

**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.

Electronically Filed  
Mar 29 2021 12:45 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 81704

District Court No.  
A-17-763397-B

**JOINT APPENDIX**  
**Vol. 13 of 85**  
**[JA002690-JA002908]**

Eric D. Hone (NV Bar No. 8499)  
Joel Z. Schwarz (NV Bar No. 9181)  
H1 LAW GROUP  
701 N. Green Valley Pkwy., Suite 200  
Henderson, Nevada 89074  
Tel: (702) 608-3720

*Liaison Counsel for Appellants*

J. Stephen Peek  
Robert J. Cassity  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
Tel: (702) 669-4600

*Attorneys for the Special Litigation  
Committee of Nominal Defendant  
DISH Network Corporation*

[Additional counsel appear on next page.]

<p>Randall J. Baron (<i>Pro Hac Vice</i>)  Benny C. Goodman III (<i>Pro Hac Vice</i>)  Erik W. Luedeke (<i>Pro Hac Vice</i>)  ROBBINS GELLER RUDMAN &amp;  DOWD LLP  655 West Broadway, Suite 1900  San Diego, CA 92101-8498  Tel: (619) 231-1058</p> <p><i>Lead Counsel for Appellants</i></p>	<p>C. Barr Flinn  Emily V. Burton  YOUNG CONAWAY STARGATT  &amp; TAYLOR, LLP  Rodney Square  1000 North King Street  Wilmington, DE 19801  Tel: (302) 571-6600</p> <p><i>Attorneys for the Special Litigation  Committee of Nominal Defendant  DISH Network Corporation</i></p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## TABLE OF CONTENTS FOR VOLUME 13<sup>1</sup>

<b>Document</b>	<b>Vol.</b>	<b>Page No.</b>	<b>Date</b>
Report of the Special Litigation Committee of DISH Network Corporation and Appendices of Exhibits Thereto (Exs. 1-792; Appx. Vols. 1-50)	4-73	JA000739- JA016874	11/27/18
<b>Evidentiary Hearing SLC Exhibit 102<sup>2</sup></b>			

---

<sup>1</sup> Volumes 2-85 of the Joint Appendix include only a per-volume table of contents. Volume 1 of the Joint Appendix includes a full table of contents incorporating all documents in Volumes 1-85.

<sup>2</sup> The Evidentiary Hearing Exhibits were filed with the District Court on July 6, 2020.

# EXHIBIT 27

# EXHIBIT 27

JA002690  
001565

TX 102-001952

11/19/2018

e10vq

10-Q 1 d67597e10vq.htm FORM 10-Q

[Table of Contents](#)

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**Form 10-Q**

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2009.**

**OR**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM \_\_\_\_\_  
TO \_\_\_\_\_.**

Commission File Number: 0-26176

**DISH Network Corporation**

(Exact name of registrant as specified in its charter)

**Nevada**

(State or other jurisdiction of incorporation or organization)

**88-0336997**

(I.R.S. Employer Identification No.)

**9601 South Meridian Boulevard**

**Englewood, Colorado**

(Address of principal executive offices)

**80112**

(Zip code)

**(303) 723-1000**

(Registrant's telephone number, including area code)

**Not Applicable**

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer ☒

Accelerated Filer ☐

Non-Accelerated Filer ☐

Smaller reporting Company  
☐

(Do not check if a smaller  
reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of April 24, 2009, the registrant's outstanding common stock consisted of 208,281,590 shares of Class A common stock and 238,435,208 shares of Class B common stock.

---

---

JA002693  
001568

## TABLE OF CONTENTS

### PART I — FINANCIAL INFORMATION

	<a href="#"><u>Disclosure Regarding Forward-Looking Statements</u></a>	i
<a href="#"><u>Item 1.</u></a>	<a href="#"><u>Financial Statements</u></a>	
	<a href="#"><u>Condensed Consolidated Balance Sheets – March 31, 2009 and December 31, 2008 (Unaudited)</u></a>	1
	<a href="#"><u>Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) For the Three Months Ended March 31, 2009 and 2008 (Unaudited)</u></a>	2
	<a href="#"><u>Condensed Consolidated Statements of Cash Flows For the Three Months Ended March 31, 2009 and 2008 (Unaudited)</u></a>	3
	<a href="#"><u>Notes to Condensed Consolidated Financial Statements (Unaudited)</u></a>	4
<a href="#"><u>Item 2.</u></a>	<a href="#"><u>Management’s Discussion and Analysis of Financial Condition and Results of Operations</u></a>	27
<a href="#"><u>Item 3.</u></a>	<a href="#"><u>Quantitative and Qualitative Disclosures about Market Risk</u></a>	41
<a href="#"><u>Item 4.</u></a>	<a href="#"><u>Controls and Procedures</u></a>	42

### PART II — OTHER INFORMATION

<a href="#"><u>Item 1.</u></a>	<a href="#"><u>Legal Proceedings</u></a>	43
<a href="#"><u>Item 1A.</u></a>	<a href="#"><u>Risk Factors</u></a>	47
<a href="#"><u>Item 2.</u></a>	<a href="#"><u>Unregistered Sales of Equity Securities and Use of Proceeds</u></a>	48
Item 3.	Defaults Upon Senior Securities	None
Item 4.	Submission of Matters to a Vote of Security Holders	None
Item 5.	Other Information	None
<a href="#"><u>Item 6.</u></a>	<a href="#"><u>Exhibits</u></a>	48
	<a href="#"><u>Signatures</u></a>	49
<a href="#"><u>EX-31.1</u></a>		
<a href="#"><u>EX-31.2</u></a>		
<a href="#"><u>EX-32.1</u></a>		
<a href="#"><u>EX-32.2</u></a>		

[Table of Contents](#)**PART I — FINANCIAL INFORMATION****DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS**

We make “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 throughout this report. Whenever you read a statement that is not simply a statement of historical fact (such as when we describe what we “believe,” “intend,” “plan,” “estimate,” “expect” or “anticipate” will occur, and other similar statements), you must remember that our expectations may not be achieved, even though we believe they are reasonable. We do not guarantee that any future transactions or events described herein will happen as described or that they will happen at all. You should read this report completely and with the understanding that actual future results may be materially different from what we expect. Whether actual events or results will conform with our expectations and predictions is subject to a number of risks and uncertainties. The risks and uncertainties include, but are not limited to, the following:

- Weakening economic conditions, including the recent downturn in financial markets and reduced consumer spending, may adversely affect our ability to grow or maintain our business.
- If we do not improve our operational performance and customer satisfaction, our gross subscriber additions may decrease and our subscriber churn may increase.
- If declines in DISH Network gross subscriber additions, increases in subscriber churn and higher subscriber acquisition and retention costs continue, our financial performance will be further adversely affected.
- We face intense and increasing competition from satellite television providers, cable television providers, telecommunications companies, and companies that provide/facilitate the delivery of video content via the internet.
- We may be required to make substantial additional investments in order to maintain competitive high definition, or HD, programming offerings.
- Technology in our industry changes rapidly and could cause our services and products to become obsolete.
- We may need additional capital, which may not be available on acceptable terms or at all, in order to continue investing in our business and to finance acquisitions and other strategic transactions.
- A portion of our investment portfolio is invested in securities that have experienced limited or no liquidity in recent months and may not be immediately accessible to support our financing needs.
- The termination of our distribution agreement with AT&T Inc., or AT&T, may reduce subscriber additions and increase churn if we are not able to develop alternative distribution channels.
- As technology changes, and in order to remain competitive, we may have to upgrade or replace subscriber equipment and make substantial investments in our infrastructure.
- We rely on EchoStar Corporation, or EchoStar, to design and develop all of our new set-top boxes and certain related components, and to provide transponder capacity, digital broadcast operations and other services for us. Our business would be adversely affected if EchoStar ceases to provide these services to us and we are unable to obtain suitable replacement services from third parties.
- We rely on one or a limited number of vendors, and the inability of these key vendors to meet our needs could have a material adverse effect on our business.
- Our programming signals are subject to theft, and we are vulnerable to other forms of fraud that could require us to make significant expenditures to remedy.
- We depend on third parties to solicit orders for DISH Network services that represent a significant percentage of our total gross subscriber acquisitions.
- We depend on others to provide the programming that we offer to our subscribers and, if we lose access to this programming, our subscriber losses and subscriber churn may increase.

[Table of Contents](#)

- Our competitors may be able to leverage their relationships with programmers so that they are able to reduce their programming costs and offer exclusive content that will place them at a competitive advantage to us.
- We depend on the Cable Act for access to programming from cable-affiliate programmers at cost-effective rates.
- We face increasing competition from other distributors of foreign language programming that may limit our ability to maintain our foreign language programming subscriber base.
- Our local programming strategy faces uncertainty because we may not be able to obtain necessary retransmission consents from local network stations.
- We are subject to significant regulatory oversight and changes in applicable regulatory requirements could adversely affect our business.
- We have made a substantial investment in certain 700 MHz wireless licenses and will be required to make significant additional investments in order to commercialize these licenses and recoup our investment.
- We have substantial debt outstanding and may incur additional debt that could have a dilutive effect on our outstanding equity capital or future earnings.
- If we are unsuccessful in defending Tivo's litigation against us, we could be prohibited from offering digital video recorder, or DVR, technology that would in turn put us at a significant disadvantage to our competitors.
- We have limited owned and leased satellite capacity and satellite failures could adversely affect our business.
- Our owned and leased satellites are subject to risks related to launch that could limit our ability to utilize these satellites.
- Our owned and leased satellites are subject to significant operational and atmospheric risks that could limit our ability to utilize these satellites.
- Our owned and leased satellites have minimum design lives of 12 years, but could fail or suffer reduced capacity before then.
- We currently have no commercial insurance coverage on the satellites we own and could face significant impairment charges if one of our satellites fails.
- We may have potential conflicts of interest with EchoStar due to our common ownership and management.
- We rely on key personnel and the loss of their services may negatively affect our businesses.
- We are controlled by one principal stockholder who is also our Chairman, President and Chief Executive Officer.
- We are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.
- We may pursue acquisitions and other strategic transactions to complement or expand our business that may not be successful and with respect to which we may lose the entire value of our investment.
- Our business depends substantially on Federal Communications Commission, or FCC, licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.
- We are subject to digital HD "carry-one-carry-all" requirements that cause capacity constraints.
- It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our capital structure.

