and/or other appropriate relief to Consumers. The Claims Administrator shall request from DISH Network and the Consumer all information he/she deems necessary to make a full and fair resolution of an Eligible Complaint. The Claims Administrator shall conduct a paper review of the Eligible Complaint and any supporting documentation. No state or federal rules of evidence shall apply to the Claims Administrator's review. The complaint-resolution program shall be designed in a Consumer-friendly non-legal environment to encourage the Consumer's participation in the process. *Ex parte* communication with the Claims Administrator will not be allowed pertaining to any specific Eligible Complaint or as to the criteria used in evaluating each Eligible Complaint.

5.10 The Claims Administrator is responsible for the coordination of the complaint-resolution program with the full and complete cooperation of all parties to this Assurance. The Claims Administrator's resolution of Eligible Complaints shall be binding only on the Attorneys General and DISH Network. The Claims Administrator shall conduct hearings on Eligible

Complaints by telephone when requested by either party or when deemed necessary by the Claims Administrator for his or her resolution of an Eligible Complaint. The Consumers shall be informed in writing of the option for a telephonic hearing.

5.11 The Claims Administrator shall issue a decision regarding an Eligible Complaint within a reasonable period of time following receipt of the Eligible Complaint and all required and/or requested documents, but in no event shall the decision be issued later than thirty (30) days following receipt of the Eligible Complaint or any supporting documentation without good cause, and shall deliver the decision to DISH Network and to the Consumer whose Eligible Complaint is the subject of the decision. In the event a decision issued by the Claims Administrator requires DISH Network to provide a Consumer with a restitution payment and/or other appropriate relief, DISH Network shall, within thirty (30) days of its receipt of such decision, deliver to the Consumer the required restitution payment and/or other appropriate relief.

5.12 On the first and second year anniversary date of the hiring of the Claims Administrator, DISH Network shall provide a report broken down by state to the Attorneys General, in a format and medium to be agreed upon by DISH Network and the Attorneys General, setting forth the following information:

- (A) the number of Eligible Complaints received from DISH Network;
- (B) a description of the nature of each Eligible Complaint, including a description of the business practices that are the focus of the Eligible Complaint;
- (C) the name and address of each Consumer who filed an Eligible Complaint;
- (D) a description of the resolution of the Eligible Complaint, including the amount of any restitution payment and a description of any other relief offered;
- (E) a statement whether the Eligible Complaint was submitted to the Claims Administrator; and
- (F) if the Eligible Complaint was submitted to the Claims Administrator, the decision of the Claims Administrator and response, if any, of any Consumer to the decision, including documentation of a Consumer's acceptance of any relief ordered by the Claims Administrator.

5.13 At the request of DISH Network, the Attorneys General, or the Claims Administrator, the Claims Administrator or his/her designee, shall meet and confer with the Attorneys General and DISH Network for any purpose relating to the administration of the complaint-resolution program provided for under this Assurance, including, but not limited to, monitoring and auditing the complaint-resolution program. Problems that arise concerning the implementation of the complaint-resolution program may be resolved by agreement among the Attorneys General, DISH Network and the Claims Administrator.



## **6. PAYMENT TO THE ATTORNEYS GENERAL**

6.1 Within thirty (30) days of entry of this Assurance, DISH Network shall pay the sum of Five Million Nine Hundred Ninety-One Thousand Dollars (\$5,991,000), to the Attorneys General. Such sum is to be divided among the Attorneys General as they may agree and said payment shall be used by the Attorneys General for attorneys' fees and other costs of investigation and litigation and/or for future public protection purposes, or be placed in, or applied to, the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of each of the Attorneys General.<sup>6</sup>

## **7. GENERAL PROVISIONS**

7.1 The acceptance of this Assurance by the Attorneys General shall not be deemed approval by the Attorneys General of any of DISH Network's Advertising or business practices. Further, neither DISH Network nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorneys General, or any other governmental unit, have approved, sanctioned or authorized any practice, act, Advertisement, representation, or conduct of DISH Network.

7.2 This Assurance does not constitute an admission by DISH Network for any purpose of any fact or of a violation of any law, rule or regulation, nor does this Assurance constitute evidence of any liability, fault or wrongdoing. This Assurance is entered into without trial or adjudication of any issue of fact or finding of liability of any kind. Neither this Assurance, nor any negotiations, statements or documents related thereto, shall be offered or received in evidence as an admission of liability or wrongdoing. This Assurance is not intended to confer upon any person any rights or remedies, shall not create any third-party beneficiary rights and may not be enforced by any person, entity or sovereign except the Attorneys General.

7.3 DISH Network shall comply with the terms of this Assurance within ninety (90) days following the execution of this Assurance, or within the time frames otherwise set by this Assurance.

7.4 The Attorneys General shall not institute any civil proceeding or action under their Consumer Protection Acts and Telemarketing Acts<sup>7</sup> against DISH Network or its successors, employees, officers and/or directors for any conduct occurring prior to the entry date

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<sup>6</sup> With regard to the State of Colorado, such funds and any interest thereon shall be held by the Attorney General in trust to be used, first, for reimbursement of the state's costs and attorneys' fees incurred by the Attorney General in this matter and second, for future consumer education, consumer protection, or antitrust enforcement efforts.

<sup>7</sup> In Indiana, Minnesota, Mississippi, South Carolina, Tennessee and Texas, state agencies other than the Attorney General also have enforcement authority for Do Not Call violations and are not releasing those claims in this settlement.

of this Assurance that is based on the conduct addressed in Section Four (4) of the Assurance. This Assurance constitutes a complete settlement and release of all claims on behalf of the Attorneys General against DISH Network with respect to all civil claims, causes of action, damages, restitution, fines, costs, attorneys' fees and penalties pursuant to the Consumer Protection Acts and Telemarketing Acts arising from any acts, issues, policies or practices prior to the entry of this Assurance and which related to or were based upon the specific subject matter raised in Section Four (4) of this Assurance. However, nothing in this Assurance, including this Paragraph 7.4, shall constitute a settlement and/or release of any claims, causes of action, damages, restitution, fines, costs, attorneys' fees and/or penalties arising from any acts, issues, policies or practices which relate in any way to or are based upon DISH Network unilaterally altering, directly or through any Third-Party Retailers, the terms of any Agreement without the express written consent of the Consumer with whom it entered the Agreement, including, but not limited to, any alteration in any terms concerning programming or pricing in any long-term contracts, or which relate to or are based upon the inclusion in DISH Network's Agreement of any provision that permits its unilateral alteration, directly or through any Third-Party Retailers, of the terms of any Agreement concerning the purchase and/or lease of DISH Network Services and/or DISH Network Goods.

7.5 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

7.6 As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

7.7 Subject to Paragraph 7.4, nothing in this Assurance shall limit the right of the Attorneys General to obtain information, documents or testimony from DISH Network pursuant to any state or federal law, regulation or rule.

7.8 Subject to Paragraph 7.4, nothing in this Assurance shall be construed to limit the authority of the Attorneys General to protect the interests or people of their State.

7.9 If any provision of this Assurance shall come into conflict with any newly enacted law or change in an existing law; there is a change in DISH Network's business practices; there are any changes or advancements in technology; or there are any other reasons that may be appropriate under the circumstances, the parties to this Assurance may modify this Assurance with the express written consent of all parties and court approval, if necessary.

7.10 Nothing in this Assurance constitutes an agreement by the Attorneys General concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

7.11 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing and signed by the party to be charged and then only to the extent set forth in such written waiver, modification or amendment.

7.12 Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance.

7.13 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance 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.

7.14 This Assurance sets forth the entire agreement between the Attorneys General and DISH Network resolving the allegations in paragraphs 1.5 through 1.12.<sup>8</sup>

7.15 Nothing in this Assurance shall be construed to waive any claims of sovereign immunity the Attorneys General or their States may have in any action or proceeding.

7.16 DISH Network will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

7.17 If a signatory Attorney General determines that DISH Network has failed to comply with any of the terms of this Assurance, and if in the signatory Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of their State, the signatory Attorney General agrees not to initiate any action or proceeding pursuant to the Assurance against DISH Network based upon a dispute relating to DISH Network's compliance without first notifying DISH Network in writing of such failure to comply. DISH Network shall then have ten (10) business days from receipt of such written notice to provide a written response to the signatory Attorney General. Nothing in this Assurance shall be construed to limit the authority of the Attorneys General to protect the interests of their States or the people of their States. Further, subject to paragraph 7.4, nothing in this Assurance shall be construed to limit or bar the Attorneys General or any other governmental entity from enforcing laws, regulations or rules against DISH Network at any point in time.

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<sup>8</sup>This Assurance of Voluntary Compliance will not have any effect on the Assurance of Voluntary Compliance or Discontinuance titled "In the Matter of: EchoStar Satellite Corporation" entered by thirteen states in 2003.

7.18 Nothing herein shall prevent the Attorneys General from agreeing to provide DISH Network with additional time beyond the ten (10) business day period to respond to the notice.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 DISH Network represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, and that this Assurance is the result of good faith negotiations.

8.2 DISH Network represents and warrants that signatories to this Assurance have authority to act for and bind DISH Network.

## **9. COMPLIANCE WITH ALL LAWS**

9.1 Nothing in this Assurance shall be construed as relieving DISH Network of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

## **10. NONCOMPLIANCE**

10.1 DISH Network represents that it has fully read and understood this Assurance and understands the legal consequences involved in signing this Assurance (including that in certain states, a violation of this Assurance is punishable by contempt, and in others, a violation of this Assurance is *prima facie* evidence of a violation of that State's consumer protection statute). DISH Network expressly understands that any violation of this Assurance may result in any signatory Attorney General seeking all available relief to enforce this Assurance, including an injunction, civil penalties, court and investigative costs, attorneys' fees, restitution, and any other mechanism provided by the laws of the state or authorized by a court.

## **11. MONITORING FOR COMPLIANCE**

11.1 Upon request by any signatory Attorney General, DISH Network shall provide books, records and/or documents to the signatory Attorney General relating to compliance with this Assurance. DISH Network shall make any requested information related to compliance with this Assurance available within thirty (30) days of the request, by the signatory Attorney General. This shall in no way limit the signatory Attorney General's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule.

11.2 Within thirty (30) days of entry of this Assurance, DISH Network shall submit a copy of this Assurance to each of its officers, directors, and any employee necessary to ensure DISH Network's compliance with the terms of this Assurance.

11.3 The Attorneys General have the right to test shop DISH Network for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the Attorneys General when making contact with DISH Network. Further, DISH Network hereby agrees that the Attorneys General may record any or all aspects of its solicitations or visit(s) with DISH Network in audio and/or video form without notice to DISH Network. DISH Network agrees to void any sale that is commenced by a test shopper and return any monies paid by a test shopper upon notification that it was test shopping conducted by the Attorneys General.

## **12. PRIVATE RIGHT OF ACTION**

12.1 Nothing in this Assurance shall be construed to affect, restrict, limit, waive or alter any private right of action that a Consumer may have against DISH Network.

## **13. NOTIFICATION TO PARTIES**

13.1 Any notices required to be sent to the Attorneys General pursuant to this Assurance shall be sent by United States certified mail, return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State of	For DISH Network:  R. Stanton Dodge Executive Vice President and General Counsel 9601 S. Meridian Blvd. Englewood, CO 80112  cc: Helen Mac Murray Mac Murray, Petersen & Shuster LLP 6530 West Campus Oval, Suite 210 New Albany, OH 43054 Telephone: (614) 939-9955
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13.2 Any party may designate a different individual to receive the notices required to be sent by sending written notification to the other parties at least thirty (30) days before such change will occur identifying that individual by name and/or title and mailing address.


#### 14. COSTS

14.1 Where necessary DISH Network shall pay all court costs associated with the filing of this Assurance.

**In the Matter of:**  
**Dish Network Assurance of Voluntary Compliance**

Dated: 7/2/09

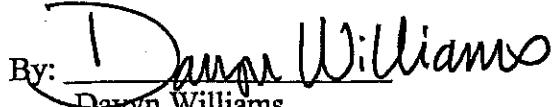
Troy King  
Attorney General of Alabama

  
W. Rushing Payne, Jr.  
Deputy Attorney General  
Office of the Attorney General  
500 Dexter Avenue  
Montgomery, Alabama 36130  
(334) 353-4951  
(334) 242-2433 (fax)

JA000046

FOR THE STATE OF ALASKA

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By:   
Davyn Williams

Alaska Bar No. 0711093  
Assistant Attorney General  
Office of the Attorney General  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
Anchorage, Alaska 99501  
(907) 269-5200



Assurance of Voluntary Compliance  
In the Matter of Dish Network, L.L.C.

TERRY GODDARD  
ATTORNEY GENERAL  
FOR THE STATE OF ARIZONA

By: *Dana Rosen for Rebecca Salisbury*  
Rebecca Salisbury  
Assistant Attorney General

Date: *June 24, 2009*

JA000048

FOR THE STATE OF ARKANSAS:



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Jean C. Block  
Assistant Attorney General  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, AR 72201  
501.682.2108 Direct  
501.683.1513 Fax

ASSURANCE OF VOLUNTARY COMPLIANCE

In the matter of:

DISH NETWORK, L.L.C.,                     )  
a Colorado Limited Liability Company    )

Agreed to and accepted by the State of Colorado, ex rel. John W. Suthers  
This 8<sup>th</sup> day of July, 2009

JOHN W. SUTHERS  
Attorney General



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ANDREW P. McCALLIN  
First Assistant Attorney General  
Consumer Protection Section

1525 Sherman Street – 7<sup>th</sup> Floor  
Denver, CO 80203  
(303) 866-5134  
FAX: (303) 866-4916  
Andrew.McCallin@State.CO.US

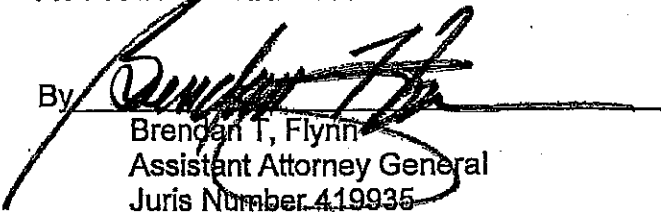
Attorney for the State of Colorado

JA000050

FOR THE STATE OF CONNECTICUT

RICHARD BLUMENTHAL  
ATTORNEY GENERAL

By



Brendan T. Flynn  
Assistant Attorney General  
Juris Number 419935  
Office of the Attorney General  
110 Sherman Street  
Hartford, CT 06105

JA000051

**DISH NETWORK, L.L.C.,** )  
**a Colorado Limited Liability Company** )

**JOSEPH R. BIDEN, III**  
Attorney General of the State of Delaware

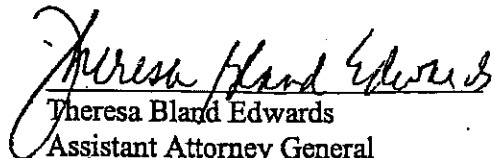
Date: 6/11/09

BILL McCOLLUM  
ATTORNEY GENERAL  
STATE OF FLORIDA



Jack A. Norris, Special Counsel  
Florida Attorney General's Office  
Multistate Litigation  
110 S.E. 6<sup>th</sup> Street  
Fort Lauderdale, FL 33301  
BAR no: 0364861

Date: 6-29-2009

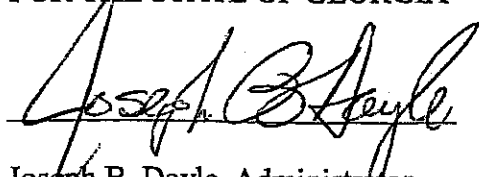


Theresa Bland Edwards  
Assistant Attorney General  
Florida Attorney General's Office  
Economic Crimes  
110 S.E. 6<sup>th</sup> Street  
Fort Lauderdale, FL 33301  
BAR no.: 252794

Date: 7/1/09

JA000053

FOR THE STATE OF GEORGIA

A handwritten signature in dark ink, appearing to read "Joseph B. Doyle", written over a horizontal line.

Joseph B. Doyle, Administrator  
Fair Business Practices Act

Date: JUNE 10, 2009


JA000054

In the Matter of  
DISH NETWORK, L.L.C

Assurance of Voluntary Compliance

DATED: June 30, 2009

STEPHEN H. LEVINS, Executive  
Director  
Office of Consumer Protection of the  
State of Hawaii

  
JEFFREY E. BRUNTON  
Staff Attorney  
Office of Consumer Protection  
State of Hawaii  
235 South Beretania Street, Suite 801  
Honolulu, Hawaii 96813

JA000055



FOR THE STATE OF IDAHO:

**LAWRENCE G. WASDEN**  
ATTORNEY GENERAL FOR THE  
STATE OF IDAHO



**STEPHANIE N. GUYON**

Deputy Attorney General

Office of the Idaho Attorney General

Consumer Protection Division

P.O. Box 83720

Boise, ID 83720-0010

Telephone: (208) 334-2424

Facsimile: (208) 334-4151

Email: [stephanie.guyon@ag.idaho.gov](mailto:stephanie.guyon@ag.idaho.gov)

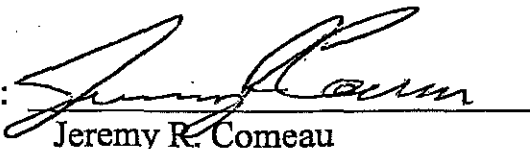
ASSURANCE OF VOLUNTARY COMPLIANCE - 38 OF 44

JA000056

FOR THE STATE OF INDIANA

Gregory F. Zoeller  
Attorney General of Indiana

By:



Jeremy R. Comeau  
Deputy Attorney General  
Atty. No. 26310-53  
Office of Attorney General  
Indiana Government Center South  
302 West Washington Street, 5<sup>th</sup> Floor  
Indianapolis, IN 46204  
317.232.6317  
jcomeau@atg.in.gov

542901

JA000057

**In Re: AVC with Dish Network, L.L.C.**

**For the Iowa Attorney General:**

A handwritten signature in black ink, appearing to read "William L. Brauch", written over a horizontal line.

**William L. Brauch**  
Special Assistant Attorney General  
Director-Consumer Protection Division

Date: June 23, 2009

JA000058

FOR THE STATE OF KANSAS:



Emilie Burdette, KS Bar #22094

Assistant Attorney General

Consumer Protection Division

Office of Kansas Attorney General Steve Six

120 SW 10<sup>th</sup> Avenue

Topeka, Kansas 66612

(786) 296-3751

**DISH NETWORK – ASSURANCE OF VOLUNTARY COMPLIANCE  
WITH COMMONWEALTH OF KENTUCKY**

APPROVED BY:

---

R. STANTON DODGE  
Executive Vice President and General Counsel  
DISH Network, L.L.C.  
9601 S. Meridian Blvd.  
Englewood, CO 80112

---

HELEN MAC MURRAY  
SHAUN K. PETERSEN  
Mac Murray, Petersen & Shuster LLP  
6530 West Campus Oval, Suite 210  
P.O. Box 365  
New Albany, OH 43054  
Telephone No.: (614) 939-9955  
Facsimile: (614) 939-9954  
Email: hmacmurray@mcpplaw.com  
spetersen@mcpplaw.com  
Counsel for DISH Network, L.L.C.



---

MARYELLEN B. MYNEAR  
Litigation Manager/Assistant Attorney General  
Office of the Kentucky Attorney General  
Consumer Protection Division  
1024 Capital Center Dr.  
Frankfort, KY 40601  
Telephone: (502) 696-5389  
Facsimile: (502) 573-7151  
Email: maryellen.mynear@ag.ky.gov

JA000060

FOR THE STATE OF LOUISIANA

JAMES D. "BUDDY" CALDWELL

Attorney General

State of Louisiana

By: 

L. Christopher Styron

La. Bar Roll No. 30747

Assistant Attorney General

State of Louisiana

Public Protection Division

Consumer Protection Section

1885 N. 3<sup>rd</sup> Street, 4<sup>th</sup> Floor

Baton Rouge, Louisiana 70802

(225) 326-6468

  
Isabel Wingerter

La. Bar Roll No. 20428

Deputy Director, Public Protection Division

Assistant Attorney General

State of Louisiana

1885 N. 3<sup>rd</sup> Street, 4<sup>th</sup> Floor


Baton Rouge, Louisiana 70802

(225) 326-6464

JA000061

FOR THE ATTORNEY GENERAL, STATE OF MAINE

JANET T. MILLS  
Attorney General

A handwritten signature in black ink, appearing to read 'L. Conti', is written over a horizontal line.


LINDA J. CONTI, Me. Bar No. 3638  
Assistant Attorney General  
Office of the Attorney General  
6 State House Station  
Augusta, Maine 04333-0006  
Tel. (207) 626-8591

JA000062

FOR THE STATE OF MARYLAND

DOUGLAS F. GANSLER  
ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read 'P. D. Ziperman', written over a horizontal line.

Philip D. Ziperman, Deputy Chief  
Consumer Protection Division  
200 St. Paul Place, 16<sup>th</sup> Floor  
Baltimore, MD 21202  
(410) 576-6374



FOR THE COMMONWEALTH OF MASSACHUSETTS

David W. Monahan

David W. Monahan  
Deputy Chief, Consumer Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
617-727-2200, x. 2954  
617-727-5765 (fax)

June 19, 2009

JA000064

**DISH NETWORK, L.L.C.,** )  
**A Colorado Limited Liability Company** )

**By:**

OMSJ00068

FOR THE STATE OF MINNESOTA

LORI SWANSON  
ATTORNEY GENERAL

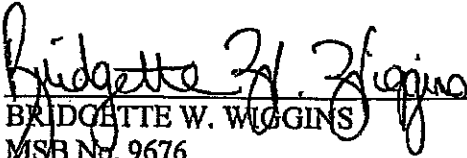
By: Jeffrey E. Grell  
Jeffrey E. Grell (021078X)  
Assistant Attorney General  
Office of the Minnesota Attorney General  
445 Minnesota Street, Suite 1400  
St. Paul, MN 55101  
(651) 215-6367

JA000066

**In the matter of  
DISH NETWORK, L.L.C.,  
a Colorado Limited Liability Company**

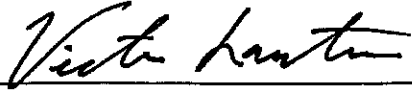
**Dated: June 19, 2009**

**JIM HOOD  
Attorney General of the State of Mississippi**

  
**BRIDGETTE W. WIGGINS**  
MSB No. 9676  
Special Assistant Attorney General  
Mississippi Attorney General's Office  
Post Office Box 22947  
Jackson, MS 39225  
Phone: (601) 359-4279  
Facsimile: (601) 359-4231

JA000067

FOR THE STATE OF MISSOURI:



---

Victoria Lautman  
Assistant Attorney General  
Consumer Protection Division  
1530 Rax Court  
Jefferson City, MO 65109  
Telephone: 573-751-3392  
Facsimile: 573-751-7948  
[Victoria.Lautman@ago.mo.gov](mailto:Victoria.Lautman@ago.mo.gov)

days before such change will occur identifying that individual by name and/or title and mailing address.

#### 14. COSTS

14.1 Where necessary DISH Network shall pay all court costs associated with the filing of this Assurance.

#### **FOR THE STATE OF MONTANA:**

STEVE BULLOCK  
Montana Attorney General

By: Kelley L. Hubbard  
KELLEY L. HUBBARD  
Assistant Attorney General

#### **APPROVED BY:**

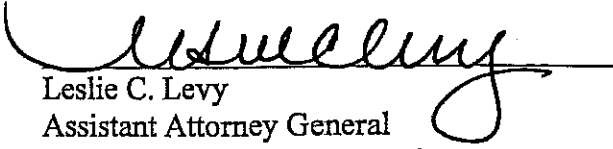
R. STANTON DODGE  
Executive Vice President and General Counsel  
DISH Network, L.L.C.  
9601 S. Meridian Blvd.  
Englewood, CO 80112

HELEN MAC MURRAY  
SHAUN K. PETERSEN  
Mac Murray, Petersen & Shuster LLP  
6530 West Campus Oval, Suite 210  
P.O. Box 365  
New Albany, OH 43054  
Telephone No.: (614) 939-9955  
Facsimile: (614) 939-9954  
Email: [hmacmurray@mcpslaw.com](mailto:hmacmurray@mcpslaw.com);  
[spetersen@mcpslaw.com](mailto:spetersen@mcpslaw.com)

Counsel for DISH Network, L.L.C.

STATE OF NEBRASKA  
ATTORNEY GENERAL JON BRUNING

By: \_\_\_\_\_

  
Leslie C. Levy  
Assistant Attorney General  
Nebraska Department of Justice  
2115 State Capitol Building  
Lincoln NE 68509  
402.471.2811

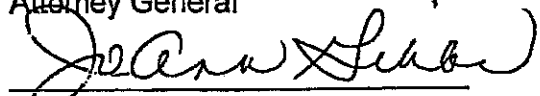
Date: \_\_\_\_\_

6-23-09

JA000070

1 CATHERINE CORTEZ MASTO  
2 Attorney General

3 By:

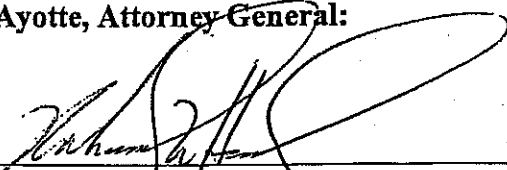
  
4 JO ANN GIBBS  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 005324  
7 555 E. Washington Avenue, #3900  
8 Las Vegas, Nevada 89101  
9 702-486-3789  
10 Attorneys for Plaintiff, State of Nevada  
11  
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JA000071



**STATE OF NEW HAMPSHIRE**  
**Kelly A. Ayotte, Attorney General:**

By:



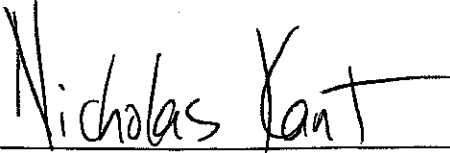
---

Richard W. Head, NH Bar No. 7900  
Associate Attorney General  
33 Capitol Street  
Concord, NH 03301  
603-271-1248

In the matter of:  
DISH NETWORK, L.L.C.  
Assurance of Voluntary Compliance

Dated: June 19, 2009

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY

By: 

Nicholas Kant  
Deputy Attorney General

Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Telephone: (973) 648-4584  
Fax: (973) 648-4887

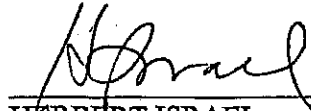
JA000073



FOR THE STATE OF NEW YORK

ANDREW M. CUOMO  
Attorney General

By:

A handwritten signature in dark ink, appearing to read "H. Israel", is written over a horizontal line.

HERBERT ISRAEL  
Assistant Attorney General

Dated: July 3, 2009

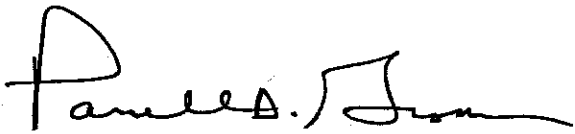
JA000075

In the matter of:

DISH NETWORK, L.L.C.  
A Colorado Limited Liability Company

STATE OF NORTH DAKOTA

Wayne Stenehjem  
Attorney General of North Dakota

A handwritten signature in black ink, appearing to read "Parrell D. Grossman". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Parrell D. Grossman, State ID No. 04684  
Assistant Attorney General  
Director  
Consumer Protection & Antitrust Division  
Office of Attorney General  
PO Box 1054  
4205 State Street  
Bismarck, ND 58502-1054  
(701)328-5570  
(701)328-5568 (Fax)

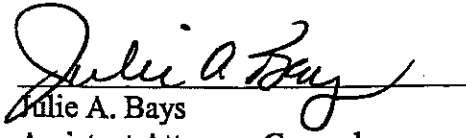
Dated this 23<sup>rd</sup> day of June, 2009

JA000076

**In the Matter of:**  
**Dish Network, LLC Assurance of Voluntary Compliance**

Dated: June 23, 2009

W.A. DREW EDMONDSON  
ATTORNEY GENERAL

  
Julie A. Bays  
Assistant Attorney General  
Consumer Protection Unit  
313 N.E. 21<sup>st</sup>  
Oklahoma City, Oklahoma 73105  
Phone: (405) 522-3082  
Fax: (405) 522-0085

JA000077

1 In the Matter of:

2 DISH NETWORK, L.L.C., a Colorado Limited Liability Company.

3 Assurance of Voluntary Compliance

4 APPROVAL BY COURT

5 APPROVED for FILING and SO ORDERED this \_\_\_ day of \_\_\_\_\_, 2009.

6

7

Circuit Court Judge  
Marion County, State of Oregon

8

9

ACCEPTANCE OF DOJ

10 ACCEPTED this 30<sup>th</sup> day of June, 2009.

11

JOHN R. KROGER  
Attorney General for the State of Oregon

12

13

By: 

14

Andrew U. Shull (OR Bar #024541)  
Assistant Attorney General  
Oregon Department of Justice  
1162 Court Street, NE  
Salem, OR 97301-4096  
andrew.shull@doj.state.or.us  
(Appearance in Oregon Only)

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**In the Matter of:**

**DISH NETWORK, L.L.C.**  
**a Colorado Limited Liability Company**

**ASSURANCE OF VOLUNTARY COMPLIANCE**

**COMMONWEALTH OF PENNSYLVANIA**  
**OFFICE OF ATTORNEY GENERAL**  
**BUREAU OF CONSUMER PROTECTION**

**THOMAS W. CORBETT, JR.**  
Attorney General

By: 

Thomas J. Blessington  
Senior Deputy Attorney General  
Pennsylvania Office of Attorney General  
Bureau of Consumer Protection  
21 South 12<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Philadelphia, PA 19107  
(215) 560-2414

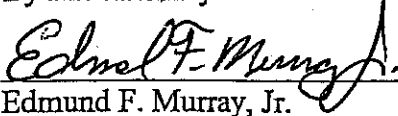
DATE: July 2, 2009

JA000079



PATRICK C. LYNCH  
ATTORNEY GENERAL  
STATE OF RHODE ISLAND

By His Attorney



Edmund F. Murray, Jr.

Special Assistant Attorney General  
Rhode Island Department of Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400 ext. 2401

JA000080

FOR THE STATE OF SOUTH CAROLINA:

  
MARY FRANCES JOWERS

Assistant Attorney General

Office of the South Carolina Attorney General

1000 Assembly Street, Room 519

Columbia, SC 29201

Phone: 803.734.3680

Fax; 803.734.3677

[mfjowers@scag.gov](mailto:mfjowers@scag.gov)

JA000081

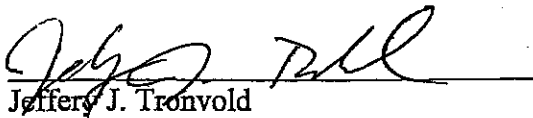
**In the Matter of:**  
**Dish Network, L.L.C**

**FOR THE STATE OF SOUTH DAKOTA**

LAWRENCE E. LONG  
ATTORNEY GENERAL

By:

Date: 6/23/09



Jeffery J. Tronvold  
Assistant Attorney General  
1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501  
(605) 773-3215 Telephone  
(605) 773-4106 Facsimile

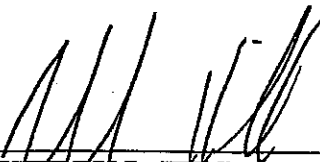
JA000082

FOR THE ATTORNEY GENERAL, STATE OF TENNESSEE



---

**ROBERT E. COOPER, JR.**  
Attorney General and Reporter  
B.P.R. No. 10934



---

**JEFFREY L. HILL**  
Senior Counsel  
B.P.R. No. 16731  
Office of the Attorney General  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202-0207  
Telephone (615) 741-2614  
Facsimile (615) 532-2910

JA000083

Date: 6-29-09


**COUNSEL FOR THE STATE OF TEXAS**

**GREG ABBOTT**  
Attorney General of Texas

**C. ANDREW WEBER**  
First Assistant Attorney General

**DAVID S. MORALES**  
Deputy First Assistant Attorney General for Litigation

**PAUL D. CARMONA**  
Chief, Consumer Protection Division  
& Public Health Division

  
**D. ESTHER CHAVEZ**  
State Bar No. 04162200  
Consumer Protection & Public Health Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
Telephone: (512) 475-4628  
Facsimile: (512) 473-8301

JA000084

We, the undersigned, have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and content of the foregoing Assurance and to its entry:

Signed this 25th day of June, 2009.

FOR THE STATE OF UTAH:

MARK L. SHURTLEFF  
Utah Attorney General



JEFFREY BUCKNER, USB #4546

Assistant Attorney General  
Office of Utah Attorney General  
Commercial Enforcement Division  
160 East 300 South, Fifth Floor  
P. O. Box 140872  
Salt Lake City, UT 84114-0872  
801-366-0310

FOR THE STATE OF VERMONT  
ATTORNEY GENERAL WILLIAM H. SORRELL



Sarah E.B. London  
Assistant Attorney General  
Vermont Attorney General's Office  
Public Protection Division  
109 State Street  
Montpelier, VT 05609-1001

Date: 6/22/09

In the Matter of  
DISH Network, L.L.C.

Assurance of Voluntary Compliance

DATED: June 16, 2009

COMMONWEALTH OF VIRGINIA,  
EX REL. WILLIAM C. MIMS,  
ATTORNEY GENERAL

William C. Mims  
Attorney General

Martin L. Kent  
Chief Deputy Attorney General

Maureen R. Matsen  
Deputy Attorney General  
Civil Division

David B. Irvin  
Senior Assistant Attorney General and Chief  
Antitrust and Consumer Litigation Section

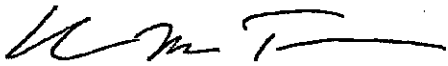
By: Courtney M. Malveaux  
Courtney M. Malveaux  
Assistant Attorney General  
(VSB No. 51064)  
Antitrust and Consumer Litigation Section  
Office of the Attorney General of Virginia  
900 East Main Street, 6<sup>th</sup> Floor  
Richmond, Virginia 23219  
Telephone: (804) 786-1925  
Facsimile: (804) 786-0122

JA000087



FOR THE STATE OF WASHINGTON

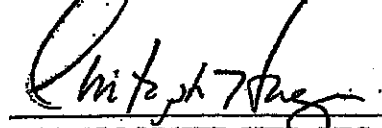
ROBERT M. MCKENNA  
Attorney General



---

KATHERINE M. TASSI WSBN 32908  
Assistant Attorney General  
Office of the Attorney General  
Consumer Protection Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

FOR THE STATE OF WEST VIRGINIA



CHRISTOPHER HEDGES (WV #7894)

ASSISTANT ATTORNEY GENERAL

Consumer Protection and Antitrust Division

Post Office Box 1789

Charleston, West Virginia 25326-1789

Telephone: 304-558-8986

Facsimile: 304-558-0184

FOR THE STATE OF WISCONSIN

J.B. VAN HOLLEN  
Attorney General

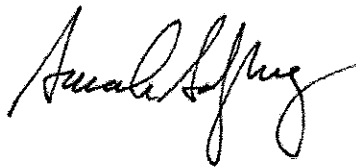
Nelle R. Rohlich

Dated: 7/1/09

NELLE R. ROHLICH  
Assistant Attorney General  
State Bar No. 1047522

Attorneys for State of Wisconsin

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 267-8901

A handwritten signature in black ink, appearing to read "Bruce A. Salzburg". The signature is fluid and cursive, with the first name "Bruce" being more prominent.

---

BRUCE A. SALZBURG  
Attorney General of Wyoming  
123 Capitol Avenue  
Cheyenne, WY 82002  
(307) 777-7841 (telephone)  
(307) 777-6869 (facsimile)

JA000091

APPROVED BY:



R. STANTON DODGE  
Executive Vice President and General Counsel  
DISH Network, L.L.C.  
9601 S. Meridian Blvd.  
Englewood, CO 80112



HELEN MAC MURRAY  
SHAUN K. PETERSEN  
Mac Murray, Petersen & Shuster LLP  
6530 West Campus Oval, Suite 210  
P.O. Box 365  
New Albany, OH 43054  
Telephone No.: (614) 939-9955  
Facsimile: (614) 939-9954  
Email: [hmacmurray@mcpslaw.com](mailto:hmacmurray@mcpslaw.com)  
[spetersen@mcpslaw.com](mailto:spetersen@mcpslaw.com)

Counsel for DISH Network, L.L.C.

JA000092

EXHIBIT A

[Date]

[Consumer Name]  
[Street Address]  
[City, State, Zip]

re: Dish Network Complaint Resolution Program

Dear [Consumer Name]

Pursuant to a settlement that was reached between Dish Network, L.L.C. ("Dish Network") and the Office of the [Insert State] Attorney General, we are offering you the restitution described below to settle the complaint that you filed against Dish Network concerning your satellite television service. If you wish to accept the restitution offer described below, you do not need to do anything. Dish Network will be providing you the below described restitution within forty-five (45) to seventy-five (75) days from the date of this letter. If you wish to reject the restitution offer described below and request that a neutral third party administrator resolve your complaint against Dish Network, you must complete, sign, and mail the attached Claims Notice to Dish Network at the following address:

**DISH NETWORK CLAIMS RESOLUTION**

[Street Address]  
[City, State, Zip]

**Description of Restitution Offer:**

---

---

If you have any questions, you may contact either the Office of the [Insert State Name] Attorney General at [Insert Contact Number] or you may contact Dish Network by calling [Insert Dish Network Contact Name and Title], at [Insert Contact Number].

Sincerely

[Dish Network Representative]

## CLAIMS NOTICE INSTRUCTIONS

If you wish to accept the restitution offer contained in the enclosed letter from Dish Network, you do not need to do anything. Dish Network will provide you with the restitution that is offered in its letter within 45 to 75 days from the date of the letter. If you wish to reject the restitution offer stated in the enclosed letter from Dish Network and to request that a neutral third party administrator resolve your complaint against Dish Network, you must complete, sign, and mail this Claims Notice to the Dish Network at the following address:

### DISH NETWORK CLAIMS RESOLUTION

[Street Address]

[City, State, Zip]

The Claims Notice must be postmarked within forty-five (45) days of the date on the enclosed final offer letter from Dish Network. In addition to completing and signing the Claim Form, you should also include copies of any documents that you believe support your claim. If your Claims Notice is not received by the Claim Administrator by the deadline, or is found to be fraudulent, it will be rejected by the Claim Administrator.