[Table of Contents](#)

- We cannot assure you that there will not be deficiencies leading to material weaknesses in our internal control over financial reporting.
- We may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission, or SEC.

All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. Investors should consider the risks described herein and should not place undue reliance on any forward-looking statements. We assume no responsibility for updating forward-looking information contained or incorporated by reference herein or in other reports we file with the SEC.

In this report, the words “DISH Network,” the “Company,” “we,” “our” and “us” refer to DISH Network Corporation and its subsidiaries, unless the context otherwise requires. “EchoStar” refers to EchoStar Corporation and its subsidiaries.

[Table of Contents](#)**Item 1. FINANCIAL STATEMENTS**

**DISH NETWORK CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(Dollars in thousands, except share amounts)  
(Unaudited)

	<b>As of</b>	
	<b>March 31, 2009</b>	<b>December 31, 2008</b>
<b>Assets</b>		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 263,936	\$ 98,574
Marketable investment securities	904,942	460,558
Trade accounts receivable — other, net of allowance for doubtful accounts of \$12,813 and \$15,207, respectively	775,838	799,139
Trade accounts receivable — EchoStar	23,508	20,604
Inventories, net	414,833	426,671
Deferred tax assets	103,920	86,331
Income tax receivable	—	148,747
Other current assets	101,162	56,394
Other current assets — EchoStar	966	966
Total current assets	<u>2,589,105</u>	<u>2,097,984</u>
<i>Noncurrent Assets:</i>		
Restricted cash and marketable investment securities	83,369	83,606
Property and equipment, net of accumulated depreciation of \$2,488,287 and \$2,432,959, respectively	2,816,998	2,663,289
FCC authorizations	1,391,441	1,391,441
Intangible assets, net	4,845	5,135
Marketable and other investment securities	119,880	158,296
Other noncurrent assets, net	57,773	60,296
Total noncurrent assets	<u>4,474,306</u>	<u>4,362,063</u>
Total assets	<u><u>\$ 7,063,411</u></u>	<u><u>\$ 6,460,047</u></u>
<b>Liabilities and Stockholders' Equity (Deficit)</b>		
<i>Current Liabilities:</i>		
Trade accounts payable — other	\$ 220,963	\$ 174,216
Trade accounts payable — EchoStar	315,992	297,629
Deferred revenue and other	835,088	830,529
Accrued programming	1,032,814	1,020,086
Other accrued expenses	558,559	619,210
Current portion of capital lease obligations, mortgages and other notes payable	23,400	13,333
3% Convertible Subordinated Note due 2011	25,000	25,000
Total current liabilities	<u>3,011,816</u>	<u>2,980,003</u>
<i>Long-term obligations, net of current portion:</i>		
6 3/8% Senior Notes due 2011	1,000,000	1,000,000
6 5/8% Senior Notes due 2014	1,000,000	1,000,000
7 1/8% Senior Notes due 2016	1,500,000	1,500,000
7% Senior Notes due 2013	500,000	500,000
7 3/4% Senior Notes due 2015	750,000	750,000
Capital lease obligations, mortgages and other notes payable, net of current portion	334,977	219,423
Deferred tax liabilities	277,614	235,551
Long-term deferred revenue, distribution and carriage payments and other long-term liabilities	355,931	224,176

JA002698  
001573

Total long-term obligations, net of current portion	5,718,522	5,429,150
Total liabilities	<u>8,730,338</u>	<u>8,409,153</u>

## Commitments and Contingencies (Note 10)

*Stockholders' Equity (Deficit):*

Class A common stock, \$.01 par value, 1,600,000,000 shares authorized, 257,265,514 and 257,117,733 shares issued, 207,167,361 and 208,968,052 shares outstanding, respectively	2,573	2,571
Class B common stock, \$.01 par value, 800,000,000 shares authorized, 238,435,208 shares issued and outstanding	2,384	2,384
Class C common stock, \$.01 par value, 800,000,000 shares authorized, none issued and outstanding	—	—
Additional paid-in capital	2,094,827	2,090,527
Accumulated other comprehensive income (loss)	(124,211)	(107,998)
Accumulated earnings (deficit)	(2,180,120)	(2,492,804)
Treasury stock, at cost	<u>(1,462,380)</u>	<u>(1,443,786)</u>
Total stockholders' equity (deficit)	<u>(1,666,927)</u>	<u>(1,949,106)</u>
Total liabilities and stockholders' equity (deficit)	<u>\$ 7,063,411</u>	<u>\$ 6,460,047</u>

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**AND COMPREHENSIVE INCOME (LOSS)**  
(Dollars in thousands, except per share amounts)  
(Unaudited)

	<b>For the Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
<b>Revenue:</b>		
Subscriber-related revenue	\$2,864,939	\$2,810,426
Equipment sales and other revenue	32,346	25,052
Equipment sales — EchoStar	2,683	2,638
Transitional services and other revenue — EchoStar	5,353	6,278
Total revenue	<u>2,905,321</u>	<u>2,844,394</u>
<b>Costs and Expenses:</b>		
Subscriber-related expenses (exclusive of depreciation shown below — Note 11)	1,550,078	1,444,641
Satellite and transmission expenses (exclusive of depreciation shown below — Note 11):		
EchoStar	80,757	78,253
Other	7,021	7,664
Equipment, transitional services and other cost of sales	40,499	31,814
<i>Subscriber acquisition costs:</i>		
Cost of sales — subscriber promotion subsidies — EchoStar (exclusive of depreciation shown below — Note 11)	24,136	30,787
Other subscriber promotion subsidies	217,560	280,197
Subscriber acquisition advertising	50,507	63,972
Total subscriber acquisition costs	<u>292,203</u>	<u>374,956</u>
General and administrative expenses — EchoStar	11,142	13,770
General and administrative expenses	125,765	115,760
Depreciation and amortization (Note 11)	223,293	272,368
Total costs and expenses	<u>2,330,758</u>	<u>2,339,226</u>
Operating income (loss)	<u>574,563</u>	<u>505,168</u>
<b>Other Income (Expense):</b>		
Interest income	4,784	14,101
Interest expense, net of amounts capitalized	(83,937)	(89,812)
Other, net	4,177	(7,028)
Total other income (expense)	<u>(74,976)</u>	<u>(82,739)</u>
Income (loss) before income taxes	499,587	422,429
Income tax (provision) benefit, net	(186,903)	(163,846)
Net income (loss)	<u>\$ 312,684</u>	<u>\$ 258,583</u>
<b>Comprehensive Income (Loss):</b>		
Foreign currency translation adjustments	(380)	(1,664)
Unrealized holding gains (losses) on available-for-sale securities	(14,348)	(48,891)
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(1,716)	(4,523)
Deferred income tax (expense) benefit	231	21,223
Comprehensive income (loss)	<u>\$ 296,471</u>	<u>\$ 224,728</u>

**Denominator for basic and diluted net income (loss) per share — Class A and B common stock:**

Denominator for basic net income (loss) per share — weighted-average common shares

446,814,002,700  
001575

outstanding		
Denominator for diluted net income (loss) per share — weighted-average common shares outstanding	<u>448,033</u>	<u>460,218</u>
<b>Net income (loss) per share — Class A and B common stock:</b>		
Basic net income (loss) per share	<u>\$ 0.70</u>	<u>\$ 0.58</u>
Diluted net income (loss) per share	<u>\$ 0.70</u>	<u>\$ 0.57</u>