If you submit a valid Claims Notice, your claim will be mediated by the Claims Administrator. The Claims Administrator will conduct a review of the claim and supporting documentation and may obtain additional information from Dish Network or request that you submit additional information. If necessary, the Claims Administrator may also conduct a hearing, which may be held by telephone at the request of any party, during which you may explain your claim. At the conclusion of the evaluation, the Claims Administrator will notify you of the resolution of your claim and will offer you any resolution he/she believes appropriate. The decision of the Claims Administrator will be final.

If you have any questions about this Claims Notice, please include them on a separate piece of paper and send them to the address listed above, or simply attach them to the Claims Form.

## CLAIMS NOTICE

Print or Type

Please Provide All Requested Information

### CONTACT INFORMATION

Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
Address: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Email: \_\_\_\_\_

### ACCOUNT INFORMATION

I purchased Dish Network equipment on the following date: \_\_\_\_\_.

Where did you buy Dish Network equipment?

From a Retail Store \_\_\_\_\_ Store Name \_\_\_\_\_.

Over the Internet \_\_\_\_\_ Web Site Name (if known) \_\_\_\_\_.

By 800 telephone number \_\_\_\_\_ (yes/no)

What type of equipment did you purchase? \_\_\_\_\_.

I purchased Dish Network service on the following date: \_\_\_\_\_.

What service plan(s) did you purchase? \_\_\_\_\_.

Please provide the account-holder name and the address at which Dish Network service is/was provided if different from above:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_



Phone: \_\_\_\_\_

I canceled Dish Network service for this address on the following date (if applicable): \_\_\_\_\_.

## CLAIM

(Explain) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Use additional pages if necessary.

I do not believe that the offer by Dish Network is sufficient to compensate me for my claim because:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ . Use additional pages if necessary.

I request the following relief:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I have attached documents in support of my claim (Copies only. Original documents will not be returned):

☐ Yes

☐ No

## CERTIFICATION

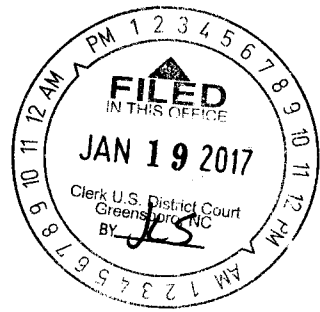
By signing and dating this form, I attest that all information provided by me in this Claims Notice (and attachments, if applicable) is true and accurate to the best of my knowledge, information and belief.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

# EXHIBIT 23

JA000097



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS H. KRAKAUER, )  
)  
Plaintiff, )  
)  
v. )  
)  
DISH NETWORK L.L.C., )  
)  
Defendant. )

1:14-CV-333

**VERDICT SHEET**

1. Was SSN acting as Dish's agent when it made the telephone calls at issue from May 11, 2010, through August 1, 2011?

☒ YES

☐ NO

*If Yes, continue to Question 2. If No, skip all other questions and sign the verdict sheet.*

2. Did SSN make and class members receive at least two telephone solicitations to a residential number in any 12-month period by or on behalf of Dish, when their telephone numbers were listed on the National Do Not Call Registry?

☒ YES as to Dr. Krakauer and all class members

*If Yes, continue to Question 3 and skip the following questions.*

☐ YES as to Dr. Krakauer and all class members except the following, whose numbers plaintiff has not proven were residential:

☐ Telephone numbers that LexisNexis always identifies as "unknown"

☐ Telephone numbers that LexisNexis identifies as residential before May 11, 2010 or after August 1, 2011

JA000098

- ☐ Telephone numbers that LexisNexis identifies as "unknown" in the May 2010 to August 2011 time period that the calls were made but identifies differently at other times
- ☐ Telephone numbers that LexisNexis identifies as both residential and "unknown"
- ☐ Telephone numbers that LexisNexis always identifies as residential, including in the May 2010 to August 2011 time period that the calls were made
- ☐ Telephone numbers that LexisNexis identifies as cellular and possibly cellular

☐ NO

*If you answer Yes in whole or in part, also answer Question 3. If you answer No to Question 2, skip Question 3 and sign the verdict sheet.*

3. What amount, up to \$500, do you award for each call made in violation of the TCPA?

\$ 400.00

Robert Jackson  
Foreperson

01/19/2017  
Date

JA000099

# EXHIBIT 1

JA000100

**Krakauer v. Dish Network L.L.C.**

United States District Court for the Middle District of North Carolina

May 22, 2017, Decided; May 22, 2017, Filed

1:14-CV-333

**Reporter**

2017 U.S. Dist. LEXIS 77163 \*; 66 Comm. Reg. (P & F) 1204; 2017 WL 2242952

THOMAS H. KRAKAUER, Plaintiff, v. DISH NETWORK L.L.C., Defendant.

ZOU, ORRICK HERRINGTON & SUTCLIFFE LLP, NEW YORK, NY; BENJAMEN E. KERN, BENESCH, FRIEDLANDER, COPLAN & ARONOFF, LLP, COLUMBUS, OH; DAVID M. KRUEGER, ERIC L. ZALUD, JEREMY GILMAN, LAURA E. KOGAN, BENESCH, FRIEDLANDER, COPLAN & ARONOFF, LLP, CLEVELAND, OH; RICHARD J. KESHIAN, KILPATRICK TOWNSEND & STOCKTON LLP, WINSTON-SALEM, NC.

**Prior History:** [Krakauer v. Dish Network, LLC, 2015 U.S. Dist. LEXIS 184382 \(M.D.N.C., June 24, 2015\)](#)

**Core Terms**

compliance, marketer, telemarketing, Registry, violations, complaints, monitor, numbers, scrubbing, lists, willful, do-not-call, class period, customer, damages, Retailers, lawsuits, investigated, new customer, injunctions, complying, records, sales, state attorney, forty-six, willfully, knowingly, terminate, contends, promises

**Judges:** Catherine C. Eagles, UNITED STATES DISTRICT JUDGE.

**Opinion by:** Catherine C. Eagles

**Opinion**

**Counsel:** [\*1] For THOMAS H. KRAKAUER, on behalf of a class of persons, Plaintiff: ANTHONY I. PARONICH, BRODERICK & PARONICH, P.C., BOSTON, MA; BRIAN A. GLASSER, JOHN W. BARRETT, BAILEY & GLASSER, LLP, CHARLESTON, WV; EDWARD A. BRODERICK, BRODERICK LAW, P.C., BOSTON, MA; JOHN J. RODDY, BAILEY & GLASSER LLP, BOSTON, MA; MATTHEW P. MCCUE, LAW OFFICE OF MATHEW P. MCCUE, NATICK, MA; PATRICK MUENCH, BAILEY & GLASSER, LLP, JOLIET, IL; JACOB MATTHEW NORRIS, THE NORRIS LAW FIRM, RALEIGH, NC.

For DISH NETWORK L.L.C., Defendant: ALLEGRA A. NOONAN, DAVID LITTERINE-KAUFMAN, ELYSE D. ECHTMAN, JOHN L. EWALD, JULIE GORCHKOVA, LOUISA S. IRVING, PETER A BICKS, SHASHA Y.

**MEMORANDUM OPINION AND ORDER**

Catherine C. Eagles, District Judge.

Satellite Systems Network, an agent of the defendant Dish Network, made more than 50,000 telemarketing [\*2] calls on behalf of Dish to phone numbers on the National Do Not Call Registry in 2010 and 2011. These calls violated the Telephone Consumer Protection Act. Despite knowing that SSN had a history of TCPA violations and was calling lists of numbers that it had not "scrubbed" against the Registry, Dish allowed SSN to continue to make telemarketing calls to sell Dish services. While Dish promised forty-six state attorneys general in 2009 that it would enforce TCPA compliance by its marketers, ~~it failed to~~ **it failed to** monitor, much less enforce, SSN's compliance with

telemarketing laws. When it learned of SSN's noncompliance, Dish repeatedly looked the other way.

Consistent with the jury's verdict that these calls violated the TCPA and that SSN was Dish's agent, the Court finds that SSN and Dish willfully and knowingly violated the TCPA. The Court further concludes that it is appropriate to treble the damages against Dish under [47 U.S.C. § 227\(c\)\(5\)](#).

## I. BACKGROUND

Congress enacted the TCPA to curb abusive telemarketing practices that threatened consumer privacy. See [Mims v. Arrow Fin. Servs., LLC](#), 565 U.S. 368, 372, 132 S. Ct. 740, 181 L. Ed. 2d 881 (2012). Among other things, the TCPA prohibits telemarketers from repeatedly calling people who list their phone numbers on the National Do Not Call Registry. [\*3] [Hannabury v. Hilton Grand Vacations Co.](#), 174 F. Supp. 3d 768, 771 (W.D.N.Y. 2016). See generally [Mainstream Mktg. Servs., Inc. v. FTC](#), 358 F.3d 1228, 1234 (10th Cir. 2004) ("The national do-not-call registry is a list containing the personal telephone numbers of telephone subscribers who have voluntarily indicated that they do not wish to receive unsolicited calls from commercial telemarketers."). People may register land-line and wireless numbers on the Registry. [Danehy v. Time Warner Cable Enters., No. 5:14-CV-133](#), 2015 U.S. Dist. LEXIS 125325, 2015 WL 5534094, at \*4 (E.D.N.C. Aug. 6, 2015) (Gates, Mag. J.), adopted by [2015 U.S. Dist. LEXIS 125053](#), 2015 WL 5534285 (E.D.N.C. Sept. 18, 2015).

The TCPA creates a private right of action for injunctive and monetary relief for any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the [TCPA] regulations." [47 U.S.C. § 227\(c\)\(5\)](#); see [Hannabury](#), 174 F. Supp. 3d at 771-72. The protections of the TCPA related to the Registry only apply to residential numbers; calls to businesses on the Registry are not actionable under [§ 227\(c\)](#). See [47 C.F.R. § 64.1200\(c\)\(2\)](#) & (d) (referring to "residential" subscribers).

The TCPA is a strict liability statute and so it does not require any intent for liability. [Alea London Ltd. v. Am. Home Servs., Inc.](#), 638 F.3d 768, 776 (11th Cir. 2011). Treble damages, however, are available for violations that occur "willfully or knowingly." *Id.*

In 2003, Dr. Thomas Krakauer, the plaintiff and class representative, registered his residential number on the Registry. Trial Tr. Jan. 11, 2017, Doc. 302 at 9:17-10:2 [\*4] (testimony of Dr. Krakauer).<sup>1</sup> Beginning in May 2009 and over the next two years, SSN called Dr. Krakauer numerous times in an effort to sell him Dish satellite television programming and related services. See *id.* at 12:3-:7, 17:22-18:5; Trial Tr. Jan. 13, Doc. 304 at 107:2-:22 (testimony of Anya Verkhovskaya). The calls continued even after Dr. Krakauer complained to Dish about SSN's sales tactics and after Dish placed Dr. Krakauer on its internal do-not-call list and told SSN to do the same. See PX<sup>2</sup> 15 at 7980-81, 8005.

Dr. Krakauer sued Dish in 2014, alleging that calls to him and others violated the TCPA and that Dish was liable as SSN's principal. Doc. 1; see Doc. 81 at 7. He sought injunctive and monetary relief on behalf of a class of all persons whose numbers were on the Registry but who nonetheless received multiple telemarketing calls from SSN to promote Dish between May 1, 2010, and August 1, 2011.<sup>3</sup> Doc. 1 at pp. 10-11; see Doc. 47 at 1. After a class was certified, Doc. 111, and summary judgment was largely denied, Doc. 113, the matter was tried to the jury in January 2017. See Minute Entry 01/10/2017. The Court heard the evidence about willfulness at the same time. See Doc. [\*5] 222 at p. 6.

Issues of agency, liability, and damages were submitted to the jury. On the agency issue, the jury was instructed that the plaintiffs must prove two things by the greater weight of the evidence in order to reach an affirmative answer: first, that SSN was Dish's agent, and second, that SSN acted in the course and scope of that agency

<sup>1</sup> All references to the record cite the document number appended by the CM-ECF system. Pin citations are to the page numbers appended by CM-ECF, or, where indicated, to numbered paragraphs in a document. For transcripts, line numbers are also indicated. Trial transcripts are available on the docket at Docs. 301 to 307

<sup>2</sup> PX refers to "Plaintiffs' Exhibit," DX to "Defendant's Exhibit," and JX to "Joint Exhibit."

<sup>3</sup> Dr. Krakauer also sought relief on behalf of persons whose numbers were on internal do-not-call lists of Dish and SSN. This class was initially certified, Doc. 111 at 33-34, but the parties later agreed to dismiss these claims without prejudice in order to simplify issues for trial, as there was almost complete overlap with the Registry class. Doc. 271. Also, by trial, the parties changed the official start date of the class period to May 11, 2010. See Doc. 292 at ¶ 1.

when it made the calls at issue. Doc. 293 at 4-5. The jury was instructed only on actual authority, including implied actual authority by consent or acquiescence. *Id.* at 6-7.<sup>4</sup> The jury answered the agency issue in favor of the plaintiffs, finding that SSN acted as Dish's agent when it made the calls at issue. Doc. 292.

On the second issue, the plaintiffs had to prove four things by a preponderance of the evidence: first, that the numbers of the class members were listed on the Registry at the time of the call; second, that after the number had been listed for at least thirty days, SSN called the number at least twice during any twelve-month period and made a telephone solicitation on behalf of Dish; third, that the calls were received; and fourth, that the numbers were residential at the time of the call. Doc. 293 at 8. The jury answered this liability [\*6] question in favor of plaintiffs for all of the calls. Doc. 292.

On the third issue, the plaintiffs asked for statutory damages and did not seek actual damages. These statutory damages are limited to no more than \$500 per violative call. [47 U.S.C. § 227\(c\)\(5\)\(B\)](#). The jury awarded \$400 for each call. Doc. 292.

After the verdict, the parties submitted written closing arguments on willfulness. Docs. 308, 312, 313, 317. Having considered those briefs and all of the evidence, the Court now enters these findings of fact<sup>5</sup> and

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<sup>4</sup> The Court earlier granted summary judgment in Dish's favor on the two alternate agency theories, apparent authority and ratification. Doc. 118.

<sup>5</sup> The Court finds all facts stated in this order from the evidence at trial, based on a preponderance of the evidence standard. The Court has considered and weighed both direct and circumstantial evidence and has drawn inferences from the credible testimony, the exhibits, and, in some instances, the lack of evidence. While the Court has considered all of the admissible evidence, it makes no effort to summarize or recite all of the evidence. Dish objected to the Court's consideration of the summary judgment opinion from *United States v. Dish Network*, an ongoing case in the Central District of Illinois, which plaintiffs offered, PX 2050, for the truth of the facts found in that opinion. See generally [United States v. Dish Network, LLC, 75 F. Supp. 3d 942 \(C.D. Ill. 2014\)](#); Trial Tr. Jan. 13, Doc. 304 at 63:9-19. As the Court is satisfied that a finding of willfulness is appropriate without consideration of that order, the Court need not address whether it is admissible. The Court has also not considered the 10-K report mentioned in Dr. Krakauer's rebuttal brief, Doc. 313 at 8, since it was not identified in his pretrial submissions, see Doc. 274

conclusions of law as to whether the violations were willful and knowing.

## II. FACTS

### A. Overview

Dish Network is a satellite television provider that often uses third-party marketers to get new customers.<sup>6</sup> Dish had contractual arrangements with these marketers, many of whom, including SSN, solicited new customers for Dish through telemarketing calls. SSN was an "Order Entry Retailer" with direct access to Dish's computer system. The OE Retailers collectively generated hundreds of millions of dollars a year in revenue for Dish.

Dish's contract with SSN gave it virtually unlimited rights to monitor and control SSN's telemarketing. In a settlement agreement [\*7] with dozens of state attorneys general in 2009, Dish confirmed that it had this power over all of its marketers.

On paper, Dish was committed to monitoring its marketers' compliance with telemarketing laws and investigating complaints of violations. In reality, however, Dish repeatedly looked the other way when SSN violated the telemarketing laws and when SSN disregarded contractual duties related to compliance. Dish received numerous complaints about SSN between 2004 and 2010 and was aware of three lawsuits against SSN over its telemarketing calls that resulted in monetary damages and injunctive relief. Dish knew in May 2009 that SSN was not scrubbing all its call lists against the Registry; it knew even earlier that SSN was not maintaining call records. When Dish received complaints about SSN and other marketers, the Dish compliance department did nothing except attempt to identify the marketer that made the call and, in the few cases when the marketer was identified, refer the complaint to the marketer. SSN, for its part, sent all complaints it received to Dish and "wait[ed] for Dish to tell [us] what to do." When individuals complained, Dish disclaimed responsibility for the acts of its [\*8]

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at 2-7, and was not offered as an exhibit at trial.

<sup>6</sup> Dish refers to these marketers as "retailers" and to new customers as "activations." See Trial Tr. Jan. 11, Doc. 302 at 87:24-90:9 (testimony of Amir Ahmed discussing sales and new customers).



marketers, including SSN, and made no effort to determine whether SSN was complying with telemarketing laws, much less to enforce such compliance.

## B. The Relationship Between Dish and SSN

Dish's relationship with SSN dates to 2001, when it first signed an agreement to have SSN market Dish services to new customers. DX 84. Around that time, SSN marketed for both Dish and DirecTV, a Dish competitor. See, e.g., Dep. Tr. of Bahar "Sophie" Tehrani, <sup>7</sup> Doc. 327 at 72:16-73:12; Trial Tr. Jan. 11, Doc. 302 at 205:7-9 (testimony of Amir Ahmed). In May 2004, Dish made SSN one of its forty-five OE Retailers. See Trial Tr. Jan. 11, Doc. 302 at 60:2-61:14 (Ahmed testimony). As an OE Retailer, SSN could log directly into Dish's ordering system and enroll new customers in Dish services. *Id.* at 60:10-18. Around 2005, DirecTV terminated SSN and stopped using them as a marketer. See Tehrani Dep., Doc. 327 at 72:16-22; Trial Tr. Jan. 12, Doc. 303 at 52:13-21, 55:6-8 (testimony of Reji Musso).

Dish's contract with SSN<sup>8</sup> characterized SSN as an independent contractor. JX 1 at ¶ 11. Dish did not own SSN or direct its day-to-day operations. Trial Tr. Jan. 11, Doc. 302 at 228:20-229:8 (Ahmed testimony). [<sup>9</sup>] SSN was a separate business entity with its own payroll and management. See *id.* at 227:4-14. In practice, Dish did not tell SSN who to market to or require it to do any specific type of marketing, like telemarketing. *Id.* at 226:12-25; see also Trial Tr. Jan. 13, Doc. 304 at 167:9-12 (testimony of James DeFranco).

Dish did allow SSN to hold itself out as a Dish authorized representative, and SSN could initiate the sales process on Dish's behalf. See Trial Tr. Jan. 11,

Doc. 302 at 60:2-18 (Ahmed testimony); Trial Tr. Jan. 12, Doc. 303 at 24:21-25:5 (Musso testimony); JX 1 at ¶ 2.1. Dish paid SSN on a weekly basis for each new customer that SSN signed up for Dish services, once those services were activated. Trial Tr. Jan. 12, Doc. 303 at 23:25-24:12 (Musso testimony). During 2010 and 2011, all of SSN's revenue came from payments from Dish for signing up new Dish customers. See Tehrani Dep., Doc. 327 at 121:17-20.

The terms of the contract between Dish and SSN showed that Dish had the power to exercise complete control over SSN's telemarketing and sales calls. The contract required SSN to "take all actions and refrain from taking any action, as requested by [Dish] in [<sup>10</sup>] connection with the marketing" of Dish services. JX 1 at ¶ 7.3. Dish had absolute control over the type and cost of programming packages that SSN could market. See *id.* at ¶¶ 4-5. All the internal records SSN created while conducting marketing on behalf of Dish were "the sole and exclusive property" of Dish, even after the Dish-SSN agreement ended. JX 1 at ¶ 7.4. SSN was required to "continuously and actively" promote Dish's products, and failure to do so was grounds for termination. *Id.* at ¶¶ 2.3, 10.4. Dish had absolute discretion to change SSN's compensation at any time. *Id.* at ¶ 6.1.1; Trial Tr. Jan. 11, Doc. 302 at 114:5-16 (Ahmed testimony). While SSN bought bulk customer data to develop lists of people to call on behalf of Dish, Dish controlled the companies from which SSN could buy this data. See Tehrani Dep., Doc. 327 at 55:5-14.

The contract also gave Dish nearly unlimited power to impose additional requirements on SSN via "business rules." Dish could issue these business rules to SSN at any time, for any reason, merely by sending an email or fax. JX 1 at ¶ 1.7. If SSN failed to follow a business rule, Dish could terminate the contract. See *id.* at ¶ 10.3.

Via these business [<sup>11</sup>] rules, Dish imposed several requirements related to TCPA compliance. E.g., DX 1 at 7; DX 2; DX 3 at 47. Dish required that marketers maintain records of the telemarketing calls they made. E.g., DX 2. Dish could require SSN to submit sales scripts to Dish for pre-approval, and Dish monitored sales calls to be sure SSN was offering Dish services on terms authorized by Dish. See Tehrani Dep., Doc. 327 at 66:7-67:1, 67:13-68:5 (discussing script submitted to Dish and referring to PX 22); PX 22; PX 15 at 7991, 8055 (notice that Dish would monitor SSN's calls). Beginning in October 2008, Dish required that all marketers "scrub" their call lists of numbers on the Registry and maintain scrubbing records, using a

<sup>7</sup> Selections of Ms. Tehrani's videotaped deposition were shown to the jury at trial and offered into evidence. Trial Tr. Jan. 12, Doc. 303 at 153:13-161:20. The excerpts presented to the jury are on the docket at Doc. 327. For the Tehrani deposition only, pin citations refer to the page numbers in the original transcript, not the page numbers appended by CM-ECF.

<sup>8</sup> Citations here are to the contract signed in 2006, which was in effect through at least 2009. See JX 1 at ¶ 10.1; Trial Tr. Jan. 11, Doc. 302 at 107:7-16 (Ahmed testimony). A later contract that was effective beginning December 31, 2010, was essentially identical. See JX 2; Trial Tr. Jan. 11, Doc. 302 at 141:15-22 (Ahmed testimony); see also DX 84 (2001 contract).

service from another business, PossibleNow. DX 5. When Dish traced a complaint to a marketer, it routinely asked for the date that SSN had scrubbed the number. *E.g.*, PX 15 at 7988.

In 2010, the OE Retailers as a whole enrolled over a million new Dish customers per year. Trial Tr. Jan. 11, Doc. 302 at 89:12-17 (Ahmed testimony); see PX 89 at 14. The average customer pays Dish about \$80 per month, see Trial Tr. Jan. 13, Doc. 304 at 193:25-194:2 (DeFranco testimony), meaning that the [\*12] new customers enrolled by OE Retailers created in the ballpark of \$960 million in new annual Dish revenue per year. Neither Dish nor the plaintiffs offered evidence of the specific number of activations that resulted from SSN's sales calls or of Dish's net sales or profits from those new customers, though SSN appears to have produced only a small percentage of Dish's activations. Trial Tr. Jan. 11, Doc. 302 at 199:14-18 (testimony by Mr. Ahmed that SSN accounted for "less than one-tenth of a percent" of Dish's 2011 budget for new customers); Trial Tr. Jan. 13, Doc. 304 at 177:15-20 (similar testimony by Mr. DeFranco).

### C. History of Complaints and Lawsuits

From early on in the relationship with Dish, SSN's telemarketing was a recurring source of TCPA complaints and compliance problems. Dish received TCPA complaints about SSN numerous times: about illegal prerecorded calls in 2005; violations of do-not-call lists in 2009 and 2010; and other, unspecified complaints in 2005, 2006, and 2008. See, e.g., PX 15 at 7988, 8005, 8006, 8035, 8037, 8046; PX 52.

In addition to the specific complaints in the record, Dish managers themselves repeatedly characterized SSN as a compliance problem. In [\*13] July 2004, Amir Ahmed, Dish's national sales manager, told others at Dish that he was "hearing a lot of complaints on [SSN] on telemarketing calls to customers." PX 503 at 1. Just a few months later, however, Mr. Ahmed told a subordinate to recruit SSN to sell more of their products and less of DirecTV's, noting that he "[n]eed[s] activations" and had gotten "additional economics" for SSN, despite "issues related to sales." PX 656 at 1. About a year later, in September 2005, Dish's corporate counsel acknowledged in an internal email that SSN was a problem:

We know that SSN is using autodialers and automessages. [SSN's owner] has been warned time and again . . . that these activities could violate

the law. Last time, Teranchi [sic] blamed a "rogue employee," who he claimed was terminated, but the activities continue. . . . SSN is a problem because we know what he is doing . . . .

PX 194 at 1.

Dish was also aware that telemarketing by SSN and its predecessor was the target of legal action. In 2004, Florida fined Vitana, a d/b/a of SSN, see Trial Tr. Jan. 11, Doc. 302 at 164:15-18 (Ahmed testimony), for telemarketing to people on Florida's do-not-call registry, and a Florida court issued a permanent [\*14] injunction. PX 191. In March 2005, the North Carolina Attorney General settled a lawsuit against SSN with a permanent injunction enjoining SSN from using prerecorded calls and from calling people in North Carolina on the National Do Not Call Registry. PX 186.<sup>9</sup> In 2006, after the manager of Dish's compliance office learned of the two injunctions, see, e.g., PX 15 at 8002, she did not do any follow-up investigation on or monitoring of SSN and "didn't have any reason to be concerned" because she purportedly believed SSN had stopped using prerecorded calls. Trial Tr. Jan. 12, Doc. 303 at 98:18-99:10, 133:20-134:5 (Musso testimony). She ignored the fact that the injunctions addressed calls to persons on state or federal do-not-call registries.

In February 2007, Dish's compliance staff discussed an ongoing class action lawsuit against SSN. See *id.* at 48:12-19 (Musso testimony); PX 15 at 7995. Again, Dish's compliance staff was unconcerned and did not investigate. See PX 15 at 7995. ("Brian tells me that they are doing well and going on the incentive trip . . . so, once again, this is a business decision. . . . [A]s far as we know, they have 'righted the wrongs[.]'" (emphasis added)). [\*15] Dish also knew that its payments to SSN were being garnished by court order in 2007 as a result of a judgment entered in a TCPA do-not-call action against SSN. See *id.* at 8009-13; Trial Tr. Jan. 12, Doc. 303 at 57:9-17 (Musso testimony).

In late 2008, Dish's emails to SSN about complaints went unanswered for more than four months; SSN responded only when Dish sent a follow-up email about

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<sup>9</sup> Dish witnesses testified that they believed this lawsuit concerned calls made on behalf of DirecTV, not Dish, e.g., Trial Tr. Jan. 12, Doc. 303 at 98:18-25 (Musso testimony), but the injunction was not limited to calls made on behalf of DirecTV. See PX 186. DirecTV, Dish's primary competitor, had terminated SSN as a marketer around this time, a fact Dish knew. Trial Tr. Jan. 12, Doc. 303 at 52:13-21, 55:6-8 (Musso testimony); see Tehranchi Dep., Doc. 327 at 72:16-22.

a more recent complaint. PX 15 at 7983-87. In April 2009, responding to that complaint, SSN told Dish it did not have records of calls made on the dates at issue, nor did it provide scrub dates for the calls at issue. *Id.* Despite knowing that SSN was not complying with business rules requiring it to maintain this information, see, e.g., *supra* p. 9; Trial Tr. Jan. 12, Doc. 303 at 39:8-17 (Musso testimony), Dish did not take any action to monitor or oversee SSN's compliance with its contractual duties or with telemarketing laws. Trial Tr. Jan. 12, Doc. 303 at 41:20-42:7 (Musso testimony). This was true even though SSN's missing information conveniently made it harder for Dish's compliance department and complaining consumers to trace violations to SSN.

Despite its knowledge of these complaints and lawsuits, Dish continued its [\*16] relationship with SSN, allowing SSN to market and sell Dish's products and services. Dish never restricted SSN's authority to act on Dish's behalf and never investigated to see whether SSN had actually solved its compliance problems. *Id.* at 20:11-16, 21:1-12, 78:4-79:1, 82:24-83:6.

#### D. Lead-Up to the Class Period

During the year before the class period began, Dish received two specific, independent complaints from which it learned that SSN was calling people on the Registry—the exact type of violation at issue in this case. In between those complaints, Dish represented to and promised forty-six state attorneys general that it would require its marketers to comply with telemarketing laws and would affirmatively investigate complaints against those marketers.

##### i. Dr. Krakauer's Complaint

In May 2009, Dr. Krakauer called Dish to complain about a telemarketing call he received on Dish's behalf by a man who identified himself only as "Ken." Trial Tr. Jan. 11, Doc. 302 at 13:16-14:21 (Krakauer testimony). Dish learned that SSN had made the call and that Dr. Krakauer was on the Registry. PX 15 at 8060-62. Dish informed Dr. Krakauer only that a "contractor" had made the call and that Dish was [\*17] not responsible for the contractor's actions. Trial Tr. Jan. 11, Doc. 302 at 14:22-15:11 (Krakauer testimony).

In Dish's follow-up with SSN, SSN admitted it was using an old customer list that had not been scrubbed by PossibleNow. PX 15 at 7980-81. Dish understood SSN

to mean that the list was scrubbed six years earlier in 2003. See Trial Tr. Jan. 12, Doc. 303 at 35:3-36:7, 38:16-39:17 (Musso testimony). SSN told Dish that the call was made by "our top employee" who "sells the most and has the least amount of cancellations." PX 15 at 7980. Dish did not ask for a recording of the call, Trial Tr. Jan. 12, Doc. 303 at 36:21-23 (Musso testimony), and Dish did not tell SSN to stop using the old list without a current scrubbing. See *id.* at 36:1-7.

Dish did tell SSN to put Dr. Krakauer on a do-not-call list and not to call him again. PX 15 at 8005. Afterwards, however, Dish did not use any of the contractual tools at its disposal to investigate or monitor SSN's TCPA compliance generally or as to Dr. Krakauer. *E.g.*, Trial Tr. Jan. 12, Doc. 303 at 82:24-83:6 (Musso testimony). Nor did Dish follow up to see if SSN complied with earlier instructions.

##### ii. The Compliance Agreement

In the summer of [\*18] 2009, Dish signed an agreement about TCPA compliance with forty-six attorneys general. PX 55. In this agreement, entitled "Assurance of Voluntary Compliance" (the Compliance Agreement), Dish represented that it had control over its third-party marketers, including OE Retailers like SSN. See Trial Tr. Jan. 11, Doc. 302 at 80:8-25 (Ahmed testimony). Dish agreed to supervise its marketers, determine if they were complying with federal do-not-call laws, and discipline or terminate them if they failed to take steps to prevent violations of the law.

Specifically, the Compliance Agreement stated that Dish "shall affirmatively investigate" do-not-call complaints and "take appropriate action . . . against any [marketer] it has determined to be in violation of the requirements of this Assurance." PX 55 at ¶ 4.74. The Compliance Agreement required Dish to "monitor, directly or through a third-party monitoring service . . . its Covered Marketers . . . to determine whether the Covered Marketer is complying with all applicable federal, state, and local do-not-call laws." *Id.* at ¶ 4.78. Dish was required to issue business rules to its marketers to require them to comply with the Compliance Agreement. [\*19] *Id.* at ¶ 4.73. If a marketer violated do-not-call laws, the Compliance Agreement stated that Dish "shall appropriately and reasonably discipline" that marketer, and that discipline "shall include" at least one of: termination, fines, withholding payment, suspension, prohibiting telemarketing, requiring the marketer to change its procedures/employees/ affiliates/training, or

"other appropriate and reasonable discipline." *Id.* at ¶ 4.79.

The Compliance Agreement required Dish to affirmatively require "Covered Marketers"—like SSN—to comply with the terms of the agreement. *Id.* at ¶¶ 2.9, 2.15, 3.3; see *a/s/o* Trial Tr. Jan. 11, Doc. 302 at 63:19-64:16 (Ahmed testimony). The Compliance Agreement stated that Dish "shall be bound from directly or indirectly engaging in the practices set forth herein and shall be required to directly or indirectly satisfy the affirmative requirements set forth herein." PX 55 at ¶ 4.

Beyond sharing the terms of the Compliance Agreement with its marketers, Trial Tr. Jan. 11, Doc. 302 at 73:25-74:10 (Ahmed testimony), the record is silent about any efforts Dish undertook to comply with the promises and assurances it made. According to Dish's co-founder, the Compliance [\*20] Agreement changed nothing: "This is how we operated even prior to the agreement as it related to telemarketing." Trial Tr. Jan. 13, Doc. 304 at 168:17-169:6 (DeFranco testimony). That, however, is patently inaccurate, as Dish's compliance department never investigated whether a marketer had violated telemarketing laws. See discussion *infra* pp. 17-19.

### iii. Mr. Campbell's Complaint

In early May 2010, Richard Campbell made a complaint to Dish that was virtually identical to Dr. Krakauer's complaint from a year earlier. See PX 8; Trial Tr. Jan. 12, Doc. 303 at 69:5-:19 (Musso testimony). Dish traced the call to SSN and confirmed that Mr. Campbell's number was on the Registry. PX 52. Just days after the class period began on May 11, SSN again told Dish that it was using an old list without a new scrub against the Registry. PX 899 at 1. Despite the business rule requiring SSN to scrub all lists with PossibleNow and Dish's knowledge that SSN was using unscrubbed lists, Dish continued to allow SSN to sell Dish products as a Dish authorized retailer. See Trial Tr., Jan. 12, Doc. 303 at 72:20-74:9 (Musso testimony). Despite the promises Dish made to the attorneys general in the Compliance Agreement, see PX 55 [\*21] at ¶ 4.74, Dish did not further investigate or monitor SSN's telemarketing or scrubbing practices. In fact, Dish did nothing beyond telling SSN to use caution and to remove the individual complainants from its call lists. See PX 52; PX 899 at 1. It never checked to be sure SSN had complied with this instruction as to Dr. Krakauer, even after it received the second identical complaint from Mr. Campbell. As noted *supra* p. 3, Dr. Krakauer continued to receive unwanted

calls from SSN on Dish's behalf.<sup>10</sup>

Despite these complaints, lawsuits, and violations of federal and state law, Dish never disciplined SSN at any point between 2006 and 2011. See Trial Tr. Jan. 12, Doc. 303 at 20:11-21:12, 22:4-:21 (Musso testimony). SSN continued to sell Dish products.

### E. The Compliance Department

When it came to OE Retailers, the division of Dish that responded to customer complaints was a compliance department in name only. It operated on "relationships of trust" with marketers. Trial Tr. Jan. 12, Doc. 303 at 145:10-:12 (Musso testimony). It never investigated the legitimacy of customer complaints alleging that SSN violated the TCPA; in the words of the compliance manager in charge of the department, that task [\*22] was simply "not my job." *Id.* at 41:12-42:7.<sup>11</sup>

The standard Dish response to a customer complaint was to (1) identify the marketer who made the call, if it could, (2) ask the marketer for call records and proof that the number had been scrubbed, and (3) regardless of the response—or lack of response—to ask the marketer not to call that specific person again. See *id.* at

<sup>10</sup> At trial, Dish blamed Dr. Krakauer for this, saying that he never complained about the recurring violations during the class period. See Trial Tr. Jan. 10, Doc. 301 at 102:4-:8 (Dish's opening statement); Trial Tr. Jan. 12, Doc. 303 at 123:19-:21, 143:20-:23 (Musso testimony); Trial Tr. Jan. 18, Doc. 306 at 75:9-:19 (Dish's closing argument). It is difficult to understand why Dr. Krakauer would have wasted his time in making a second complaint to Dish; Dish had disclaimed responsibility for the first SSN call and Dr. Krakauer's first complaint had not stopped the calls about Dish products. Nothing in the TCPA requires a consumer who receives violative calls to complain. See [47 U.S.C. § 227\(c\)](#).

<sup>11</sup> This reality was in contrast with characterizations of the compliance department by Dish's upper management. The vice president of sales testified that Dish "had a very, very strong management team overseeing the OE retailers" during the class period. Trial Tr. Jan. 11, Doc. 302 at 191:14-:17 (Ahmed testimony). He also testified that "[w]e had a very good compliance team . . . that was put together headed by Reji Musso and Bruce Werner . . ." *Id.* at 237:23-238:6. The co-founder testified that the compliance department "affirmatively investigated" complaints to see if they were "legitimate." Trial Tr. Jan. 13, Doc. 304 at 193:20-:24 (DeFranco testimony). Ms. Musso's testimony was directly to the contrary.

19:23-20:2, 43:24-44:12, 56:3-19, 58:20-59:2; PX 15 at 7988 (example of form letter). For the majority of complaints, the compliance department was unable to trace the call back to a specific marketer. Trial Tr. Jan. 12, Doc. 303 at 149:6-150:12 (Musso testimony).

When SSN received complaints, it forwarded them to Dish and then would "wait for Dish to tell [them] what to do." Tehranchi Dep., Doc. 327 at 41:24-42:17. The result was a circular and ineffective compliance program.

The Dish compliance department believed TCPA compliance "was really up to the retailer," and Dish's department was not set up to monitor marketers for Registry compliance. Trial Tr. Jan. 12, Doc. 303 at 18:17-19:8 (Musso testimony). The compliance department never looked at SSN's call records or checked behind SSN to confirm that SSN was scrubbing [\*23] its lists. See *id.* at 41:12-42:7, 73:12-74:9, 78:12-79:1 (Musso testimony). As is obvious from the number of violations shown at trial, SSN was not scrubbing its customer lists when it bought customer data from some sources. Tehranchi Dep., Doc. 327 at 122:6-25, 123:12-22.