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	<b>For the Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
<b>Cash Flows From Operating Activities:</b>		
Net income (loss)	\$ 312,684	\$ 258,583
<i>Adjustments to reconcile net income (loss) to net cash flows from operating activities:</i>		
Depreciation and amortization	223,293	272,368
Equity in losses (earnings) of affiliates	2,360	2,318
Realized and unrealized losses (gains) on investments	(844)	2,357
Non-cash, stock-based compensation	3,209	3,559
Deferred tax expense (benefit)	24,705	14,520
Other, net	1,777	1,472
Change in noncurrent assets	1,683	1,664
Change in long-term deferred revenue, distribution and carriage payments and other long-term liabilities	3,407	81,446
Changes in current assets and current liabilities, net	328,942	267,450
<b>Net cash flows from operating activities</b>	<b>901,216</b>	<b>905,737</b>
<b>Cash Flows From Investing Activities:</b>		
Purchases of marketable investment securities	(725,779)	(818,220)
Sales and maturities of marketable investment securities	264,507	700,289
Purchases of property and equipment	(252,174)	(266,771)
Change in restricted cash and marketable investment securities	187	(77)
Purchase of strategic investments included in noncurrent marketable and other investment securities	—	(115,253)
Other	—	(2,569)
<b>Net cash flows from investing activities</b>	<b>(713,259)</b>	<b>(502,601)</b>
<b>Cash Flows From Financing Activities:</b>		
Distribution of cash and cash equivalents to EchoStar in connection with the Spin-off	—	(585,147)
Repayment of capital lease obligations, mortgages and other notes payable	(5,093)	(1,979)
Class A common stock repurchases	(18,594)	—
Net proceeds from Class A common stock options exercised and Class A common stock issued under the Employee Stock Purchase Plan	1,092	930
<b>Net cash flows from financing activities</b>	<b>(22,595)</b>	<b>(586,196)</b>
Net increase (decrease) in cash and cash equivalents	165,362	(183,060)
Cash and cash equivalents, beginning of period	98,574	919,542
Cash and cash equivalents, end of period	<u>\$ 263,936</u>	<u>\$ 736,482</u>
<b>Supplemental Disclosure of Cash Flow Information:</b>		
Cash paid for interest	\$ 58,250	\$ 57,221
Capitalized interest	\$ 3,942	\$ 3,848
Cash received for interest	\$ 3,366	\$ 12,976
Cash paid for income taxes	\$ 7,978	\$ 17,393
Employee benefits paid in Class A common stock	\$ —	\$ 19,374
Satellites and other assets financed under capital lease obligations	\$ 130,714	\$ —
Net assets contributed in connection with the Spin-off, excluding cash and cash equivalents	\$ —	\$2,765,398

**JA002702**  
001577

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**1. Organization and Business Activities*****Principal Business***

DISH Network Corporation is a holding company. Its subsidiaries (which together with DISH Network Corporation are referred to as “DISH Network,” the “Company,” “we,” “us” and/or “our”) operate the DISH Network® direct broadcast satellite (“DBS”) subscription television service in the United States which had 13.584 million subscribers as of March 31, 2009. We have deployed substantial resources to develop the “DISH Network DBS System.” The DISH Network DBS System consists of our licensed Federal Communications Commission (“FCC”) authorized DBS and Fixed Satellite Service (“FSS”) spectrum, our owned and leased satellites, receiver systems, third-party broadcast operations, customer service facilities, in-home service and call center operations and certain other assets utilized in our operations.

***Spin-off of Technology and Certain Infrastructure Assets***

On January 1, 2008, we completed a tax-free distribution of our technology and set-top box business and certain infrastructure assets (the “Spin-off”) into a separate publicly-traded company, EchoStar Corporation (“EchoStar”). DISH Network and EchoStar now operate as separate publicly-traded companies, and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of both companies is owned beneficially by Charles W. Ergen, our Chairman, President and Chief Executive Officer. The two entities consist of the following:

- *DISH Network Corporation* — which retained its DISH Network® subscription television business and
- *EchoStar Corporation* — which sells equipment, including set-top boxes and related components, to DISH Network and international customers, and provides digital broadcast operations and satellite services to DISH Network and other customers.

**2. Summary of Significant Accounting Policies*****Basis of Presentation***

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and notes required for complete financial statements prepared under GAAP. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the three months ended March 31, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009. For further information, refer to the Consolidated Financial Statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2008 (“2008 10-K”). Certain prior period amounts have been reclassified to conform to the current period presentation.

***Principles of Consolidation***

We consolidate all majority owned subsidiaries and investments in entities in which we have controlling influence. Non-majority owned investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the investee. When we do not have the ability to significantly influence the operating decisions of an investee, the cost method is used. For entities that are considered variable interest entities we apply the provisions of Financial Accounting Standards Board (“FASB”) Interpretation No. 46R, “Consolidation of Variable Interest Entities — An Interpretation of ARB No. 51” (“FIN 46R”). All significant intercompany accounts and transactions have been eliminated in consolidation.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses for each reporting period. Estimates are used in accounting for, among other things, allowances for doubtful accounts, inventory allowances, self-insurance obligations, deferred taxes and related valuation allowances, uncertain tax positions, loss contingencies, fair value of financial instruments, fair value of options granted under our stock-based compensation plans, fair values of assets and liabilities acquired in business combinations, capital leases, asset impairments, useful lives of property, equipment and intangible assets, retailer incentives, programming expenses, subscriber lives and royalty obligations. Illiquid credit markets and general downward economic conditions have increased the inherent uncertainty in the estimates and assumptions indicated above. Actual results may differ from previously estimated amounts, and such differences may be material to the Condensed Consolidated Financial Statements. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively in the period they occur.

***New Accounting Pronouncements***

In April 2009, the FASB issued FASB Staff Position No. 157-4 (“FSP 157-4”), which provides additional guidance on FASB Statement No. 157 (“SFAS 157”), Fair Value Measurements, when the volume and level of activity for the asset or liability has significantly decreased. FSP 157-4 will be effective for interim and annual reporting periods ending after June 15, 2009. We are currently evaluating the impact that adoption of FSP 157-4 will have on our financial position and our results of operations.

In April 2009, the FASB issued FASB Staff Position No. 115-2 (“FSP 115-2”) and FASB Staff Position No. 124-2 (“FSP 124-2”), which amends prior other-than-temporary impairment guidance for debt and equity securities. FSP 115-2 and FSP 124-2 will be effective for interim and annual reporting periods ending after June 15, 2009. We are currently evaluating the impact that adoption of FSP 115-2 and FSP 124-2 will have on our financial position and our results of operations.

**3. Basic and Diluted Income (Loss) Per Share**

Statement of Financial Accounting Standards No. 128, “Earnings Per Share” (“SFAS 128”) requires entities to present both basic earnings per share (“EPS”) and diluted EPS. Basic EPS excludes dilution and is computed by dividing net income (loss) by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock awards were exercised and convertible securities were converted to common stock.

The potential dilution from our subordinated notes convertible into common stock was computed using the “if converted method.” The potential dilution from stock awards exercisable into common stock was computed using the treasury stock method based on the average market value of our Class A common stock. The following table reflects the basic and diluted weighted-average shares outstanding used to calculate basic and diluted earnings per share. Earnings per share amounts for all periods are presented below in accordance with the requirements of SFAS 128.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

	<b>For the Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
	(In thousands)	
<b>Numerator:</b>		
Numerator for basic net income (loss) per share — Net income (loss)	\$312,684	\$258,583
Interest on dilutive subordinated convertible notes, net of related tax effect	117	2,461
Numerator for diluted net income (loss) per common share	<u>\$312,801</u>	<u>\$261,044</u>
<b>Denominator:</b>		
Denominator for basic net income (loss) per common share – weighted-average common shares outstanding	446,874	448,803
Dilutive impact of stock awards outstanding	677	2,634
Dilutive impact of subordinated notes convertible into common shares	<u>482</u>	<u>8,781</u>
Denominator for diluted net income (loss) per share – weighted-average common shares outstanding	<u>448,033</u>	<u>460,218</u>
<b>Net income (loss) per share:</b>		
Basic net income (loss)	<u>\$ 0.70</u>	<u>\$ 0.58</u>
Diluted net income (loss)	<u>\$ 0.70</u>	<u>\$ 0.57</u>

**Shares of Class A common stock issuable upon conversion of:**

3% Convertible Subordinated Note due 2010 (repaid during third quarter 2008)	—	8,299
3% Convertible Subordinated Note due 2011	482	482

As of March 31, 2009 and 2008, there were stock awards to purchase 11.1 million and 3.4 million shares of Class A common stock outstanding, respectively, not included in the above denominator as their effect is antidilutive.

Vesting of options and rights to acquire shares of our Class A common stock (“Restricted performance units”) granted pursuant to our long-term incentive plans is contingent upon meeting certain long-term goals which have not yet been achieved. As a consequence, the following are not included in the diluted EPS calculation:

	<b>For the Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
	(In thousands)	
Performance-based options	10,287	9,721
Restricted performance units	603	590
Total	<u>10,890</u>	<u>10,311</u>

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

**4. Marketable Investment Securities, Restricted Cash and Other Investment Securities**

Our marketable investment securities, restricted cash and other investment securities consist of the following:

	<b>As of</b>	
	<b>March 31, 2009</b>	<b>December 31, 2008</b>
	(In thousands)	
<b>Marketable investment securities:</b>		
Current marketable investment securities — VRDNs	\$ 699,847	\$ 239,611
Current marketable investment securities — strategic	23,756	13,561
Current marketable investment securities — other	181,339	207,386
<i>Total current marketable investment securities</i>	904,942	460,558
Restricted marketable investment securities (1)	21,185	22,407
Noncurrent marketable investment securities — ARS and MBS (2)	78,652	113,394
<b>Total marketable investment securities</b>	<u>1,004,779</u>	<u>596,359</u>
<b>Restricted cash and cash equivalents:</b>		
Restricted cash and cash equivalents (1)	62,184	61,199
<b>Total restricted cash and cash equivalents</b>	<u>62,184</u>	<u>61,199</u>
<b>Other investment securities:</b>		
Other investment securities — cost method	15,795	15,795
Other investment securities — equity method	24,045	26,784
Other investment securities — fair value method	1,388	2,323
<b>Total other investment securities (2)</b>	<u>41,228</u>	<u>44,902</u>
<b>Total marketable investment securities, restricted cash and other investment securities</b>	<u><u>\$ 1,108,191</u></u>	<u><u>\$ 702,460</u></u>

- (1) Restricted marketable investment securities and restricted cash and cash equivalents are included in “Restricted cash and marketable investment securities” on our Condensed Consolidated Balance Sheets.
- (2) Noncurrent marketable investment securities — ARS, MBS and other investment securities are included in “Marketable and other investment securities” on our Condensed Consolidated Balance Sheets.