Several Dish employees, including the compliance manager, testified that it was not feasible for Dish to monitor compliance of its marketers. Trial Tr. Jan. 12, Doc. 303 at 41:12-42:7 (Musso testimony); Trial Tr. Jan. 13, Doc. 304 at 174:24-175:7 (DeFranco testimony); see Trial Tr. Jan. 11, Doc. 302 at 228:20-229:14 (Ahmed testimony). This testimony is not credible. First, in the Compliance Agreement, Dish had agreed to monitor and enforce compliance. PX 55 at ¶¶ 4.78-4.79. Second, in 2009, PossibleNow offered to audit Dish's marketers for TCPA compliance for a fee of \$1,000 to \$4,500 per marketer. PX 70. Dish did not buy any of these options for any marketer or force any marketer to buy it themselves. Trial Tr. Jan. 12, Doc. 303 at 85:19-22 (Musso testimony). Nor did Dish take any other steps to comply with the provision of the Compliance Agreement that it would "monitor, directly or through a third-party monitoring [\*24] service . . . its Covered Marketers . . . to determine whether the Covered Marketer is complying with all applicable federal, state, and local do-not-call laws." PX 55 at ¶ 4.78.

The Dish compliance department dismissively referred to people who filed TCPA lawsuits or who regularly complained about TCPA violations as a type of "harvester" or "frequent flyer" who "tended to make a living placing TCPA complaints." Trial Tr. Jan. 12, Doc.

303 at 58:1-19, 134:13-135:8 (Musso testimony). This derisive attitude existed even though Dish's compliance department was aware that some of these "harvester" complaints stated legitimate violations of federal law. *Id.* at 135:13-21.

## F. Agency

The evidence at trial persuasively demonstrated that SSN was acting as Dish's agent and was acting in the course and scope of that agency when it made the calls at issue, and the jury so found. Doc. 292 at ¶ 1; see Doc. 293 at 4-8 (jury instructions on agency). As noted *supra* pp. 8-10, 14-16, Dish had substantial contractual rights to control SSN's telemarketing activities and Dish represented to forty-six state attorneys general that it had such control. Dish was aware of SSN's long history of TCPA violations. *Supra* pp. 10-13. Within a year of the [\*25] beginning of the class period and again at the beginning of the class period, Dish knew SSN was calling numbers on the Registry and that SSN was using lists of numbers that it had not scrubbed. *Supra* pp. 13-14, 16-17. It took no action to monitor Dish's compliance with telemarketing laws, *supra* pp. 17-19, and effectively acquiesced in SSN's use of unscrubbed lists.

## G. The Calls at Issue

The evidence at trial persuasively demonstrated that SSN made thousands of telephone solicitations during the class period to persons whose numbers were on the Registry. The plaintiffs' expert, Anya Verkhovskaya, reviewed and analyzed records showing all the calls placed by SSN in the class period. See *generally* Trial Tr. Jan. 12, Doc. 303 at 174:3-184:8. Her testimony established that SSN made 51,119 outbound calls to 18,066 numbers on the Registry, that each number got at least two calls within a twelve-month period, and that these numbers were highly likely to be residential. See *id.* at 188:14-18; PX 2008.<sup>12</sup> This included five connected calls to Dr. Krakauer's number. Trial Tr. Jan. 12, Doc. 303 at 189:16-19 (Verkhovskaya testimony).

<sup>12</sup> Ms. Verkhovskaya's report identified 57,900 calls to 20,450 numbers; additional calls were removed by stipulation of the parties just before trial. See Trial Tr. Jan. 12, Doc. 303 at 183:21-184:8, 187:19-188:13 (Verkhovskaya testimony); PX 278. Ms. Verkhovskaya also identified thousands of other calls to numbers on the Registry, which she excluded from the class for various reasons. See *generally* PX 2008 at 1.

The jury rejected challenges by Dish to the validity of Ms. Verkhovskaya's overall analysis [\*26] and to subgroups where Dish contended the evidence was insufficient to show the numbers were residential. *E.g.*, Trial Tr. Jan. 13, Doc. 304 at 51:19-52:11, 98:21-99:15 (Verkhovskaya testimony). The Court agrees with the jury's factual findings.

### III. DISCUSSION

To recover treble damages, the plaintiffs must show that Dish "willfully or knowingly violated" the relevant provisions of the TCPA and must persuade the Court, acting in its discretion, that trebling is appropriate. 47 *U.S.C. § 227(c)(5)*. While a finding of willfulness does not require bad faith, it does require that the caller "have reason to know, or should have known, that his conduct would violate the statute." *Texas v. Am. Blastfax, Inc.*, 164 F. Supp. 2d 892, 899-901 (W.D. Tex. 2001); *Maryland v. Universal Elections, Inc.*, 862 F. Supp. 2d 457, 463 & n.7 (D. Md. 2012) (applying *American Blastfax* standard), *aff'd on other grounds*, 729 F.3d 370 (4th Cir. 2013); *Adamcik v. Credit Control Servs., Inc.*, 832 F. Supp. 2d 744, 754-55 (W.D. Tex. 2011) (same).

#### A. Willful and Knowing Violations

Over the course of approximately fifteen months, SSN made tens of thousands of calls to numbers on the Registry. *Supra* pp. 20-21. SSN knew it was using lists that had not been scrubbed in any relevant time period to remove numbers on the Registry. Tehranchi Dep., Doc. 327 at 122:6-25, 123:12-22. It called Dr. Krakauer, repeatedly, even though it knew he was on the Registry and knew he had asked not to receive any more calls on behalf of Dish. [\*27] See PX 15 at 8005; Trial Tr. Jan. 13, Doc. 304 at 107:2-22 (Verkhovskaya testimony). It has a long history of acting in disregard of the requirements of the TCPA. See *supra* pp. 10-13. SSN willfully and knowingly violated the provisions of the TCPA when it made the calls at issue here.

Dr. Krakauer contends that because the jury found that SSN acted as Dish's agent and SSN's conduct is imputed to Dish, the determinative question is whether SSN, and not Dish, acted knowingly or willfully. Doc. 308 at 3. Neither party has identified a case presenting this specific issue in the TCPA context.<sup>13</sup>

While the concept is phrased differently in different jurisdictions and in different contexts, it appears well-established that at a minimum, a principal is liable for the willful acts of his agent committed within the scope of the agent's actual authority. See, e.g., *Bosh v. Cherokee Cty. Bldg. Auth.*, 2013 OK 9, 305 P.3d 994, 998 (Okla. 2013) ("Under the common law doctrine of *respondeat superior* a principal . . . is generally held liable for the willful acts of an agent . . . acting within the scope of the employment in furtherance of assigned duties."); *Restatement (Third) of Agency § 7.04* (2006) (stating that a principal is liable for tortious conduct of an agent when the agent's conduct is within the scope of [\*28] the agent's actual authority). Here, the jury explicitly found that SSN was acting within the scope of its authority from Dish when it made the calls at issue. Doc. 292 at ¶ 1. The Court agrees with that factual finding. *Supra* p. 19. Applying the traditional rule, Dish is responsible for any willful or knowing violation of the telemarketing laws by SSN.

The result is the same even if one only looks at the willfulness of Dish's conduct. Dish knew that SSN had committed many TCPA violations over the years. It had received many complaints and knew of at least three lawsuits, one of which resulted in a money judgment and two of which resulted in injunctions. *Supra* pp. 11-12. It knew SSN's uncorroborated and conclusory explanations—that violations were inadvertent or the product of rogue employees—were not credible. See PX 194. It knew SSN was not scrubbing all its lists or keeping call records. *Supra* pp. 12-14, 16-17. It ignored SSN's misconduct and, despite promises to forty-six state attorneys general, it made no effort to monitor SSN's compliance with telemarketing laws. See *supra* pp. 14-16, 17-19. Dish had the power to control SSN's

(*Bankr. S.D.N.Y. 2008*), in which the court held that an agent had willfully violated a stay and that the violation was attributable to the principal. The cases that Dish cites address whether the actual knowledge of an agent can be imputed to a principal to satisfy an element or an affirmative defense, which is not the question here. See Doc. 312 at 19 (referring to Doc. 310-2 at ¶¶ 39-40 (citing *Martin Marietta Corp. v. Gould, Inc.*, 70 F.3d 768, 770, 773 (4th Cir. 1995) (statute of limitations defense); *Thomas v. N.A. Chase Manhattan Bank*, 1 F.3d 320, 324-26 (5th Cir. 1993) (justifiable reliance element); *Wycoff v. Motorola, Inc.*, 502 F. Supp. 77, 93 (N.D. Ill. 1980) (patent invalidity defense), *aff'd*, 688 F.2d 843 (7th Cir. 1982))). These holdings do not dispute the fundamental concept that principals can be liable for the conduct of their agents. See *Restatement (Third) of Agency § 7.04 & cmt. b.* (2006). Neither do they distinguish between the intent of the agent and the intent of the principal for that liability.

<sup>13</sup> Dr. Krakauer relies on *In re Crawford*, 388 B.R. 506, 522



telemarketing; it simply did not care whether SSN complied with the law or not. Cf. United States v. Blankenship, 846 F.3d 663, 673 (4th Cir. 2017) (holding that "not caring about adherence [\*29] to legal requirements amounts to criminal willfulness" (internal quotation marks omitted)). Dish knew or should have known that its agent, SSN, was violating the TCPA, and Dish's conduct thus willfully and knowingly violated the TCPA.

## B. Dish's Arguments

Dish contends its conduct was not willful or knowing for several reasons, none of which are persuasive. Dish first contends that its actions were not willful because it instructed SSN to comply with the law and, specifically, to scrub its lists with PossibleNow. See, e.g., DX 1 at 7; DX 2; DX 3 at 47; DX 5. While there was evidence of this, the evidence also revealed that these were empty words. For instance, when SSN told Dish's compliance department that it was, in fact, *not* using PossibleNow to scrub customer lists in 2009, and again in 2010, Dish did nothing. *Supra* pp. 13-14, 16-17. In context, Dish only paid lip service to compliance.

Dish also contends that it investigated every consumer complaint. Doc. 312 at 7. While it does appear that, for each complaint, Dish tried to identify the telemarketer who made the call, that can hardly be called a full investigation. Dish did not try to determine if the telemarketer had followed the TCPA or broken the law. [\*30] See Trial Tr. Jan. 12, Doc. 303 at 41:12-42:7, 73:19-74:5 (Musso testimony).

Dish asserts that SSN's telemarketing violations from 2005 and earlier are irrelevant because these were about prerecorded calls, not do-not-call violations, and because all issues were resolved, in part as a result of Dish's actions. Doc. 312 at 11-12. First, there was evidence that these earlier violations did, in fact, involve do-not-call violations, *supra* pp. 11-12, and it seems more likely that the prerecorded calls stopped as a result of legal action and injunctions, not Dish's actions. See PX 186; PX 191. Moreover, and contrary to Dish's assertions, these violations are relevant because the earlier violations established the framework for the relationship between Dish and SSN in the years to come: Dish would turn a blind eye to any recordkeeping lapses and telemarketing violations by SSN; any lawsuits brought against SSN were SSN's problem, not Dish's; and Dish would not modify or terminate its contract with SSN as a result of TCPA violations,

recordkeeping breaches, lawsuits, or complaints. See, e.g., PX 15 at 7995 ("Brian tells me that they are doing well and going on the incentive trip . . . so, once again, this [\*31] is a business decision. . . . [A]s far as we know, they have 'righted the wrongs[.]'" (emphasis added)).<sup>14</sup>

Dish maintains that by calling Dr. Krakauer in 2010 and 2011, SSN disobeyed direct instructions from Dish. Doc. 312 at 16-18. This is true, but it does not disprove willfulness or knowledge. Dish was aware that SSN disregarded other instructions from Dish about telemarketing compliance, as discussed *supra* pp. 12-13, but Dish took no disciplinary action against SSN, did not monitor SSN's compliance, and allowed SSN to keep selling Dish products by telemarketing. See Trial Tr. Jan. 12, Doc. 303 at 20:11-21:12, 22:4-:21, 78:4-79:1, 82:24-83:6 (Musso testimony). Furthermore, Dr. Krakauer's complaint in May 2009 put Dish on notice that SSN was calling people on the Registry. See *supra* pp. 13-14. A year later, when Mr. Campbell complained at the very beginning of the class period, they knew that SSN was still calling people on the Registry. *Supra* pp. 16-17. Dish's only response was to ask SSN to stop calling the specific person. See, e.g., PX 52; PX 899 at 1. The evidence shows that Dish cared about stopping complaints, not about achieving TCPA compliance.

Dish contends that the complaints received about SSN were few in number and insufficient [\*32] to put it on notice that there were widespread violations, and that everyone involved at Dish believed that SSN was complying with telemarketing laws. Doc. 312 at 13-19. First, the testimony that Dish thought SSN was in compliance is not credible and is controverted by Dish's own documents. See *generally* PX 15. Second, even if some Dish employees did think this, that belief was only possible because Dish ignored the facts and failed to investigate and monitor SSN's compliance.<sup>15</sup> Dish knew

<sup>14</sup> SSN's behavior corroborates this understanding of the relationship. When asked about Dr. Krakauer's complaint, SSN responded that the call in question was made by their "top employee" who "sells the most." PX 15 at 7980.

<sup>15</sup> This belief was also based on unwarranted assumptions. For instance, Ms. Musso testified that if a year went by without seeing any complaints about SSN, then SSN must have been following the law. Trial Tr. Jan. 12, Doc. 303 at 101:16-:20. This overlooks that most people on the Registry who receive calls do not complain, see *id.* at 150:16-152:15, that Dish was unable to trace the vast majority of the complaints to a marketer, *id.* at 149:6-150:12, and that the SSN telemarketers here initially told both Dr. Krakauer and Mr. Campbell that they

that SSN was not scrubbing its customer lists and knew that SSN had actually called people on the Registry: Dr. Krakauer in 2009, and Mr. Campbell in 2010.<sup>16</sup> See *supra* pp. 13-14, 16-17. It knew that it was often difficult to determine whether a complaint was attributable to a particular marketer, Trial Tr. Jan. 12, Doc. 303 at 149:6-150:12 (Musso testimony), and that SSN made this even harder because it did not keep complete records of the calls it made. See *supra* p. 12. Given the tens of thousands of violative calls SSN made in a span of just over a year, even a cursory investigation or monitoring effort by Dish would have uncovered the violations. Under these circumstances, what Dish calls a mistaken belief is actually willful ignorance. [\*33]

Finally, Dish contends that the TCPA requires proof that Dish itself knew that each and every call was made and violated the TCPA. Doc. 312 at 5-6. Dish relies on *Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101, 1107 (11th Cir. 2015). A standard that required the defendant to know that its conduct as to each individual call actually violated the law would be significantly higher than the standard applied in criminal cases involving willful conduct. See *Blankenship*, 846 F.3d at 672-73 (holding that "reckless disregard and plain indifference can constitute criminal willfulness" (internal quotation marks omitted)). It would not be reasonable to apply such a high standard to telemarketing calls, which almost by definition are made in high volume.<sup>17</sup>

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worked for DirecTV, not Dish. PX 8 at 2; PX 15 at 8061.

<sup>16</sup> Dish mentions that SSN "assumed" and "felt" it had an established business relationship (EBR) that allowed it to call people on the Registry like Dr. Krakauer, to whom it had previously sold DirecTV. Trial Tr. Jan. 12, Doc. 303 at 112:4-13 (Musso testimony). First, there is no evidence that Dish evaluated the legitimacy of this purported EBR; rather, Dish simply accepted what SSN said without any monitoring or oversight, despite its promises to forty-six state Attorneys General in the Compliance Agreement. See, e.g., *id.* at 35:12-36:7, 72:1-19; DX 16 at 1 (email by Ms. Musso to SSN saying "we just want to encourage you to be cautious" about EBRs). Second, this purported EBR defense appears to be baseless. DirecTV had ended its relationship with SSN by 2005, Tehranchi Dep., Doc. 327 at 72:16-22, a fact that Dish knew, and an EBR would be valid, at the longest, for eighteen months from that point or from the last communication with Dr. Krakauer. See 47 C.F.R. § 64.1200(f)(5). Any EBR between SSN and Dr. Krakauer or other DirecTV customer would therefore have long since expired by 2009. Finally, EBR is an affirmative defense, and to the extent SSN's belief was based on some other list than SSN's DirecTV list from 2003, there is no evidence that an EBR existed for any of those calls.

In any event, SSN had to know it was routinely violating the TCPA. It was not scrubbing all its lists against the Registry, it received—through Dish's compliance department—at least two complaints about this type of call shortly before the class period began, and it made over 50,000 calls to persons on the Registry during the class period. There is no evidence that these calls were inadvertent or accidental, and the number of calls by itself is inconsistent with accident or mistake.

[\*34] Dish knew SSN was using unscrubbed lists as a result of the Krakauer and Campbell complaints and it knew SSN had a long history of violations of both the TCPA and Dish's business rules related to TCPA compliance. Dish easily could have discovered the full extent of the violations with a minimal monitoring effort, which it had promised forty-six state Attorneys General it would undertake. Dish's conduct was willful.

### C. Are Treble Damages Appropriate?

Even where willful or knowing violations are found, courts have discretion on whether to treble damages. 47 U.S.C. § 227(c)(5). For example, in *Bridgeview Health Care Center Ltd. v. Clark*, No. 09 C 5601, 2013 U.S. Dist. LEXIS 37310, 2013 WL 1154206, at \*7-8 (N.D. Ill. Mar. 19, 2013) (Valdez, Mag. J.), *aff'd on other grounds*, 816 F.3d 935 (7th Cir. 2016), the court found that the conduct was willful but did not treble the damages because a marketer had cold called the defendant—a naïve small business—and convinced it to join in the marketer's ongoing practice of illegal fax advertising.

The Court concludes that treble damages are appropriate here because of the need to deter Dish from future violations and the need to give appropriate weight to the scope of the violations. The evidence shows that Dish's TCPA compliance policy was decidedly two-

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<sup>17</sup> The exact definition of "willfully or knowingly" in the TCPA is debated. E.g., *Echevarria v. Diversified Consultants, Inc.*, No. 13 Civ. 4980, 2014 U.S. Dist. LEXIS 32136, 2014 WL 929275, at \*9 (S.D.N.Y. Feb. 28, 2014) (Peck, Mag. J.) (acknowledging "a split of authority"). The *Lary* court appears to be on one end of the spectrum. See 780 F.3d at 1107. Courts on the other end have held that calls are willful merely if the act of placing a call was intentional or volitional, as opposed to inadvertent. *Bridgeview Health Care Ctr. Ltd. v. Clark*, No. 09 C 5601, 2013 U.S. Dist. LEXIS 37310, 2013 WL 1154206, at \*7 (N.D. Ill. Mar. 19, 2013) (Valdez, Mag. J.), *aff'd on other grounds*, 816 F.3d 935 (7th Cir. 2016). The Fourth Circuit has not weighed in on the issue.



faced. Its contract allowed it to monitor TCPA compliance, *supra* pp. 8-9, and it told forty-six [\*35] state attorneys general that it would monitor and enforce marketer compliance, *supra* pp. 14-16, but in reality it never did anything more than attempt to find out what marketer had made a complained-about call. *Supra* pp. 17-19. It never investigated whether a marketer actually violated the TCPA and it never followed up to see if marketers complied with general directions concerning TCPA compliance and or with specific do-not-call instructions about individual persons. *Supra* pp. 12-13, 17-19. Dish characterized people who pursued TCPA lawsuits not as canaries in the coal mine, but as "harvester" plaintiffs who were illegitimately seeking money from the company. *See supra* p. 19. The Compliance Agreement did not cause Dish to take the TCPA seriously, so significant damages are appropriate to emphasize the seriousness of such statutory violations and to deter Dish in the future.

In the years leading up to the class period, Dish disregarded multiple warnings that SSN was calling people on the Registry. *See supra* pp. 10-14, 16-17. As a result, SSN made over 50,000 calls on Dish's behalf to people on the Do Not Call Registry. Trial Tr. Jan. 12, Doc. 303 at 188:14-:18 (Verkhovskaya testimony). This case does not involve an inadvertent or occasional violation. It involves a [\*36] sustained and ingrained practice of violating the law.

Dish did not take seriously the promises it made to forty-six state attorneys general, repeatedly overlooked TCPA violations by SSN, and allowed SSN to make many thousands of calls on its behalf that violated the TCPA. Trebled damages are therefore appropriate.

Dish contends that the Court should not treble the damages because the existing damages are material to Dish and will be adequate to deter. Doc. 312 at 21-22. This appears unlikely. Dish is a large company with 13 million subscribers. Trial Tr. Jan. 13, Doc. 304 at 156:4-:5 (DeFranco testimony). It paid a nearly \$6 million fine as part of the Compliance Agreement in 2009, PX 55 at ¶ 6.1, yet Dish's co-founder testified that the Compliance Agreement did not change Dish's procedures at all. *See* Trial Tr. Jan. 13, Doc. 304 at 168:17-169:6 (DeFranco testimony). A damages award that is an order of magnitude larger is warranted here.<sup>18</sup>

<sup>18</sup> Because of the age of the case, there may be a significant number of class members who have moved and who the parties will not be able to locate in order to provide them their damages award. The Court defers to another day what should

Dish also contends that the harm caused was only a "minor nuisance" and "inconvenience." Doc. 312 at 21-22. Dish's description has left out "illegal," not to mention "infuriating." Dish's argument shows a failure to recognize the purpose of the law and [\*37] is demeaning to consumers who put their names on the Do Not Call Registry and who are entitled by law to have their privacy respected. It also reflects a lack of appreciation for the seriousness of the violations found by the jury: over 50,000 connected calls to over 18,000 private individuals. Trial Tr. Jan. 12, Doc. 303 at 188:14-:18 (Verkhovskaya testimony). In any event, "[t]he reality is that the TCPA's damages provision is specifically designed to be disproportional to the harm suffered; such disproportion both deters the violative conduct and encourages victims to bring suit to redress violations." *Hannabury*, 174 F. Supp. 3d at 776 (quotation omitted).

#### IV. CONCLUSION

The Court finds that Dish Network willfully and knowingly violated the TCPA and that treble damages are appropriate to deter Dish and to give suitable weight to the seriousness and scope of the violations Dish committed. The Court will treble the jury's damage award under [47 U.S.C. 227\(c\)\(5\)](#) and increase the damages from \$400 per call to \$1,200 per call.

This order does not speak to the issues raised by the parties' briefing on post-trial procedures.

**SO ORDERED**, this the 22nd day of May, 2017.

/s/ Catherine C. Eagles

UNITED STATES DISTRICT JUDGE

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happen to any such unclaimed damages.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS H. KRAKAUER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:14-CV-333
	)	
DISH NETWORK L.L.C.,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

Catherine C. Eagles, District Judge.

Satellite Systems Network, an agent of the defendant Dish Network, made more than 50,000 telemarketing calls on behalf of Dish to phone numbers on the National Do Not Call Registry in 2010 and 2011. These calls violated the Telephone Consumer Protection Act. Despite knowing that SSN had a history of TCPA violations and was calling lists of numbers that it had not “scrubbed” against the Registry, Dish allowed SSN to continue to make telemarketing calls to sell Dish services. While Dish promised forty-six state attorneys general in 2009 that it would enforce TCPA compliance by its marketers, Dish did nothing to monitor, much less enforce, SSN’s compliance with telemarketing laws. When it learned of SSN’s noncompliance, Dish repeatedly looked the other way.

Consistent with the jury’s verdict that these calls violated the TCPA and that SSN was Dish’s agent, the Court finds that SSN and Dish willfully and knowingly violated the

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TCPA. The Court further concludes that it is appropriate to treble the damages against Dish under 47 U.S.C. § 227(c)(5).

## **I. BACKGROUND**

Congress enacted the TCPA to curb abusive telemarketing practices that threatened consumer privacy. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012). Among other things, the TCPA prohibits telemarketers from repeatedly calling people who list their phone numbers on the National Do Not Call Registry. *Hannabury v. Hilton Grand Vacations Co.*, 174 F. Supp. 3d 768, 771 (W.D.N.Y. 2016). *See generally Mainstream Mktg. Servs., Inc. v. FTC*, 358 F.3d 1228, 1234 (10th Cir. 2004) (“The national do-not-call registry is a list containing the personal telephone numbers of telephone subscribers who have voluntarily indicated that they do not wish to receive unsolicited calls from commercial telemarketers.”). People may register land-line and wireless numbers on the Registry. *Danehy v. Time Warner Cable Enters.*, No. 5:14-CV-133, 2015 WL 5534094, at \*4 (E.D.N.C. Aug. 6, 2015) (Gates, Mag. J.), *adopted by* 2015 WL 5534285 (E.D.N.C. Sept. 18, 2015).

The TCPA creates a private right of action for injunctive and monetary relief for any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the [TCPA] regulations.” 47 U.S.C. § 227(c)(5); *see Hannabury*, 174 F. Supp. 3d at 771-72. The protections of the TCPA related to the Registry only apply to residential numbers; calls to businesses on the Registry are not actionable under § 227(c). *See* 47 C.F.R. § 64.1200(c)(2) & (d) (referring to “residential” subscribers).

The TCPA is a strict liability statute and so it does not require any intent for liability. *Alea London Ltd. v. Am. Home Servs., Inc.*, 638 F.3d 768, 776 (11th Cir. 2011). Treble damages, however, are available for violations that occur “willfully or knowingly.” *Id.*

In 2003, Dr. Thomas Krakauer, the plaintiff and class representative, registered his residential number on the Registry. Trial Tr. Jan. 11, 2017, Doc. 302 at 9:17-10:2 (testimony of Dr. Krakauer).<sup>1</sup> Beginning in May 2009 and over the next two years, SSN called Dr. Krakauer numerous times in an effort to sell him Dish satellite television programming and related services. *See id.* at 12:3-:7, 17:22-18:5; Trial Tr. Jan. 13, Doc. 304 at 107:2-:22 (testimony of Anya Verkhovskaya). The calls continued even after Dr. Krakauer complained to Dish about SSN’s sales tactics and after Dish placed Dr. Krakauer on its internal do-not-call list and told SSN to do the same. *See* PX<sup>2</sup> 15 at 7980-81, 8005.

Dr. Krakauer sued Dish in 2014, alleging that calls to him and others violated the TCPA and that Dish was liable as SSN’s principal. Doc. 1; *see* Doc. 81 at 7. He sought injunctive and monetary relief on behalf of a class of all persons whose numbers were on the Registry but who nonetheless received multiple telemarketing calls from SSN to

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<sup>1</sup> All references to the record cite the document number appended by the CM-ECF system. Pin citations are to the page numbers appended by CM-ECF, or, where indicated, to numbered paragraphs in a document. For transcripts, line numbers are also indicated. Trial transcripts are available on the docket at Docs. 301 to 307

<sup>2</sup> PX refers to “Plaintiffs’ Exhibit,” DX to “Defendant’s Exhibit,” and JX to “Joint Exhibit.”

promote Dish between May 1, 2010, and August 1, 2011.<sup>3</sup> Doc. 1 at pp. 10-11; *see* Doc. 47 at 1. After a class was certified, Doc. 111, and summary judgment was largely denied, Doc. 113, the matter was tried to the jury in January 2017. *See* Minute Entry 01/10/2017. The Court heard the evidence about willfulness at the same time. *See* Doc. 222 at p. 6.

Issues of agency, liability, and damages were submitted to the jury. On the agency issue, the jury was instructed that the plaintiffs must prove two things by the greater weight of the evidence in order to reach an affirmative answer: first, that SSN was Dish's agent, and second, that SSN acted in the course and scope of that agency when it made the calls at issue. Doc. 293 at 4-5. The jury was instructed only on actual authority, including implied actual authority by consent or acquiescence. *Id.* at 6-7.<sup>4</sup> The jury answered the agency issue in favor of the plaintiffs, finding that SSN acted as Dish's agent when it made the calls at issue. Doc. 292.

On the second issue, the plaintiffs had to prove four things by a preponderance of the evidence: first, that the numbers of the class members were listed on the Registry at the time of the call; second, that after the number had been listed for at least thirty days, SSN called the number at least twice during any twelve-month period and made a telephone solicitation on behalf of Dish; third, that the calls were received; and fourth,

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<sup>3</sup> Dr. Krakauer also sought relief on behalf of persons whose numbers were on internal do-not-call lists of Dish and SSN. This class was initially certified, Doc. 111 at 33-34, but the parties later agreed to dismiss these claims without prejudice in order to simplify issues for trial, as there was almost complete overlap with the Registry class. Doc. 271. Also, by trial, the parties changed the official start date of the class period to May 11, 2010. *See* Doc. 292 at ¶ 1.

<sup>4</sup> The Court earlier granted summary judgment in Dish's favor on the two alternate agency theories, apparent authority and ratification. Doc. 118.

that the numbers were residential at the time of the call. Doc. 293 at 8. The jury answered this liability question in favor of plaintiffs for all of the calls. Doc. 292.

On the third issue, the plaintiffs asked for statutory damages and did not seek actual damages. These statutory damages are limited to no more than \$500 per violative call. 47 U.S.C. § 227(c)(5)(B). The jury awarded \$400 for each call. Doc. 292.

After the verdict, the parties submitted written closing arguments on willfulness. Docs. 308, 312, 313, 317. Having considered those briefs and all of the evidence, the Court now enters these findings of fact<sup>5</sup> and conclusions of law as to whether the violations were willful and knowing.

## **II. FACTS**

### **A. Overview**

Dish Network is a satellite television provider that often uses third-party marketers to get new customers.<sup>6</sup> Dish had contractual arrangements with these marketers, many of

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<sup>5</sup> The Court finds all facts stated in this order from the evidence at trial, based on a preponderance of the evidence standard. The Court has considered and weighed both direct and circumstantial evidence and has drawn inferences from the credible testimony, the exhibits, and, in some instances, the lack of evidence. While the Court has considered all of the admissible evidence, it makes no effort to summarize or recite all of the evidence. Dish objected to the Court's consideration of the summary judgment opinion from *United States v. Dish Network*, an ongoing case in the Central District of Illinois, which plaintiffs offered, PX 2050, for the truth of the facts found in that opinion. *See generally United States v. Dish Network, LLC*, 75 F. Supp. 3d 942 (C.D. Ill. 2014); Trial Tr. Jan. 13, Doc. 304 at 63:9-:19. As the Court is satisfied that a finding of willfulness is appropriate without consideration of that order, the Court need not address whether it is admissible. The Court has also not considered the 10-K report mentioned in Dr. Krakauer's rebuttal brief, Doc. 313 at 8, since it was not identified in his pretrial submissions, *see* Doc. 274 at 2-7, and was not offered as an exhibit at trial.

<sup>6</sup> Dish refers to these marketers as "retailers" and to new customers as "activations." *See* Trial Tr. Jan. 11, Doc. 302 at 87:24-90:9 (testimony of Amir Ahmed discussing sales and new customers).

whom, including SSN, solicited new customers for Dish through telemarketing calls. SSN was an “Order Entry Retailer” with direct access to Dish’s computer system. The OE Retailers collectively generated hundreds of millions of dollars a year in revenue for Dish.

Dish’s contract with SSN gave it virtually unlimited rights to monitor and control SSN’s telemarketing. In a settlement agreement with dozens of state attorneys general in 2009, Dish confirmed that it had this power over all of its marketers.

On paper, Dish was committed to monitoring its marketers’ compliance with telemarketing laws and investigating complaints of violations. In reality, however, Dish repeatedly looked the other way when SSN violated the telemarketing laws and when SSN disregarded contractual duties related to compliance. Dish received numerous complaints about SSN between 2004 and 2010 and was aware of three lawsuits against SSN over its telemarketing calls that resulted in monetary damages and injunctive relief. Dish knew in May 2009 that SSN was not scrubbing all its call lists against the Registry; it knew even earlier that SSN was not maintaining call records. When Dish received complaints about SSN and other marketers, the Dish compliance department did nothing except attempt to identify the marketer that made the call and, in the few cases when the marketer was identified, refer the complaint to the marketer. SSN, for its part, sent all complaints it received to Dish and “wait[ed] for Dish to tell [us] what to do.” When individuals complained, Dish disclaimed responsibility for the acts of its marketers, including SSN, and made no effort to determine whether SSN was complying with telemarketing laws, much less to enforce such compliance.

## **B. The Relationship Between Dish and SSN**

Dish's relationship with SSN dates to 2001, when it first signed an agreement to have SSN market Dish services to new customers. DX 84. Around that time, SSN marketed for both Dish and DirecTV, a Dish competitor. *See, e.g.*, Dep. Tr. of Bahar "Sophie" Tehranchi,<sup>7</sup> Doc. 327 at 72:16-73:12; Trial Tr. Jan. 11, Doc. 302 at 205:7-:9 (testimony of Amir Ahmed). In May 2004, Dish made SSN one of its forty-five OE Retailers. *See* Trial Tr. Jan. 11, Doc. 302 at 60:2-61:14 (Ahmed testimony). As an OE Retailer, SSN could log directly into Dish's ordering system and enroll new customers in Dish services. *Id.* at 60:10-:18. Around 2005, DirecTV terminated SSN and stopped using them as a marketer. *See* Tehranchi Dep., Doc. 327 at 72:16-:22; Trial Tr. Jan. 12, Doc. 303 at 52:13-:21, 55:6-:8 (testimony of Reji Musso).

Dish's contract with SSN<sup>8</sup> characterized SSN as an independent contractor. JX 1 at ¶ 11. Dish did not own SSN or direct its day-to-day operations. Trial Tr. Jan. 11, Doc. 302 at 228:20-229:8 (Ahmed testimony). SSN was a separate business entity with its own payroll and management. *See id.* at 227:4-:14. In practice, Dish did not tell SSN who to market to or require it to do any specific type of marketing, like telemarketing.

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<sup>7</sup> Selections of Ms. Tehranchi's videotaped deposition were shown to the jury at trial and offered into evidence. Trial Tr. Jan. 12, Doc. 303 at 153:13-161:20. The excerpts presented to the jury are on the docket at Doc. 327. For the Tehranchi deposition only, pin citations refer to the page numbers in the original transcript, not the page numbers appended by CM-ECF.

<sup>8</sup> Citations here are to the contract signed in 2006, which was in effect through at least 2009. *See* JX 1 at ¶ 10.1; Trial Tr. Jan. 11, Doc. 302 at 107:7-:16 (Ahmed testimony). A later contract that was effective beginning December 31, 2010, was essentially identical. *See* JX 2; Trial Tr. Jan. 11, Doc. 302 at 141:15-:22 (Ahmed testimony); *see also* DX 84 (2001 contract).



*Id.* at 226:12-:25; *see also* Trial Tr. Jan. 13, Doc. 304 at 167:9-:12 (testimony of James DeFranco).

Dish did allow SSN to hold itself out as a Dish authorized representative, and SSN could initiate the sales process on Dish's behalf. *See* Trial Tr. Jan. 11, Doc. 302 at 60:2-:18 (Ahmed testimony); Trial Tr. Jan. 12, Doc. 303 at 24:21-25:5 (Musso testimony); JX 1 at ¶ 2.1. Dish paid SSN on a weekly basis for each new customer that SSN signed up for Dish services, once those services were activated. Trial Tr. Jan. 12, Doc. 303 at 23:25-24:12 (Musso testimony). During 2010 and 2011, all of SSN's revenue came from payments from Dish for signing up new Dish customers. *See* Tehranchi Dep., Doc. 327 at 121:17-:20.

The terms of the contract between Dish and SSN showed that Dish had the power to exercise complete control over SSN's telemarketing and sales calls. The contract required SSN to "take all actions and refrain from taking any action, as requested by [Dish] in connection with the marketing" of Dish services. JX 1 at ¶ 7.3. Dish had absolute control over the type and cost of programming packages that SSN could market. *See id.* at ¶¶ 4-5. All the internal records SSN created while conducting marketing on behalf of Dish were "the sole and exclusive property" of Dish, even after the Dish-SSN agreement ended. JX 1 at ¶ 7.4. SSN was required to "continuously and actively" promote Dish's products, and failure to do so was grounds for termination. *Id.* at ¶¶ 2.3, 10.4. Dish had absolute discretion to change SSN's compensation at any time. *Id.* at ¶ 6.1.1; Trial Tr. Jan. 11, Doc. 302 at 114:5-:16 (Ahmed testimony). While SSN bought bulk customer data to develop lists of people to call on behalf of Dish, Dish controlled

the companies from which SSN could buy this data. *See* Tehranchi Dep., Doc. 327 at 55:5-:14.

The contract also gave Dish nearly unlimited power to impose additional requirements on SSN via “business rules.” Dish could issue these business rules to SSN at any time, for any reason, merely by sending an email or fax. JX 1 at ¶ 1.7. If SSN failed to follow a business rule, Dish could terminate the contract. *See id.* at ¶ 10.3.

Via these business rules, Dish imposed several requirements related to TCPA compliance. *E.g.*, DX 1 at 7; DX 2; DX 3 at 47. Dish required that marketers maintain records of the telemarketing calls they made. *E.g.*, DX 2. Dish could require SSN to submit sales scripts to Dish for pre-approval, and Dish monitored sales calls to be sure SSN was offering Dish services on terms authorized by Dish. *See* Tehranchi Dep., Doc. 327 at 66:7-67:1, 67:13-68:5 (discussing script submitted to Dish and referring to PX 22); PX 22; PX 15 at 7991, 8055 (notice that Dish would monitor SSN’s calls). Beginning in October 2008, Dish required that all marketers “scrub” their call lists of numbers on the Registry and maintain scrubbing records, using a service from another business, PossibleNow. DX 5. When Dish traced a complaint to a marketer, it routinely asked for the date that SSN had scrubbed the number. *E.g.*, PX 15 at 7988.