**Marketable Investment Securities**

Our marketable investment securities portfolio consists of various debt and equity instruments, all of which are classified as available-for-sale.

*Current Marketable Investment Securities — VRDNs*

Variable rate demand notes (“VRDNs”) are long-term floating rate municipal bonds with embedded put options that allow the bondholder to sell the security at par plus accrued interest. All of the put options are secured by a pledged liquidity source. While they are classified as marketable investment securities, the put option allows for VRDNs to be liquidated on a same day or on a five business day settlement basis.

*Current Marketable Investment Securities — Strategic*

Our strategic marketable investment securities are highly speculative and have experienced and continue to experience volatility. As of March 31, 2009, a significant portion of our strategic investment portfolio consisted of securities of a single issuer and the value of that portfolio therefore depends on that issuer.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

*Current Marketable Investment Securities — other*

Our other current marketable investment securities portfolio includes investments in various debt instruments including corporate and government bonds.

*Restricted Marketable Investment Securities*

As of March 31, 2009 and December 31, 2008, our restricted marketable investment securities, together with our restricted cash, included amounts required as collateral for our letters of credit.

*Noncurrent Marketable Investment Securities — ARS and MBS*

We have investments in auction rate securities (“ARS”) and mortgage backed securities (“MBS”) which are classified as available-for-sale securities and reported at fair value. Recent events in the credit markets have reduced or eliminated current liquidity for certain of our ARS and MBS investments. As a result, we classify these investments as noncurrent assets as we intend to hold these investments until they recover or mature.

The valuation of our ARS and MBS investments portfolio is subject to uncertainties that are difficult to estimate. The fair values of these securities are estimated utilizing a combination of comparable instruments and liquidity assumptions. These analyses consider, among other items, the collateral underlying the investments, credit ratings, and liquidity. These securities were also compared, when possible, to other observable market data with similar characteristics.

For our ARS and MBS investments, due to the lack of observable market quotes for identical assets, we utilize analyses that rely on Level 2 and/or Level 3 inputs as defined by Statement of Financial Accounting Standards No. 157, “Fair Value Measurements” (“SFAS 157”). These inputs include observed prices on similar assets as well as our assumptions and estimates related to the counterparty credit quality, default risk underlying the security and overall capital market liquidity.

*Other Investment Securities*

We have several strategic investments in certain equity securities that are included in noncurrent “Marketable and other investment securities” on our Condensed Consolidated Balance Sheets accounted for using the cost, equity or fair value methods of accounting.

Our ability to realize value from our strategic investments in companies that are not publicly traded depends on the success of those companies’ businesses and their ability to obtain sufficient capital to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them.

*Unrealized Gains (Losses) on Marketable Investment Securities — Recorded on the Condensed Consolidated Balance Sheets*

As of March 31, 2009 and December 31, 2008, we had accumulated net unrealized losses of \$132 million and \$116 million, both net of related tax effect, respectively, as a part of “Accumulated other comprehensive income (loss)” within “Total stockholders’ equity (deficit).” A full valuation allowance has been established against the deferred tax assets associated with these unrealized capital losses. The components of our available-for-sale investments are detailed in the table below.

## Table of Contents

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

	As of March 31, 2009				As of December 31, 2008			
	Marketable Investment Securities	Unrealized		Net	Marketable Investment Securities	Unrealized		Net
		Gains	Losses			Gains	Losses	
				(In thousands)				
<b>Debt securities:</b>								
VRDNs	\$ 699,847	\$ —	\$ —	\$ —	\$ 239,611	\$ —	\$ —	\$ —
ARS and MBS	78,652	—	(135,308)	(135,308)	113,394	—	(103,943)	(103,943)
Other (including restricted)	206,619	1,649	(11,495)	(9,846)	231,863	—	(12,442)	(12,442)
<b>Equity securities:</b>								
Other	19,661	12,841	(136)	12,705	11,491	—	—	—
<b>Total marketable investment securities</b>	<u>\$1,004,779</u>	<u>\$14,490</u>	<u>\$ (146,939)</u>	<u>\$ (132,449)</u>	<u>\$ 596,359</u>	<u>\$ —</u>	<u>\$ (116,385)</u>	<u>\$ (116,385)</u>

As of March 31, 2009, restricted and non-restricted marketable investment securities include debt securities of \$872 million with contractual maturities of one year or less and \$113 million with contractual maturities greater than one year. Actual maturities may differ from contractual maturities as a result of our ability to sell these securities prior to maturity.

### Marketable Investment Securities in a Loss Position

In accordance with the guidance of FASB Staff Position No. 115-1 (“FSP 115-1”) “The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments,” the following table reflects the length of time that the individual securities, accounted for as available-for-sale, have been in an unrealized loss position, aggregated by investment category. As of March 31, 2009, the unrealized losses on our investments in debt securities primarily represent investments in auction rate, mortgage and asset-backed securities. We are not aware of any specific factors indicating that the underlying issuers of these investments would not be able to pay interest as it becomes due or repay the principal at maturity. Therefore, we believe that these changes in the estimated fair values of these marketable investment securities are related to temporary market fluctuations. In addition, we have the ability and intent to hold our investments in these debt securities until they recover or mature.

Investment Category	Primary Reason for Unrealized Loss	Total Fair Value	As of March 31, 2009					
			Less than Six Months		Six to Nine Months		Nine Months or More	
			Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
(In thousands)								
Debt securities	Temporary market fluctuations	\$219,120	\$ 1,532	\$ (5)	\$ —	\$ —	\$217,588	\$(146,798)
Equity securities	Temporary market fluctuations	120	120	(136)	—	—	—	—
<b>Total</b>		<u>\$219,240</u>	<u>\$ 1,652</u>	<u>\$ (141)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$217,588</u>	<u>\$(146,798)</u>
As of December 31, 2008								
(In thousands)								
Debt securities	Temporary market fluctuations	\$295,676	\$ 2,070	\$ (540)	\$ 8,114	\$ (24)	\$285,492	\$(115,821)
<b>Total</b>		<u>\$295,676</u>	<u>\$ 2,070</u>	<u>\$ (540)</u>	<u>\$ 8,114</u>	<u>\$ (24)</u>	<u>\$285,492</u>	<u>\$(115,821)</u>

### *Fair Value Measurements*

SFAS 157 “Fair Value Measurements” established a new framework for measuring fair value for all financial and non-financial instruments and expands related disclosures. Broadly, the SFAS 157 framework requires fair value to be determined based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. SFAS 157 established market or observable inputs as the preferred source of values, followed by unobservable inputs or assumptions based on hypothetical transactions in the absence of market inputs.

JA002709  
001584



[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

- Level 1, defined as observable inputs being quoted prices in active markets for identical assets;
- Level 2, defined as observable inputs including quoted prices for similar assets; and
- Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring assumptions based on the best information available.

Our assets measured at fair value on a recurring basis were as follows:

<u>Assets</u>	<b>Total Fair Value As of March 31, 2009</b>			
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
		(In thousands)		
Marketable investment securities	\$1,004,779	\$24,166	\$909,831	\$70,782
Other investment securities	1,388	—	—	1,388
<b>Total assets at fair value</b>	<u>\$1,006,167</u>	<u>\$24,166</u>	<u>\$909,831</u>	<u>\$72,170</u>

Changes in Level 3 instruments are as follows:

	<b>Level 3</b>		
	<u>Total</u>	<u>Current and Noncurrent Marketable Investment Securities</u>	<u>Other Investment Securities</u>
		(In thousands)	
<b>Balance as of December 31, 2008</b>	\$106,679	\$104,356	\$2,323
Transfers in (out) of level 3, net	—	—	—
Net realized/unrealized gains/(losses) included in earnings	(935)	—	(935)
Net realized/unrealized gains/(losses) included in other comprehensive income (loss)	(30,762)	(30,762)	—
Purchases, issuances and settlements, net	(2,812)	(2,812)	—
<b>Balance as of March 31, 2009</b>	<u>\$72,170</u>	<u>\$70,782</u>	<u>\$1,388</u>

***Gains and Losses on Sales and Changes in Carrying Values of Investments — Recorded on the Condensed Consolidated Statements of Operations***

“Other, net” income and expense included on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes other changes in the carrying amount of our marketable and non-marketable investments as follows:

<u>Other Income (Expense):</u>	<b>For the Three Months Ended March 31,</b>	
	<u>2009</u>	<u>2008</u>
	(In thousands)	
Marketable investment securities — gains (losses) on sales/exchange	\$7,262	\$2,275
Other investment securities — unrealized gains (losses) on fair value investments and other-than-temporary impairments	(935)	(4,632)
Other	(2,150)	(4,671)
<b>Total</b>	<u>\$4,177</u>	<u>\$(7,028)</u>

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

**5. Inventories**

Inventories consist of the following:

	<b>March 31, 2009</b>	<b>As of December 31, 2008</b>
	(In thousands)	
Finished goods — DBS	\$ 249,272	\$ 238,343
Raw materials	116,038	146,353
Work-in-process — used	74,539	61,663
Work-in-process — new	2,552	2,414
Subtotal	442,401	448,773
Inventory allowance	(27,568)	(22,102)
Inventories, net	<u>\$ 414,833</u>	<u>\$ 426,671</u>

**6. Satellites**

We currently utilize twelve satellites in geostationary orbit approximately 22,300 miles above the equator, five of which are owned by us. Each of the owned satellites had an original estimated minimum useful life of at least 12 years. We currently lease capacity on five satellites from EchoStar with terms of up to two years and we account for these as operating leases. (See Note 12 for further discussion of our satellite leases with EchoStar.) We also lease two satellites from third parties, which are accounted for as capital leases pursuant to Statement of Financial Accounting Standards No. 13, "Accounting for Leases" ("SFAS 13"). The capital leases are depreciated over the shorter of the economic life or the term of the satellite agreement.

Operation of our programming service requires that we have adequate satellite transmission capacity for the programming we offer. Moreover, current competitive conditions require that we continue to expand our offering of new programming, particularly by expanding local HD coverage and offering more HD national channels. While we generally have had in-orbit satellite capacity sufficient to transmit our existing channels and some backup capacity to recover the transmission of certain critical programming, our backup capacity is limited.

In the event of a failure or loss of any of our satellites, we may need to acquire or lease additional satellite capacity or relocate one of our other satellites and use it as a replacement for the failed or lost satellite. Such a failure could result in a prolonged loss of critical programming or a significant delay in our plans to expand programming as necessary to remain competitive and thus may have a material adverse effect on our business, financial condition and results of operations.

Prior to 2009, certain satellites in our fleet have experienced anomalies, some of which have had a significant adverse impact on their commercial operation. There can be no assurance that future anomalies will not cause further losses, which could further impact the remaining life or commercial operation of any of these satellites. See "*Long-Lived Satellite Assets*" below for further discussion of evaluation of impairment. There can be no assurance that we can recover critical transmission capacity in the event one or more of our in-orbit satellites were to fail. We do not anticipate carrying insurance for any of the in-orbit satellites that we own, and we will bear the risk associated with any in-orbit satellite failures. Recent developments with respect to our satellites are discussed below.

***Owned Satellites***

***EchoStar V.*** EchoStar V was originally designed with a minimum 12-year design life. Momentum wheel failures in prior years, together with relocation of the satellite between orbital locations, resulted in increased fuel consumption, as previously disclosed. Prior to 2009, EchoStar V experienced anomalies resulting in the loss of 13 solar array strings. During April 2009, EchoStar V lost an additional solar array string. These issues have not impacted commercial operation of the satellite. However, during 2005, as a result of the momentum wheel failures

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

and the increased fuel consumption, we reduced the remaining estimated useful life of the satellite. As of October 2008, EchoStar V was fully depreciated.

***Leased Satellites***

**EchoStar XII.** EchoStar XII was designed to operate 13 DBS transponders at 270 watts per channel when providing service to the entire continental United States (“CONUS”), or 22 spot beams in a combination of 135 and 65 watts per channel. We currently operate the satellite in spot beam/CONUS hybrid mode. EchoStar XII has a total of 24 solar array circuits, approximately 22 of which are required to assure full power for the original minimum 12-year design life of the satellite. Prior to 2009, eight solar array circuits on EchoStar XII experienced anomalous behavior resulting in both temporary and permanent solar array circuit failures. During March 2009, EchoStar XII experienced an additional solar array circuit failure. Although the design life of the satellite has not been affected, these circuit failures have resulted in a reduction in power to the satellite which will preclude us from using the full complement of transponders on EchoStar XII for the 12-year design life of the satellite.

***Long-Lived Satellite Assets***

We account for impairments of long-lived satellite assets in accordance with the provisions of Statement of Financial Accounting Standards No. 144, “*Accounting for the Impairment or Disposal of Long-Lived Assets*” (“SFAS 144”). SFAS 144 requires a long-lived asset or asset group to be tested for recoverability whenever events or changes in circumstance indicate that its carrying amount may not be recoverable. Based on the guidance under SFAS 144, we evaluate our satellite fleet for recoverability as one asset group. While certain of the anomalies discussed above, and previously disclosed, may be considered to represent a significant adverse change in the physical condition of an individual satellite, based on the redundancy designed within each satellite and considering the asset grouping, these anomalies (none of which caused a loss of service to subscribers for an extended period) are not considered to be significant events that would require evaluation for impairment recognition pursuant to the guidance under SFAS 144. Unless and until a specific satellite is abandoned or otherwise determined to have no service potential, the net carrying amount related to the satellite would not be written off.

**7. Long-Term Debt*****Capital Lease Obligations***

Ciel II, a Canadian DBS satellite, was launched in December 2008 and commenced commercial operation at the 129 degree orbital location in February 2009. We have leased 100% of the capacity on the satellite for an initial term of ten years. Prior to the launch, we pre-paid \$131 million to SES Americom in connection with the lease agreement and we capitalized \$16 million of interest related to this satellite. In accordance with Statement of Financial Accounting Standards No. 13, “*Accounting for Leases*” (“SFAS 13”), we have accounted for this agreement as a capital lease asset by recording \$277 million as the estimated fair value of the satellite and recording a capital lease obligation in the amount of \$130 million.

As of March 31, 2009 and December 31, 2008, we had \$500 million and \$223 million capitalized for satellites acquired under capital leases included in “Property and equipment, net,” respectively, with related accumulated depreciation of \$34 million and \$26 million, respectively. This increase during the three months ended March 31, 2009 related to the Ciel II satellite discussed above. In our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), we recognized \$8 million and \$4 million in depreciation expense on satellites acquired under capital lease agreements during the three months ended March 31, 2009 and 2008, respectively.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Future minimum lease payments under our capital lease obligations, together with the present value of the net minimum lease payments as of March 31, 2009, are as follows (in thousands):

For the Years Ended December 31,	
2009 (remaining nine months)	\$ 57,707
2010	76,525
2011	75,999
2012	75,999
2013	75,999
Thereafter	542,328
Total minimum lease payments	904,557
Less: Amount representing lease of the orbital location and estimated executory costs (primarily insurance and maintenance) including profit thereon, included in total minimum lease payments	(416,326)
Net minimum lease payments	488,231
Less: Amount representing interest	(175,993)
Present value of net minimum lease payments	312,238
Less: Current portion	(19,051)
Long-term portion of capital lease obligations	<u>\$ 293,187</u>

## 8. Stockholders' Equity (Deficit)

### Common Stock Repurchase Program

Our board of directors previously authorized stock repurchases of up to \$1.0 billion of our Class A common stock. During the three months ended March 31, 2009, we repurchased 1.9 million shares of our common stock for \$19 million. As of March 31, 2009, we may repurchase up to \$981 million under this plan.

## 9. Stock-Based Compensation

### Stock Incentive Plans

In connection with the Spin-off, as permitted by our existing stock incentive plans and consistent with the Spin-off exchange ratio, each DISH Network stock option was converted into two stock options as follows:

- an adjusted DISH Network stock option for the same number of shares that were exercisable under the original DISH Network stock option, with an exercise price equal to the exercise price of the original DISH Network stock option multiplied by 0.831219.
- a new EchoStar stock option for one-fifth of the number of shares that were exercisable under the original DISH Network stock option, with an exercise price equal to the exercise price of the original DISH Network stock option multiplied by 0.843907.

Similarly, each holder of DISH Network restricted stock units retained his or her DISH Network restricted stock units and received one EchoStar restricted stock unit for every five DISH Network restricted stock units that they held.

Consequently, the fair value of the DISH Network stock award and the new EchoStar stock award immediately following the Spin-off was equivalent to the fair value of such stock award immediately prior to the Spin-off.

We maintain stock incentive plans to attract and retain officers, directors and key employees. Awards under these plans include both performance and non-performance based equity incentives. As of March 31, 2009, we had outstanding under these plans stock options to acquire 22.2 million shares of our Class A common stock and 0.9 million restricted stock awards. Stock options granted through March 31, 2009 were granted with exercise prices equal to or greater than the market value of our Class A common stock at the date of grant and with a maximum term of ten years. While historically we have issued stock options subject to vesting, typically at the rate of 20% per

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

year, some stock options have been granted with immediate vesting and other stock options vest only upon the achievement of certain company-wide objectives. As of March 31, 2009, we had 57.6 million shares of our Class A common stock available for future grant under our stock incentive plans.

As of March 31, 2009, the following stock incentive awards were outstanding:

	As of March 31, 2009			
	DISH Network Awards		EchoStar Awards	
Stock Incentive Awards Outstanding	Stock Options	Restricted Stock Units	Stock Options	Restricted Stock Units
Held by DISH Network employees	18,629,714	487,735	1,622,315	81,366
Held by EchoStar employees	3,603,669	427,249	N/A	N/A
Total	22,233,383	914,984	1,622,315	81,366

We are responsible for fulfilling all stock incentive awards related to DISH Network common stock and EchoStar is responsible for fulfilling all stock incentive awards related to EchoStar common stock, regardless of whether such stock incentive awards are held by our or EchoStar's employees. Notwithstanding the foregoing, based on the requirements of Statement of Financial Accounting Standards No. 123R, "Share Based Payments" ("SFAS 123R"), our stock-based compensation expense, resulting from awards outstanding at the Spin-off date, is based on the stock incentive awards held by our employees regardless of whether such awards were issued by DISH Network or EchoStar. Accordingly, stock-based compensation that we expense with respect to EchoStar stock incentive awards is included in "Additional paid-in capital" on our Condensed Consolidated Balance Sheets.