In 2010, the OE Retailers as a whole enrolled over a million new Dish customers per year. Trial Tr. Jan. 11, Doc. 302 at 89:12-:17 (Ahmed testimony); *see* PX 89 at 14. The average customer pays Dish about \$80 per month, *see* Trial Tr. Jan. 13, Doc. 304 at 193:25-194:2 (DeFranco testimony), meaning that the new customers enrolled by OE Retailers created in the ballpark of \$960 million in new annual Dish revenue per year.

Neither Dish nor the plaintiffs offered evidence of the specific number of activations that resulted from SSN's sales calls or of Dish's net sales or profits from those new customers, though SSN appears to have produced only a small percentage of Dish's activations. Trial Tr. Jan. 11, Doc. 302 at 199:14-:18 (testimony by Mr. Ahmed that SSN accounted for "less than one-tenth of a percent" of Dish's 2011 budget for new customers); Trial Tr. Jan. 13, Doc. 304 at 177:15-:20 (similar testimony by Mr. DeFranco).

### **C. History of Complaints and Lawsuits**

From early on in the relationship with Dish, SSN's telemarketing was a recurring source of TCPA complaints and compliance problems. Dish received TCPA complaints about SSN numerous times: about illegal prerecorded calls in 2005; violations of do-not-call lists in 2009 and 2010; and other, unspecified complaints in 2005, 2006, and 2008. *See, e.g.*, PX 15 at 7988, 8005, 8006, 8035, 8037, 8046; PX 52.

In addition to the specific complaints in the record, Dish managers themselves repeatedly characterized SSN as a compliance problem. In July 2004, Amir Ahmed, Dish's national sales manager, told others at Dish that he was "hearing a lot of complaints on [SSN] on telemarketing calls to customers." PX 503 at 1. Just a few months later, however, Mr. Ahmed told a subordinate to recruit SSN to sell more of their products and less of DirecTV's, noting that he "[n]eed[s] activations" and had gotten "additional economics" for SSN, despite "issues related to sales." PX 656 at 1. About a year later, in September 2005, Dish's corporate counsel acknowledged in an internal email that SSN was a problem:

We know that SSN is using autodialers and automessages. [SSN's owner] has been warned time and again . . . that these activities could violate the law. Last time, Teranchi [sic] blamed a "rogue employee," who he claimed was terminated, but the activities continue. . . . SSN is a problem because we know what he is doing . . . .

PX 194 at 1.

Dish was also aware that telemarketing by SSN and its predecessor was the target of legal action. In 2004, Florida fined Vitana, a d/b/a of SSN, *see* Trial Tr. Jan. 11, Doc. 302 at 164:15-:18 (Ahmed testimony), for telemarketing to people on Florida's do-not-call registry, and a Florida court issued a permanent injunction. PX 191. In March 2005, the North Carolina Attorney General settled a lawsuit against SSN with a permanent injunction enjoining SSN from using prerecorded calls and from calling people in North Carolina on the National Do Not Call Registry. PX 186.<sup>9</sup> In 2006, after the manager of Dish's compliance office learned of the two injunctions, *see, e.g.*, PX 15 at 8002, she did not do any follow-up investigation on or monitoring of SSN and "didn't have any reason to be concerned" because she purportedly believed SSN had stopped using prerecorded calls. Trial Tr. Jan. 12, Doc. 303 at 98:18-99:10, 133:20-134:5 (Musso testimony). She ignored the fact that the injunctions addressed calls to persons on state or federal do-not-call registries.

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<sup>9</sup> Dish witnesses testified that they believed this lawsuit concerned calls made on behalf of DirecTV, not Dish, *e.g.*, Trial Tr. Jan. 12, Doc. 303 at 98:18-:25 (Musso testimony), but the injunction was not limited to calls made on behalf of DirecTV. *See* PX 186. DirecTV, Dish's primary competitor, had terminated SSN as a marketer around this time, a fact Dish knew. Trial Tr. Jan. 12, Doc. 303 at 52:13-:21, 55:6-:8 (Musso testimony); *see* Tehranchi Dep., Doc. 327 at 72:16-:22.

In February 2007, Dish's compliance staff discussed an ongoing class action lawsuit against SSN. *See id.* at 48:12-:19 (Musso testimony); PX 15 at 7995. Again, Dish's compliance staff was unconcerned and did not investigate. *See* PX 15 at 7995. ("Brian tells me that they are doing well and going on the incentive trip . . . so, once again, this is a business decision. . . . [A]s far as we know, they have 'righted the wrongs[.]'" (emphasis added)). Dish also knew that its payments to SSN were being garnished by court order in 2007 as a result of a judgment entered in a TCPA do-not-call action against SSN. *See id.* at 8009-13; Trial Tr. Jan. 12, Doc. 303 at 57:9-:17 (Musso testimony).

In late 2008, Dish's emails to SSN about complaints went unanswered for more than four months; SSN responded only when Dish sent a follow-up email about a more recent complaint. PX 15 at 7983-87. In April 2009, responding to that complaint, SSN told Dish it did not have records of calls made on the dates at issue, nor did it provide scrub dates for the calls at issue. *Id.* Despite knowing that SSN was not complying with business rules requiring it to maintain this information, *see, e.g., supra* p. 9; Trial Tr. Jan. 12, Doc. 303 at 39:8-:17 (Musso testimony), Dish did not take any action to monitor or oversee SSN's compliance with its contractual duties or with telemarketing laws. Trial Tr. Jan. 12, Doc. 303 at 41:20-42:7 (Musso testimony). This was true even though SSN's missing information conveniently made it harder for Dish's compliance department and complaining consumers to trace violations to SSN.

Despite its knowledge of these complaints and lawsuits, Dish continued its relationship with SSN, allowing SSN to market and sell Dish's products and services.

Dish never restricted SSN's authority to act on Dish's behalf and never investigated to see whether SSN had actually solved its compliance problems. *Id.* at 20:11-:16, 21:1-:12, 78:4-79:1, 82:24-83:6.

#### **D. Lead-Up to the Class Period**

During the year before the class period began, Dish received two specific, independent complaints from which it learned that SSN was calling people on the Registry—the exact type of violation at issue in this case. In between those complaints, Dish represented to and promised forty-six state attorneys general that it would require its marketers to comply with telemarketing laws and would affirmatively investigate complaints against those marketers.

##### **i. Dr. Krakauer's Complaint**

In May 2009, Dr. Krakauer called Dish to complain about a telemarketing call he received on Dish's behalf by a man who identified himself only as "Ken." Trial Tr. Jan. 11, Doc. 302 at 13:16-14:21 (Krakauer testimony). Dish learned that SSN had made the call and that Dr. Krakauer was on the Registry. PX 15 at 8060-62. Dish informed Dr. Krakauer only that a "contractor" had made the call and that Dish was not responsible for the contractor's actions. Trial Tr. Jan. 11, Doc. 302 at 14:22-15:11 (Krakauer testimony).

In Dish's follow-up with SSN, SSN admitted it was using an old customer list that had not been scrubbed by PossibleNow. PX 15 at 7980-81. Dish understood SSN to mean that the list was scrubbed six years earlier in 2003. *See* Trial Tr. Jan. 12, Doc. 303 at 35:3-36:7, 38:16-39:17 (Musso testimony). SSN told Dish that the call was made by "our top employee" who "sells the most and has the least amount of cancellations." PX

15 at 7980. Dish did not ask for a recording of the call, Trial Tr. Jan. 12, Doc. 303 at 36:21-:23 (Musso testimony), and Dish did not tell SSN to stop using the old list without a current scrubbing. *See id.* at 36:1-:7.

Dish did tell SSN to put Dr. Krakauer on a do-not-call list and not to call him again. PX 15 at 8005. Afterwards, however, Dish did not use any of the contractual tools at its disposal to investigate or monitor SSN's TCPA compliance generally or as to Dr. Krakauer. *E.g.*, Trial Tr. Jan. 12, Doc. 303 at 82:24-83:6 (Musso testimony). Nor did Dish follow up to see if SSN complied with earlier instructions.

## **ii. The Compliance Agreement**

In the summer of 2009, Dish signed an agreement about TCPA compliance with forty-six attorneys general. PX 55. In this agreement, entitled "Assurance of Voluntary Compliance" (the Compliance Agreement), Dish represented that it had control over its third-party marketers, including OE Retailers like SSN. *See* Trial Tr. Jan. 11, Doc. 302 at 80:8-:25 (Ahmed testimony). Dish agreed to supervise its marketers, determine if they were complying with federal do-not-call laws, and discipline or terminate them if they failed to take steps to prevent violations of the law.

Specifically, the Compliance Agreement stated that Dish "shall affirmatively investigate" do-not-call complaints and "take appropriate action . . . against any [marketer] it has determined to be in violation of the requirements of this Assurance." PX 55 at ¶ 4.74. The Compliance Agreement required Dish to "monitor, directly or through a third-party monitoring service . . . its Covered Marketers . . . to determine whether the Covered Marketer is complying with all applicable federal, state, and local

do-not-call laws.” *Id.* at ¶ 4.78. Dish was required to issue business rules to its marketers to require them to comply with the Compliance Agreement. *Id.* at ¶ 4.73. If a marketer violated do-not-call laws, the Compliance Agreement stated that Dish “shall appropriately and reasonably discipline” that marketer, and that discipline “shall include” at least one of: termination, fines, withholding payment, suspension, prohibiting telemarketing, requiring the marketer to change its procedures/employees/affiliates/training, or “other appropriate and reasonable discipline.” *Id.* at ¶ 4.79.

The Compliance Agreement required Dish to affirmatively require “Covered Marketers”—like SSN—to comply with the terms of the agreement. *Id.* at ¶¶ 2.9, 2.15, 3.3; *see also* Trial Tr. Jan. 11, Doc. 302 at 63:19-64:16 (Ahmed testimony). The Compliance Agreement stated that Dish “shall be bound from directly or indirectly engaging in the practices set forth herein and shall be required to directly or indirectly satisfy the affirmative requirements set forth herein.” PX 55 at ¶ 4.

Beyond sharing the terms of the Compliance Agreement with its marketers, Trial Tr. Jan. 11, Doc. 302 at 73:25-74:10 (Ahmed testimony), the record is silent about any efforts Dish undertook to comply with the promises and assurances it made. According to Dish’s co-founder, the Compliance Agreement changed nothing: “This is how we operated even prior to the agreement as it related to telemarketing.” Trial Tr. Jan. 13, Doc. 304 at 168:17-169:6 (DeFranco testimony). That, however, is patently inaccurate, as Dish’s compliance department never investigated whether a marketer had violated telemarketing laws. *See* discussion *infra* pp. 17-19.



### iii. Mr. Campbell's Complaint

In early May 2010, Richard Campbell made a complaint to Dish that was virtually identical to Dr. Krakauer's complaint from a year earlier. *See* PX 8; Trial Tr. Jan. 12, Doc. 303 at 69:5-:19 (Musso testimony). Dish traced the call to SSN and confirmed that Mr. Campbell's number was on the Registry. PX 52. Just days after the class period began on May 11, SSN again told Dish that it was using an old list without a new scrub against the Registry. PX 899 at 1. Despite the business rule requiring SSN to scrub all lists with PossibleNow and Dish's knowledge that SSN was using unscrubbed lists, Dish continued to allow SSN to sell Dish products as a Dish authorized retailer. *See* Trial Tr., Jan. 12, Doc. 303 at 72:20-74:9 (Musso testimony). Despite the promises Dish made to the attorneys general in the Compliance Agreement, *see* PX 55 at ¶ 4.74, Dish did not further investigate or monitor SSN's telemarketing or scrubbing practices. In fact, Dish did nothing beyond telling SSN to use caution and to remove the individual complainants from its call lists. *See* PX 52; PX 899 at 1. It never checked to be sure SSN had complied with this instruction as to Dr. Krakauer, even after it received the second identical complaint from Mr. Campbell. As noted *supra* p. 3, Dr. Krakauer continued to receive unwanted calls from SSN on Dish's behalf.<sup>10</sup>

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<sup>10</sup> At trial, Dish blamed Dr. Krakauer for this, saying that he never complained about the recurring violations during the class period. *See* Trial Tr. Jan. 10, Doc. 301 at 102:4-:8 (Dish's opening statement); Trial Tr. Jan. 12, Doc. 303 at 123:19-:21, 143:20-:23 (Musso testimony); Trial Tr. Jan. 18, Doc. 306 at 75:9-:19 (Dish's closing argument). It is difficult to understand why Dr. Krakauer would have wasted his time in making a second complaint to Dish; Dish had disclaimed responsibility for the first SSN call and Dr. Krakauer's first complaint had not stopped the calls about Dish products. Nothing in the TCPA requires a consumer who receives violative calls to complain. *See* 47 U.S.C. § 227(c).

Despite these complaints, lawsuits, and violations of federal and state law, Dish never disciplined SSN at any point between 2006 and 2011. *See* Trial Tr. Jan. 12, Doc. 303 at 20:11-21:12, 22:4-:21 (Musso testimony). SSN continued to sell Dish products.

### **E. The Compliance Department**

When it came to OE Retailers, the division of Dish that responded to customer complaints was a compliance department in name only. It operated on “relationships of trust” with marketers. Trial Tr. Jan. 12, Doc. 303 at 145:10-:12 (Musso testimony). It never investigated the legitimacy of customer complaints alleging that SSN violated the TCPA; in the words of the compliance manager in charge of the department, that task was simply “not my job.” *Id.* at 41:12-42:7.<sup>11</sup>

The standard Dish response to a customer complaint was to (1) identify the marketer who made the call, if it could, (2) ask the marketer for call records and proof that the number had been scrubbed, and (3) regardless of the response—or lack of response—to ask the marketer not to call that specific person again. *See id.* at 19:23-20:2, 43:24-44:12, 56:3-:19, 58:20-59:2; PX 15 at 7988 (example of form letter). For the majority of complaints, the compliance department was unable to trace the call back to a specific marketer. Trial Tr. Jan. 12, Doc. 303 at 149:6-150:12 (Musso testimony).

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<sup>11</sup> This reality was in contrast with characterizations of the compliance department by Dish’s upper management. The vice president of sales testified that Dish “had a very, very strong management team overseeing the OE retailers” during the class period. Trial Tr. Jan 11, Doc. 302 at 191:14-:17 (Ahmed testimony). He also testified that “[w]e had a very good compliance team . . . that was put together headed by Reji Musso and Bruce Werner . . . .” *Id.* at 237:23-238:6. The co-founder testified that the compliance department “affirmatively investigated” complaints to see if they were “legitimate.” Trial Tr. Jan. 13, Doc. 304 at 193:20-:24 (DeFranco testimony). Ms. Musso’s testimony was directly to the contrary.

When SSN received complaints, it forwarded them to Dish and then would “wait for Dish to tell [them] what to do.” Tehranchi Dep., Doc. 327 at 41:24-42:17. The result was a circular and ineffective compliance program.

The Dish compliance department believed TCPA compliance “was really up to the retailer,” and Dish’s department was not set up to monitor marketers for Registry compliance. Trial Tr. Jan. 12, Doc. 303 at 18:17-19:8 (Musso testimony). The compliance department never looked at SSN’s call records or checked behind SSN to confirm that SSN was scrubbing its lists. *See id.* at 41:12-42:7, 73:12-74:9, 78:12-79:1 (Musso testimony). As is obvious from the number of violations shown at trial, SSN was not scrubbing its customer lists when it bought customer data from some sources. Tehranchi Dep., Doc. 327 at 122:6-:25, 123:12-:22.

Several Dish employees, including the compliance manager, testified that it was not feasible for Dish to monitor compliance of its marketers. Trial Tr. Jan. 12, Doc. 303 at 41:12-42:7 (Musso testimony); Trial Tr. Jan. 13, Doc. 304 at 174:24-175:7 (DeFranco testimony); *see* Trial Tr. Jan. 11, Doc. 302 at 228:20-229:14 (Ahmed testimony). This testimony is not credible. First, in the Compliance Agreement, Dish had agreed to monitor and enforce compliance. PX 55 at ¶¶ 4.78-4.79. Second, in 2009, PossibleNow offered to audit Dish’s marketers for TCPA compliance for a fee of \$1,000 to \$4,500 per marketer. PX 70. Dish did not buy any of these options for any marketer or force any marketer to buy it themselves. Trial Tr. Jan. 12, Doc. 303 at 85:19-:22 (Musso testimony). Nor did Dish take any other steps to comply with the provision of the Compliance Agreement that it would “monitor, directly or through a third-party

monitoring service . . . its Covered Marketers . . . to determine whether the Covered Marketer is complying with all applicable federal, state, and local do-not-call laws.” PX 55 at ¶ 4.78.

The Dish compliance department dismissively referred to people who filed TCPA lawsuits or who regularly complained about TCPA violations as a type of “harvester” or “frequent flyer” who “tended to make a living placing TCPA complaints.” Trial Tr. Jan. 12, Doc. 303 at 58:1-:19, 134:13-135:8 (Musso testimony). This derisive attitude existed even though Dish’s compliance department was aware that some of these “harvester” complaints stated legitimate violations of federal law. *Id.* at 135:13-:21.

#### **F. Agency**

The evidence at trial persuasively demonstrated that SSN was acting as Dish’s agent and was acting in the course and scope of that agency when it made the calls at issue, and the jury so found. Doc. 292 at ¶ 1; *see* Doc. 293 at 4-8 (jury instructions on agency). As noted *supra* pp. 8-10, 14-16, Dish had substantial contractual rights to control SSN’s telemarketing activities and Dish represented to forty-six state attorneys general that it had such control. Dish was aware of SSN’s long history of TCPA violations. *Supra* pp. 10-13. Within a year of the beginning of the class period and again at the beginning of the class period, Dish knew SSN was calling numbers on the Registry and that SSN was using lists of numbers that it had not scrubbed. *Supra* pp. 13-14, 16-17. It took no action to monitor Dish’s compliance with telemarketing laws, *supra* pp. 17-19, and effectively acquiesced in SSN’s use of unscrubbed lists.

### **G. The Calls at Issue**

The evidence at trial persuasively demonstrated that SSN made thousands of telephone solicitations during the class period to persons whose numbers were on the Registry. The plaintiffs' expert, Anya Verkhovskaya, reviewed and analyzed records showing all the calls placed by SSN in the class period. *See generally* Trial Tr. Jan. 12, Doc. 303 at 174:3-184:8. Her testimony established that SSN made 51,119 outbound calls to 18,066 numbers on the Registry, that each number got at least two calls within a twelve-month period, and that these numbers were highly likely to be residential. *See id.* at 188:14-:18; PX 2008.<sup>12</sup> This included five connected calls to Dr. Krakauer's number. Trial Tr. Jan. 12, Doc. 303 at 189:16-:19 (Verkhovskaya testimony).

The jury rejected challenges by Dish to the validity of Ms. Verkhovskaya's overall analysis and to subgroups where Dish contended the evidence was insufficient to show the numbers were residential. *E.g.*, Trial Tr. Jan. 13, Doc. 304 at 51:19-52:11, 98:21-99:15 (Verkhovskaya testimony). The Court agrees with the jury's factual findings.