#### **Stock Award Activity**

Our stock option activity (including performance and non-performance based stock options) for the three months ended March 31, 2009 was as follows:

	For the Three Months Ended March 31, 2009	
	Options	Weighted-Average Exercise Price
Total options outstanding, beginning of period	21,835,687	\$ 22.50
Granted	1,105,500	11.11
Exercised	(98,597)	6.25
Forfeited and cancelled	(609,207)	23.95
Total options outstanding, end of period	22,233,383	21.97
Performance based options outstanding, end of period (1)	10,286,750	16.94
Exercisable at end of period	6,946,731	29.47

(1) These stock options, which are included in the caption "Total options outstanding, end of period," were issued pursuant to two separate long-term, performance-based stock incentive plans. Vesting of these stock options is contingent upon meeting certain long-term company goals. See discussion of the 2005 LTIP and 2008 LTIP below.

We did not realize a tax benefit from stock options exercised during the three months ended March 31, 2009. The tax benefit from stock options exercised during the three months ended March 31, 2008 was less than \$1 million. Based on the closing market price of our Class A common stock on March 31, 2009, the aggregate intrinsic value of our outstanding stock options was \$1 million. Of that amount, stock options with an aggregate intrinsic value of \$1 million were exercisable at the end of the period.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Our restricted stock award activity (including performance and non-performance based stock awards) for the three months ended March 31, 2009 was as follows:

	<b>For the Three Months Ended March 31, 2009</b>	<b>Weighted- Average Grant Date Fair Value</b>
	<b>Restricted Stock Awards</b>	
Total restricted stock awards outstanding, beginning of period	1,452,734	\$ 27.87
Granted	6,666	11.11
Exercised	—	—
Forfeited and cancelled	(544,416)	30.55
Total restricted stock awards outstanding, end of period	<u>914,984</u>	26.16
Restricted performance units outstanding, end of period (1)	<u>602,734</u>	24.08

(1) These restricted performance units, which are included in the caption “Total restricted stock awards outstanding, end of period,” were issued pursuant to two separate long-term, performance-based stock incentive plans. Vesting of these restricted performance units is contingent upon meeting certain long-term company goals. See discussion of the 2005 LTIP and 2008 LTIP below.

***Long-Term Performance-Based Plans***

**2005 LTIP.** In 2005, we adopted a long-term, performance-based stock incentive plan (the “2005 LTIP”) within the terms of our 1999 Stock Incentive Plan. The 2005 LTIP provides stock options and restricted performance units, either alone or in combination, which vest over seven years at the rate of 10% per year during the first four years, and at the rate of 20% per year thereafter. Exercise of the stock options is subject to a performance condition that a company-specific subscriber goal is achieved prior to March 31, 2015.

Contingent compensation related to the 2005 LTIP will not be recorded in our financial statements unless and until management concludes achievement of the performance condition is probable. Given the competitive nature of our business, small variations in subscriber churn, gross subscriber addition rates and certain other factors can significantly impact subscriber growth. Consequently, while it was determined that achievement of the goal was not probable as of March 31, 2009, that assessment could change at any time.

In accordance with SFAS 123R, if all of the awards under the 2005 LTIP were vested and the goal had been met or if we had determined that achievement of the goal was probable during the three months ended March 31, 2009, we would have recorded total non-cash, stock-based compensation expense for our employees as indicated in the table below. If the goal is met and there are unvested stock options at that time, the vested amounts would be expensed immediately on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), with the unvested portion recognized ratably over the remaining vesting period.

	<b>2005 LTIP</b>	
	<b>Total</b>	<b>Vested Portion</b>
	(In thousands)	
DISH Network awards held by DISH Network employees	\$47,171	\$14,360
EchoStar awards held by DISH Network employees	9,578	2,916
Total	<u>\$56,749</u>	<u>\$17,276</u>

**2008 LTIP.** In December 2008, we adopted a long-term, performance-based stock incentive plan (the “2008 LTIP”) within the terms of our 1999 Stock Incentive Plan. The 2008 LTIP provides stock options and restricted performance units, either alone or in combination, which vest based on company-specific subscriber and financial goals. Exercise of the awards is contingent on achieving these goals prior to December 31, 2015. Management has determined it is

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

probable that a portion of the 2008 LTIP awards will vest and as a result, we recorded less than \$1 million in non-cash, stock-based compensation expense during the three months ended March 31, 2009. During the remainder of 2009, we expect to record an additional \$1 million in non-cash, stock-based compensation expense related to this portion which management has determined to be probable. Additional compensation related to the 2008 LTIP will be recorded based on management's assessment of the probability of meeting the remaining performance conditions. If the remaining goals are achieved and the remaining 2008 LTIP awards vest, we will recognize an additional \$23 million in non-cash, stock-based compensation expense over the term of this stock incentive plan.

Of the 22.2 million stock options and 0.9 million restricted stock awards outstanding under our stock incentive plans as of March 31, 2009, the following awards were outstanding pursuant to the 2005 LTIP and the 2008 LTIP:

	As of March 31, 2009	
	Number of Awards	Weighted-Average Exercise Price
<b>Stock Options</b>		
2005 LTIP	4,279,250	\$ 25.16
2008 LTIP	6,007,500	\$ 11.09
Total	<u>10,286,750</u>	<u>\$ 16.94</u>
<b>Restricted Performance Units</b>		
2005 LTIP	521,912	
2008 LTIP	80,822	
Total	<u>602,734</u>	

No awards were granted under the 2005 LTIP during the three months ended March 31, 2009.

### ***Stock-Based Compensation***

Total non-cash, stock-based compensation expense for all of our employees is shown in the following table for the three months ended March 31, 2009 and 2008 and was allocated to the same expense categories as the base compensation for such employees:

	For the Three Months Ended March 31,	
	2009	2008
	(In thousands)	
Subscriber-related	\$ 259	\$ 271
General and administrative	2,950	3,288
Total non-cash, stock-based compensation	<u>\$ 3,209</u>	<u>\$ 3,559</u>

As of March 31, 2009, our total unrecognized compensation cost related to our non-performance based unvested stock options was \$30 million and includes compensation expense that we will recognize for EchoStar stock options held by our employees as a result of the Spin-off. This cost is based on an estimated future forfeiture rate of approximately 4.3% per year and will be recognized over a weighted-average period of approximately three years. Share-based compensation expense is recognized based on awards ultimately expected to vest and is reduced for estimated forfeitures. SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Changes in the estimated forfeiture rate can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

The fair value of each award for the three months ended March 31, 2009 and 2008 was estimated at the date of the grant using a Black-Scholes option pricing model with the following assumptions:

<b>Stock Options</b>	<b>For the Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
Risk-free interest rate	1.97% - 2.51%	2.74%
Volatility factor	29.72% - 32.04%	19.98%
Expected term of options in years	6.0 - 7.3	6.1
Weighted-average fair value of options granted	\$3.86 - \$4.17	\$ 7.64

We do not currently plan to pay additional dividends on our common stock, and therefore the dividend yield percentage is set at zero for all periods presented. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded stock options which have no vesting restrictions and are fully transferable. Consequently, our estimate of fair value may differ from other valuation models. Further, the Black-Scholes model requires the input of highly subjective assumptions. Changes in the subjective input assumptions can materially affect the fair value estimate. Therefore, we do not believe the existing models provide as reliable a single measure of the fair value of stock-based compensation awards as a market-based model would.

We will continue to evaluate the assumptions used to derive the estimated fair value of our stock options as new events or changes in circumstances become known.

## 10. Commitments and Contingencies

### Commitments

#### *Guarantees*

In connection with the Spin-off, we distributed certain satellite lease agreements to EchoStar. We remain the guarantor under those capital leases for payments totaling approximately \$486 million over the next eight years.

In addition, during the first quarter of 2008, EchoStar entered into a satellite transponder service agreement for Nimiq 5 for a total of \$535 million in payments through 2024. We sublease this capacity from EchoStar and have also guaranteed its obligation under this agreement. As of March 31, 2009, the remaining obligation under this agreement was \$532 million.

As of March 31, 2009, we have not recorded a liability on the balance sheet for any of these guarantees.

### Contingencies

In connection with the Spin-off, we entered into a separation agreement with EchoStar, which provides for, among other things, the division of liability resulting from litigation. Under the terms of the separation agreement, EchoStar has assumed liability for any acts or omissions that relate to its business whether such acts or omissions occurred before or after the Spin-off. Certain exceptions are provided, including for intellectual property related claims generally, whereby EchoStar will only be liable for its acts or omissions that occurred following the Spin-off and we have indemnified EchoStar for any potential liability or damages resulting from intellectual property claims relating to the period prior to the effective date of the Spin-off.

#### *Acacia*

During 2004, Acacia Media Technologies (“Acacia”) filed a lawsuit against us and EchoStar in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an intellectual property holding company that seeks to license an acquired patent portfolio. The suit alleges infringement of United States Patent Nos. 5,132,992, 5,253,275, 5,550,863, 6,002,720 and 6,144,702, which relate to certain systems and methods for transmission of

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

digital data. In March 2008, the Court issued an order outlining a schedule for filing dispositive invalidity motions based on its claim constructions. Acacia has agreed to stipulate to invalidity based on the Court's claim constructions in order to proceed immediately to the Federal Circuit on appeal. The Court, however, has permitted us to file additional invalidity motions.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Broadcast Innovation, L.L.C.***

In 2001, Broadcast Innovation, L.L.C. ("Broadcast Innovation") filed a lawsuit against us, EchoStar, DirecTV, Thomson Consumer Electronics and others in United States District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (the '094 patent) and 4,992,066 (the '066 patent). The '094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The '066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During 2004, the judge issued an order finding the '066 patent invalid. Also in 2004, the Court found the '094 patent invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In 2005, the United States Court of Appeals for the Federal Circuit overturned the '094 patent finding of invalidity and remanded the Charter case back to the District Court. During June 2006, Charter filed a reexamination request with the United States Patent and Trademark Office. The Court has stayed the Charter case pending reexamination, and our case has been stayed pending resolution of the Charter case.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Channel Bundling Class Action***

On September 21, 2007, a purported class of cable and satellite subscribers filed an antitrust action against us in the United States District Court for the Central District of California. The suit also names as defendants DirecTV, Comcast, Cablevision, Cox, Charter, Time Warner, Inc., Time Warner Cable, NBC Universal, Viacom, Fox Entertainment Group, and Walt Disney Company. The suit alleges, among other things, that the defendants engaged in a conspiracy to provide customers with access only to bundled channel offerings as opposed to giving customers the ability to purchase channels on an "a la carte" basis. We filed a motion to dismiss, which the Court denied in July 2008. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Enron Commercial Paper Investment***

During October 2001, we received approximately \$40 million from the sale of Enron commercial paper to a third party broker. That commercial paper was ultimately purchased by Enron. During November 2003, an action was commenced in the United States Bankruptcy Court for the Southern District of New York against approximately 100 defendants, including us, who invested in Enron's commercial paper. The complaint alleges that Enron's October 2001 purchase of its commercial paper was a fraudulent conveyance and voidable preference under bankruptcy laws. We dispute these allegations. We typically invest in commercial paper and notes that are rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations. At the time of our

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

investment in Enron commercial paper, it was considered to be high quality and low risk. On April 7, 2009, we settled the litigation for an immaterial amount.

***ESPN***

On January 30, 2008, we filed a lawsuit against ESPN, Inc., ESPN Classic, Inc., ABC Cable Networks Group, Soapnet L.L.C., and International Family Entertainment (collectively “ESPN”) for breach of contract in New York State Supreme Court. Our complaint alleges that ESPN failed to provide us with certain high-definition feeds of the Disney Channel, ESPN News, Toon, and ABC Family. ESPN asserted a counterclaim, and then filed a motion for summary judgment, alleging that we owed approximately \$35 million under the applicable affiliation agreements. We brought a motion to amend our complaint to assert that ESPN was in breach of certain most-favored-nation provisions under the affiliation agreements. On April 15, 2009, the trial court granted our motion to amend the complaint, and granted, in part, ESPN’s motion on the counterclaim, finding that we are liable for some of the amount alleged to be owing but that the actual amount owing is disputed and will have to be determined at a later date. We will appeal the partial grant of ESPN’s motion. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Finisar Corporation***

Finisar Corporation (“Finisar”) obtained a \$100 million verdict in the United States District Court for the Eastern District of Texas against DirecTV for patent infringement. Finisar alleged that DirecTV’s electronic program guide and other elements of its system infringe United States Patent No. 5,404,505 (the ‘505 patent).

In July 2006, we and EchoStar, together with NagraStar LLC, filed a Complaint for Declaratory Judgment in the United States District Court for the District of Delaware against Finisar that asks the Court to declare that we do not infringe, and have not infringed, any valid claim of the ‘505 patent. During April 2008, the Federal Circuit reversed the judgment against DirecTV and ordered a new trial. Our case is stayed until the DirecTV action is resolved.

We intend to vigorously prosecute this case. In the event that a Court ultimately determines that we infringe this patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to modify our system architecture. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Global Communications***

On April 19, 2007, Global Communications, Inc. (“Global”) filed a patent infringement action against us and EchoStar in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,947,702 (the ‘702 patent), which relates to satellite reception. On October 24, 2007, the United States Patent and Trademark Office granted our request for reexamination of the ‘702 patent and issued an Office Action finding that all of the claims of the ‘702 patent were invalid. At the request of the parties, the District Court stayed the litigation until the reexamination proceeding is concluded and/or other Global patent applications issue.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the ‘702 patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

***Guardian Media***

On December 22, 2008, Guardian Media Technologies LTD (“Guardian”) filed suit against us, EchoStar, EchoStar Technologies L.L.C., DirecTV and several other defendants in the United States District Court for the Central District of California alleging infringement of United States Patent Nos. 4,930,158 and 4,930,160. Both patents are expired and relate to certain parental lock features.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Katz Communications***

On June 21, 2007, Ronald A. Katz Technology Licensing, L.P. (“Katz”) filed a patent infringement action against us in the United States District Court for the Northern District of California. The suit alleges infringement of 19 patents owned by Katz. The patents relate to interactive voice response, or IVR, technology.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Multimedia Patent Trust***

On February 13, 2009, Multimedia Patent Trust (“MPT”) filed suit against us, EchoStar, DirecTV and several other defendants in the United States District Court for the Southern District of California alleging infringement of United States Patent Nos. 4,958,226, 5,227,878, 5,136,377, 5,500,678 and 5,563,593, which relate to video encoding, decoding and compression technology.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Personalized Media Communications***

In February 2008, Personalized Media Communications, Inc. filed suit against us, EchoStar and Motorola, Inc. in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent Nos. 4,694,490, 5,109,414, 4,965,825, 5,233,654, 5,335,277, and 5,887,243, which relate to satellite signal processing.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

***Retailer Class Actions***

During 2000, lawsuits were filed by retailers in Colorado state and federal courts attempting to certify nationwide classes on behalf of certain of our retailers. The plaintiffs are requesting the Courts declare certain provisions of, and changes to, alleged agreements between us and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. We have asserted a variety of counterclaims. The federal court action has been stayed during the pendency of the state court action. We filed a motion for summary judgment on all counts and against all plaintiffs. The plaintiffs filed a motion for additional time to conduct discovery to enable them to respond to our motion. The state court granted limited discovery which ended during 2004. The plaintiffs claimed we did not provide adequate disclosure during the discovery process. The state court agreed, and denied our motion for summary judgment as a result. In April 2008, the state court granted plaintiff's class certification motion and in January 2009, the state court entered an order excluding certain evidence that we can present at trial based on the prior discovery issues. The state court also denied plaintiffs' request to dismiss our counterclaims. The final impact of the court's evidentiary ruling cannot be fully assessed at this time. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the lawsuit or determine the extent of any potential liability or damages.

***Technology Development Licensing***

On January 22, 2009, Technology Development and Licensing LLC ("TechDev") filed suit against us and EchoStar in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. 35, 952, which relates to certain favorite channel features.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Tivo Inc.***

On January 31, 2008, the U.S. Court of Appeals for the Federal Circuit affirmed in part and reversed in part the April 2006 jury verdict concluding that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. In accordance with Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies" ("SFAS 5"), we previously recorded a total reserve of \$132 million on our Condensed Consolidated Balance Sheets to reflect the April 2006 jury verdict, supplemental damages and pre-judgment interest awarded by the Texas court. This amount also includes the estimated cost of any software infringement prior to implementation of our alternative technology, discussed below, plus interest subsequent to the jury verdict. In its January 2008 decision, the Federal Circuit affirmed the jury's verdict of infringement on Tivo's "software claims," upheld the award of damages from the District Court, and ordered that the stay of the District Court's injunction against us, which was issued pending appeal, be dissolved when the appeal becomes final. The Federal Circuit, however, found that we did not literally infringe Tivo's "hardware claims," and remanded such claims back to the District Court for further proceedings. On October 6, 2008, the Supreme Court denied our petition for certiorari. As a result, approximately \$105 million of the total \$132 million reserve was released from an escrow account to Tivo.

We have developed and deployed "next-generation" DVR software to our customers' DVRs. This improved software is fully operational and has been automatically downloaded to current customers (our "alternative technology"). We have written legal opinions from outside counsel that conclude that our alternative technology does not infringe, literally or under the doctrine of equivalents, either the hardware or software claims of Tivo's patent. Tivo has filed a motion for contempt alleging that we are in violation of the Court's injunction. We have vigorously opposed the motion arguing that the Court's injunction does not apply to DVRs that have received our

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

alternative technology, that our alternative technology does not infringe Tivo's patent, and that we are in compliance with the injunction. An evidentiary hearing on Tivo's motion for contempt was held mid-February 2009, the parties' have submitted their post-trial briefs and we are now awaiting a ruling from the Court. In January 2009, the Patent and Trademark Office ("PTO") granted our Petition for Re-Examination of the software claims of Tivo's '389 patent, which are the subject of Tivo's current motion for contempt. The PTO found that there is a 'substantial new question' of patentability as to the software claims in light of prior patents that appear to render Tivo's '389 patent invalid as obvious.

If we are unsuccessful in defending against Tivo's motion for contempt or any subsequent claim that our alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs, or could be required to modify or eliminate certain user-friendly DVR features that we currently offer to consumers. In that event we would be at a significant disadvantage to our competitors who could offer this functionality and, while we would attempt to provide that functionality through other manufacturers, the adverse affect on our business could be material. We could also have to pay substantial additional damages.