### **III. DISCUSSION**

To recover treble damages, the plaintiffs must show that Dish "willfully or knowingly violated" the relevant provisions of the TCPA and must persuade the Court, acting in its discretion, that trebling is appropriate. 47 U.S.C. § 227(c)(5). While a

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<sup>12</sup> Ms. Verkhovskaya's report identified 57,900 calls to 20,450 numbers; additional calls were removed by stipulation of the parties just before trial. *See* Trial Tr. Jan. 12, Doc. 303 at 183:21-184:8, 187:19-188:13 (Verkhovskaya testimony); PX 278. Ms. Verkhovskaya also identified thousands of other calls to numbers on the Registry, which she excluded from the class for various reasons. *See generally* PX 2008 at 1.

finding of willfulness does not require bad faith, it does require that the caller “have reason to know, or should have known, that his conduct would violate the statute.” *Texas v. Am. Blastfax, Inc.*, 164 F. Supp. 2d 892, 899-901 (W.D. Tex. 2001); *Maryland v. Universal Elections, Inc.*, 862 F. Supp. 2d 457, 463 & n.7 (D. Md. 2012) (applying *American Blastfax* standard), *aff’d on other grounds*, 729 F.3d 370 (4th Cir. 2013); *Adamcik v. Credit Control Servs., Inc.*, 832 F. Supp. 2d 744, 754-55 (W.D. Tex. 2011) (same).

### **A. Willful and Knowing Violations**

Over the course of approximately fifteen months, SSN made tens of thousands of calls to numbers on the Registry. *Supra* pp. 20-21. SSN knew it was using lists that had not been scrubbed in any relevant time period to remove numbers on the Registry. Tehranchi Dep., Doc. 327 at 122:6-:25, 123:12-:22. It called Dr. Krakauer, repeatedly, even though it knew he was on the Registry and knew he had asked not to receive any more calls on behalf of Dish. *See* PX 15 at 8005; Trial Tr. Jan. 13, Doc. 304 at 107:2-:22 (Verkhovskaya testimony). It has a long history of acting in disregard of the requirements of the TCPA. *See supra* pp. 10-13. SSN willfully and knowingly violated the provisions of the TCPA when it made the calls at issue here.

Dr. Krakauer contends that because the jury found that SSN acted as Dish’s agent and SSN’s conduct is imputed to Dish, the determinative question is whether SSN, and

not Dish, acted knowingly or willfully. Doc. 308 at 3. Neither party has identified a case presenting this specific issue in the TCPA context.<sup>13</sup>

While the concept is phrased differently in different jurisdictions and in different contexts, it appears well-established that at a minimum, a principal is liable for the willful acts of his agent committed within the scope of the agent's actual authority. *See, e.g., Bosh v. Cherokee Cty. Bldg. Auth.*, 305 P.3d 994, 998 (Okla. 2013) ("Under the common law doctrine of *respondeat superior* a principal . . . is generally held liable for the willful acts of an agent . . . acting within the scope of the employment in furtherance of assigned duties."); Restatement (Third) of Agency § 7.04 (2006) (stating that a principal is liable for tortious conduct of an agent when the agent's conduct is within the scope of the agent's actual authority). Here, the jury explicitly found that SSN was acting within the scope of its authority from Dish when it made the calls at issue. Doc. 292 at ¶ 1. The Court agrees with that factual finding. *Supra* p. 19. Applying the traditional rule, Dish is responsible for any willful or knowing violation of the telemarketing laws by SSN.

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<sup>13</sup> Dr. Krakauer relies on *In re Crawford*, 388 B.R. 506, 522 (Bankr. S.D.N.Y. 2008), in which the court held that an agent had willfully violated a stay and that the violation was attributable to the principal. The cases that Dish cites address whether the actual knowledge of an agent can be imputed to a principal to satisfy an element or an affirmative defense, which is not the question here. *See* Doc. 312 at 19 (referring to Doc. 310-2 at ¶¶ 39-40 (citing *Martin Marietta Corp. v. Gould, Inc.*, 70 F.3d 768, 770, 773 (4th Cir. 1995) (statute of limitations defense); *Thomas v. N.A. Chase Manhattan Bank*, 1 F.3d 320, 324-26 (5th Cir. 1993) (justifiable reliance element); *Wycoff v. Motorola, Inc.*, 502 F. Supp. 77, 93 (N.D. Ill. 1980) (patent invalidity defense), *aff'd*, 688 F.2d 843 (7th Cir. 1982))). These holdings do not dispute the fundamental concept that principals can be liable for the conduct of their agents. *See* Restatement (Third) of Agency § 7.04 & cmt. b. (2006). Neither do they distinguish between the intent of the agent and the intent of the principal for that liability.

The result is the same even if one only looks at the willfulness of Dish's conduct. Dish knew that SSN had committed many TCPA violations over the years. It had received many complaints and knew of at least three lawsuits, one of which resulted in a money judgment and two of which resulted in injunctions. *Supra* pp. 11-12. It knew SSN's uncorroborated and conclusory explanations—that violations were inadvertent or the product of rogue employees—were not credible. *See* PX 194. It knew SSN was not scrubbing all its lists or keeping call records. *Supra* pp. 12-14, 16-17. It ignored SSN's misconduct and, despite promises to forty-six state attorneys general, it made no effort to monitor SSN's compliance with telemarketing laws. *See supra* pp. 14-16, 17-19. Dish had the power to control SSN's telemarketing; it simply did not care whether SSN complied with the law or not. *Cf. United States v. Blankenship*, 846 F.3d 663, 673 (4th Cir. 2017) (holding that “not caring about adherence to legal requirements amounts to criminal willfulness” (internal quotation marks omitted)). Dish knew or should have known that its agent, SSN, was violating the TCPA, and Dish's conduct thus willfully and knowingly violated the TCPA.

### **B. Dish's Arguments**

Dish contends its conduct was not willful or knowing for several reasons, none of which are persuasive. Dish first contends that its actions were not willful because it instructed SSN to comply with the law and, specifically, to scrub its lists with PossibleNow. *See, e.g.*, DX 1 at 7; DX 2; DX 3 at 47; DX 5. While there was evidence of this, the evidence also revealed that these were empty words. For instance, when SSN told Dish's compliance department that it was, in fact, *not* using PossibleNow to scrub



customer lists in 2009, and again in 2010, Dish did nothing. *Supra* pp. 13-14, 16-17. In context, Dish only paid lip service to compliance.

Dish also contends that it investigated every consumer complaint. Doc. 312 at 7. While it does appear that, for each complaint, Dish tried to identify the telemarketer who made the call, that can hardly be called a full investigation. Dish did not try to determine if the telemarketer had followed the TCPA or broken the law. *See* Trial Tr. Jan. 12, Doc. 303 at 41:12-42:7, 73:19-74:5 (Musso testimony).

Dish asserts that SSN's telemarketing violations from 2005 and earlier are irrelevant because these were about prerecorded calls, not do-not-call violations, and because all issues were resolved, in part as a result of Dish's actions. Doc. 312 at 11-12. First, there was evidence that these earlier violations did, in fact, involve do-not-call violations, *supra* pp. 11-12, and it seems more likely that the prerecorded calls stopped as a result of legal action and injunctions, not Dish's actions. *See* PX 186; PX 191. Moreover, and contrary to Dish's assertions, these violations are relevant because the earlier violations established the framework for the relationship between Dish and SSN in the years to come: Dish would turn a blind eye to any recordkeeping lapses and telemarketing violations by SSN; any lawsuits brought against SSN were SSN's problem, not Dish's; and Dish would not modify or terminate its contract with SSN as a result of TCPA violations, recordkeeping breaches, lawsuits, or complaints. *See, e.g.*, PX 15 at 7995 ("Brian tells me that they are doing well and going on the incentive trip . . . so, once

again, this is a business decision. . . . [A]s far as we know, they have ‘righted the wrongs[.]’” (emphasis added)).<sup>14</sup>

Dish maintains that by calling Dr. Krakauer in 2010 and 2011, SSN disobeyed direct instructions from Dish. Doc. 312 at 16-18. This is true, but it does not disprove willfulness or knowledge. Dish was aware that SSN disregarded other instructions from Dish about telemarketing compliance, as discussed *supra* pp. 12-13, but Dish took no disciplinary action against SSN, did not monitor SSN’s compliance, and allowed SSN to keep selling Dish products by telemarketing. *See* Trial Tr. Jan. 12, Doc. 303 at 20:11-21:12, 22:4-:21, 78:4-79:1, 82:24-83:6 (Musso testimony). Furthermore, Dr. Krakauer’s complaint in May 2009 put Dish on notice that SSN was calling people on the Registry. *See supra* pp. 13-14. A year later, when Mr. Campbell complained at the very beginning of the class period, they knew that SSN was still calling people on the Registry. *Supra* pp. 16-17. Dish’s only response was to ask SSN to stop calling the specific person. *See, e.g.*, PX 52; PX 899 at 1. The evidence shows that Dish cared about stopping complaints, not about achieving TCPA compliance.

Dish contends that the complaints received about SSN were few in number and insufficient to put it on notice that there were widespread violations, and that everyone involved at Dish believed that SSN was complying with telemarketing laws. Doc. 312 at 13-19. First, the testimony that Dish thought SSN was in compliance is not credible and

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<sup>14</sup> SSN’s behavior corroborates this understanding of the relationship. When asked about Dr. Krakauer’s complaint, SSN responded that the call in question was made by their “top employee” who “sells the most.” PX 15 at 7980.

is controverted by Dish's own documents. *See generally* PX 15. Second, even if some Dish employees did think this, that belief was only possible because Dish ignored the facts and failed to investigate and monitor SSN's compliance.<sup>15</sup> Dish knew that SSN was not scrubbing its customer lists and knew that SSN had actually called people on the Registry: Dr. Krakauer in 2009, and Mr. Campbell in 2010.<sup>16</sup> *See supra* pp. 13-14, 16-17. It knew that it was often difficult to determine whether a complaint was attributable to a particular marketer, Trial Tr. Jan. 12, Doc. 303 at 149:6-150:12 (Musso testimony), and that SSN made this even harder because it did not keep complete records of the calls it made. *See supra* p. 12. Given the tens of thousands of violative calls SSN made in a span of just over a year, even a cursory investigation or monitoring effort by Dish would

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<sup>15</sup> This belief was also based on unwarranted assumptions. For instance, Ms. Musso testified that if a year went by without seeing any complaints about SSN, then SSN must have been following the law. Trial Tr. Jan. 12, Doc. 303 at 101:16-:20. This overlooks that most people on the Registry who receive calls do not complain, *see id.* at 150:16-152:15, that Dish was unable to trace the vast majority of the complaints to a marketer, *id.* at 149:6-150:12, and that the SSN telemarketers here initially told both Dr. Krakauer and Mr. Campbell that they worked for DirecTV, not Dish. PX 8 at 2; PX 15 at 8061.

<sup>16</sup> Dish mentions that SSN "assumed" and "felt" it had an established business relationship (EBR) that allowed it to call people on the Registry like Dr. Krakauer, to whom it had previously sold DirecTV. Trial Tr. Jan. 12, Doc. 303 at 112:4-:13 (Musso testimony). First, there is no evidence that Dish evaluated the legitimacy of this purported EBR; rather, Dish simply accepted what SSN said without any monitoring or oversight, despite its promises to forty-six state Attorneys General in the Compliance Agreement. *See, e.g., id.* at 35:12-36:7, 72:1-:19; DX 16 at 1 (email by Ms. Musso to SSN saying "we just want to encourage you to be cautious" about EBRs). Second, this purported EBR defense appears to be baseless. DirecTV had ended its relationship with SSN by 2005, Tehranchi Dep., Doc. 327 at 72:16-:22, a fact that Dish knew, and an EBR would be valid, at the longest, for eighteen months from that point or from the last communication with Dr. Krakauer. *See* 47 C.F.R. § 64.1200(f)(5). Any EBR between SSN and Dr. Krakauer or other DirecTV customer would therefore have long since expired by 2009. Finally, EBR is an affirmative defense, and to the extent SSN's belief was based on some other list than SSN's DirecTV list from 2003, there is no evidence that an EBR existed for any of those calls.

have uncovered the violations. Under these circumstances, what Dish calls a mistaken belief is actually willful ignorance.

Finally, Dish contends that the TCPA requires proof that Dish itself knew that each and every call was made and violated the TCPA. Doc. 312 at 5-6. Dish relies on *Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101, 1107 (11th Cir. 2015). A standard that required the defendant to know that its conduct as to each individual call actually violated the law would be significantly higher than the standard applied in criminal cases involving willful conduct. *See Blankenship*, 846 F.3d at 672-73 (holding that “reckless disregard and plain indifference can constitute criminal willfulness” (internal quotation marks omitted)). It would not be reasonable to apply such a high standard to telemarketing calls, which almost by definition are made in high volume.<sup>17</sup>

In any event, SSN had to know it was routinely violating the TCPA. It was not scrubbing all its lists against the Registry, it received—through Dish’s compliance department—at least two complaints about this type of call shortly before the class period began, and it made over 50,000 calls to persons on the Registry during the class period. There is no evidence that these calls were inadvertent or accidental, and the number of calls by itself is inconsistent with accident or mistake.

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<sup>17</sup> The exact definition of “willfully or knowingly” in the TCPA is debated. *E.g., Echevvaria v. Diversified Consultants, Inc.*, No. 13 Civ. 4980, 2014 WL 929275, at \*9 (S.D.N.Y. Feb. 28, 2014) (Peck, Mag. J.) (acknowledging “a split of authority”). The *Lary* court appears to be on one end of the spectrum. *See* 780 F.3d at 1107. Courts on the other end have held that calls are willful merely if the act of placing a call was intentional or volitional, as opposed to inadvertent. *Bridgeview Health Care Ctr. Ltd. v. Clark*, No. 09 C 5601, 2013 WL 1154206, at \*7 (N.D. Ill. Mar. 19, 2013) (Valdez, Mag. J.), *aff’d on other grounds*, 816 F.3d 935 (7th Cir. 2016). The Fourth Circuit has not weighed in on the issue.

Dish knew SSN was using unscrubbed lists as a result of the Krakauer and Campbell complaints and it knew SSN had a long history of violations of both the TCPA and Dish's business rules related to TCPA compliance. Dish easily could have discovered the full extent of the violations with a minimal monitoring effort, which it had promised forty-six state Attorneys General it would undertake. Dish's conduct was willful.

### **C. Are Treble Damages Appropriate?**

Even where willful or knowing violations are found, courts have discretion on whether to treble damages. 47 U.S.C. § 227(c)(5). For example, in *Bridgeview Health Care Center Ltd. v. Clark*, No. 09 C 5601, 2013 WL 1154206, at \*7-8 (N.D. Ill. Mar. 19, 2013) (Valdez, Mag. J.), *aff'd on other grounds*, 816 F.3d 935 (7th Cir. 2016), the court found that the conduct was willful but did not treble the damages because a marketer had cold called the defendant—a naïve small business—and convinced it to join in the marketer's ongoing practice of illegal fax advertising.

The Court concludes that treble damages are appropriate here because of the need to deter Dish from future violations and the need to give appropriate weight to the scope of the violations. The evidence shows that Dish's TCPA compliance policy was decidedly two-faced. Its contract allowed it to monitor TCPA compliance, *supra* pp. 8-9, and it told forty-six state attorneys general that it would monitor and enforce marketer compliance, *supra* pp. 14-16, but in reality it never did anything more than attempt to find out what marketer had made a complained-about call. *Supra* pp. 17-19. It never investigated whether a marketer actually violated the TCPA and it never followed up to

see if marketers complied with general directions concerning TCPA compliance and or with specific do-not-call instructions about individual persons. *Supra* pp. 12-13, 17-19. Dish characterized people who pursued TCPA lawsuits not as canaries in the coal mine, but as “harvester” plaintiffs who were illegitimately seeking money from the company. *See supra* p. 19. The Compliance Agreement did not cause Dish to take the TCPA seriously, so significant damages are appropriate to emphasize the seriousness of such statutory violations and to deter Dish in the future.

In the years leading up to the class period, Dish disregarded multiple warnings that SSN was calling people on the Registry. *See supra* pp. 10-14, 16-17. As a result, SSN made over 50,000 calls on Dish’s behalf to people on the Do Not Call Registry. Trial Tr. Jan. 12, Doc. 303 at 188:14-:18 (Verkhovskaya testimony). This case does not involve an inadvertent or occasional violation. It involves a sustained and ingrained practice of violating the law.

Dish did not take seriously the promises it made to forty-six state attorneys general, repeatedly overlooked TCPA violations by SSN, and allowed SSN to make many thousands of calls on its behalf that violated the TCPA. Trebled damages are therefore appropriate.

Dish contends that the Court should not treble the damages because the existing damages are material to Dish and will be adequate to deter. Doc. 312 at 21-22. This appears unlikely. Dish is a large company with 13 million subscribers. Trial Tr. Jan. 13, Doc. 304 at 156:4-:5 (DeFranco testimony). It paid a nearly \$6 million fine as part of the Compliance Agreement in 2009, PX 55 at ¶ 6.1, yet Dish’s co-founder testified that the

Compliance Agreement did not change Dish's procedures at all. *See* Trial Tr. Jan. 13, Doc. 304 at 168:17-169:6 (DeFranco testimony). A damages award that is an order of magnitude larger is warranted here.<sup>18</sup>

Dish also contends that the harm caused was only a "minor nuisance" and "inconvenience." Doc. 312 at 21-22. Dish's description has left out "illegal," not to mention "infuriating." Dish's argument shows a failure to recognize the purpose of the law and is demeaning to consumers who put their names on the Do Not Call Registry and who are entitled by law to have their privacy respected. It also reflects a lack of appreciation for the seriousness of the violations found by the jury: over 50,000 connected calls to over 18,000 private individuals. Trial Tr. Jan. 12, Doc. 303 at 188:14-:18 (Verkhovskaya testimony). In any event, "[t]he reality is that the TCPA's damages provision is specifically designed to be disproportional to the harm suffered; such disproportion both deters the violative conduct and encourages victims to bring suit to redress violations." *Hannabury*, 174 F. Supp. 3d at 776 (quotation omitted).

#### **IV. CONCLUSION**

The Court finds that Dish Network willfully and knowingly violated the TCPA and that treble damages are appropriate to deter Dish and to give suitable weight to the seriousness and scope of the violations Dish committed. The Court will treble the jury's

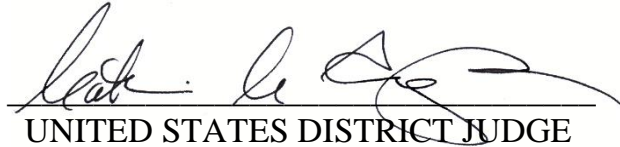
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<sup>18</sup> Because of the age of the case, there may be a significant number of class members who have moved and who the parties will not be able to locate in order to provide them their damages award. The Court defers to another day what should happen to any such unclaimed damages.

damage award under 47 U.S.C. 227(c)(5) and increase the damages from \$400 per call to \$1,200 per call.

This order does not speak to the issues raised by the parties' briefing on post-trial procedures.

**SO ORDERED**, this the 22nd day of May, 2017.



UNITED STATES DISTRICT JUDGE