***Voom***

On May 28, 2008, Voom HD Holdings ("Voom") filed a complaint against us in New York Supreme Court. The suit alleges breach of contract arising from our termination of the affiliation agreement we had with Voom for the carriage of certain Voom HD channels on the DISH Network satellite television service. In January 2008, Voom sought a preliminary injunction to prevent us from terminating the agreement. The Court denied Voom's motion, finding, among other things, that Voom was not likely to prevail on the merits of its case. Voom is claiming over \$1.0 billion in damages. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Other***

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business, including among other things, disputes with programmers regarding fees. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity.

**11. Depreciation and Amortization Expense**

Depreciation and amortization expense consists of the following:

	<b>For the Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
	(In thousands)	
Equipment leased to customers	\$192,568	\$212,279
Satellites	19,882	26,451
Furniture, fixtures, equipment and other	9,297	28,237
Identifiable intangible assets subject to amortization	291	4,331
Buildings and improvements	1,255	1,070
Total depreciation and amortization	<u>\$223,293</u>	<u>\$272,368</u>

Cost of sales and operating expense categories included in our accompanying Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) do not include depreciation expense related to satellites or equipment leased to customers.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

**12. Related Party Transactions with EchoStar**

Following the Spin-off, EchoStar has operated as a separate public company and we have no continued ownership interest in EchoStar. However, a substantial majority of the voting power of the shares of both companies is owned beneficially by our Chairman, President and Chief Executive Officer, Charles W. Ergen.

EchoStar is our primary supplier of set-top boxes and digital broadcast operations and our key supplier of transponder leasing. Generally the prices charged for products and services provided under the agreements entered into in connection with the Spin-off are based on pricing equal to EchoStar's cost plus a fixed margin (unless noted differently below), which will vary depending on the nature of the products and services provided. Prior to the Spin-off, these products were provided and services were performed internally at cost.

In connection with the Spin-off, we and EchoStar also entered into certain transitional services agreements pursuant to which we obtain certain services and rights from EchoStar, EchoStar obtains certain services and rights from us, and we and EchoStar have indemnified each other against certain liabilities arising from our respective businesses. Subsequent to the Spin-off, we also entered into certain agreements with EchoStar and may enter into additional agreements with EchoStar in the future. The following is a summary of the terms of the principal agreements that we have entered into with EchoStar that may have an impact on our results of operations.

***“Equipment sales — EchoStar”***

*Remanufactured Receiver Agreement.* We entered into a remanufactured receiver agreement with EchoStar under which EchoStar has the right to purchase remanufactured receivers and accessories from us for a two-year period ending, January 1, 2010. Under the remanufactured receiver agreement, EchoStar has the right, but not the obligation, to purchase remanufactured receivers and accessories from us at cost plus a fixed margin, which varies depending on the nature of the equipment purchased. EchoStar may terminate the remanufactured receiver agreement for any reason upon sixty days written notice to us. We may also terminate this agreement if certain entities acquire us.

***“Transitional services and other revenue — EchoStar”***

*Transition Services Agreement.* We entered into a transition services agreement with EchoStar pursuant to which EchoStar has the right, but not the obligation, to receive the following services from us: finance, information technology, benefits administration, travel and event coordination, human resources, human resources development (training), program management, internal audit and corporate quality, legal, accounting and tax, and other support services. The fees for the services provided under the transition services agreement are cost plus a fixed margin, which varies depending on the nature of the services provided. The transition services agreement has a term of two years ending on January 1, 2010. EchoStar may terminate the transition services agreement with respect to a particular service for any reason upon thirty days prior written notice.

*Management Services Agreement.* We entered into a management services agreement with EchoStar pursuant to which we make certain of our officers available to provide services (which are primarily legal and accounting services) to EchoStar. Specifically, Bernard L. Han, R. Stanton Dodge and Paul W. Orban remain employed by us, but also serve as EchoStar's Executive Vice President and Chief Financial Officer, Executive Vice President and General Counsel, and Senior Vice President and Controller, respectively. EchoStar makes payments to us based upon an allocable portion of the personnel costs and expenses incurred by us with respect to such officers (taking into account wages and fringe benefits). These allocations are based upon the estimated percentages of time to be spent by our executive officers performing services for EchoStar under the management services agreement. EchoStar also reimburses us for direct out-of-pocket costs incurred by us for management services provided to EchoStar. We and EchoStar evaluate all charges for reasonableness at least annually and make any adjustments to these charges as we and EchoStar mutually agree upon.

The management services agreement is for a one year period commencing on January 1, 2008, and will be renewed automatically for successive one-year periods thereafter, unless terminated earlier (i) by EchoStar at any time upon

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

at least 30 days' prior written notice, (ii) by us at the end of any renewal term, upon at least 180 days' prior notice; or (iii) by us upon written notice to EchoStar, following certain changes in control.

*Real Estate Lease Agreement.* During 2008, we subleased space at 185 Varick Street, New York, New York to EchoStar for a period of approximately seven years. The rent on a per square foot basis for this sublease was comparable to per square foot rental rates of similar commercial property in the same geographic area at the time of the sublease, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises.

*Packout Services Agreement.* We entered into a packout services agreement with EchoStar, whereby EchoStar has the right, but not the obligation, to engage us to package and ship satellite receivers to customers that are not associated with us. The fees charged by us for the services provided under the packout services agreement are equal to our cost plus a fixed margin, which varies depending on the nature of the products and services provided. The original one year term of the packout services agreement was extended for an additional one year term and expires on December 31, 2009. EchoStar may terminate this agreement for any reason upon sixty days' prior written notice to us. In the event of an early termination of this agreement, EchoStar will be entitled to a refund of any unearned fees paid to us for the services.

***“Satellite and transmission expenses — EchoStar”***

*Broadcast Agreement.* We entered into a broadcast agreement pursuant to which EchoStar provides us broadcast services, including teleport services such as transmission and downlinking, channel origination, and channel management services for a two year period ending on January 1, 2010. We have the right, but not the obligation, to extend the broadcast agreement annually for up to two years. We have exercised our right to renew this agreement for an additional year. We may terminate channel origination services and channel management services for any reason and without any liability upon sixty days written notice to EchoStar. If we terminate teleport services for a reason other than EchoStar's breach, we must pay EchoStar the aggregate amount of the remainder of the expected cost of providing the teleport services.

*Satellite Capacity Agreements.* We entered into satellite capacity agreements pursuant to which we lease satellite capacity on satellites owned or leased by EchoStar. The fees for the services to be provided under the satellite capacity agreements are based on spot market prices for similar satellite capacity and depend, among other things, upon the orbital location of the satellite and the frequency on which the satellite provides services. Generally, each satellite capacity agreement will terminate upon the earlier of: (i) the end of life or replacement of the satellite; (ii) the date the satellite fails; (iii) the date that the transponder on which service is being provided under the agreement fails; or (iv) January 1, 2010.

*Nimiq 5 Lease Agreement.* During March 2008, EchoStar entered into a fifteen-year satellite service agreement with Bell TV, to receive service on 16 DBS transponders on the Nimiq 5 satellite at the 72.7 degree orbital location. The Nimiq 5 satellite is expected to be launched in the second half of 2009. Bell TV currently has the right to receive service on the entire communications capacity of the Nimiq 5 satellite pursuant to an agreement with Telesat Canada. During March 2008, EchoStar also entered into a transponder service agreement (“Nimiq 5 Transponder Agreement”) with us, pursuant to which we will receive service from EchoStar on all of the DBS transponders covered by EchoStar's satellite service agreement with Bell TV. We have guaranteed certain obligations of EchoStar under the Nimiq 5 Transponder Agreement.

Under the terms of the Nimiq 5 Transponder Agreement, we will make certain monthly payments to EchoStar commencing when the Nimiq 5 satellite is placed into service and continuing through the service term. Unless earlier terminated under the terms and conditions of the Nimiq 5 Transponder Agreement, the service term will expire ten years following the date it is placed in service. Upon expiration of the initial term we have the option to renew the Nimiq 5 Transponder Agreement on a year-to-year basis through the end-of-life of the Nimiq 5 satellite. Upon a launch failure, in-orbit failure or end-of-life of the Nimiq 5 satellite, and in certain other circumstances, we have certain rights to receive service from EchoStar on a replacement satellite.

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

*QuetzSat-1 Lease Agreement.* During November 2008, EchoStar entered into a ten-year satellite service agreement with SES, which provides, among other things, for the provision by SES to EchoStar of service on 32 DBS transponders on the QuetzSat-1 satellite expected to be placed in service at the 77 degree orbital location. During November 2008, EchoStar also entered into a transponder service agreement (“QuetzSat-1 Transponder Agreement”) with us pursuant to which we will receive service from EchoStar on 24 of the DBS transponders.

Under the terms of the QuetzSat-1 Transponder Agreement, we will make certain monthly payments to EchoStar commencing when the QuetzSat-1 satellite is placed into service and continuing through the service term. Unless earlier terminated under the terms and conditions of the QuetzSat-1 Transponder Agreement, the service term will expire ten years following the actual service commencement date. Upon expiration of the initial term, we have the option to renew the QuetzSat-1 Transponder Agreement on a year-to-year basis through the end-of-life of the QuetzSat-1 satellite. Upon a launch failure, in-orbit failure or end-of-life of the QuetzSat-1 satellite, and in certain other circumstances, we have certain rights to receive service from EchoStar on a replacement satellite.

*TT&C Agreement.* We entered into a telemetry, tracking and control (“TT&C”) agreement pursuant to which we receive TT&C services from EchoStar for a two year period ending on January 1, 2010. DISH Network has the right, but not the obligation, to extend the agreement annually for up to two years. We have exercised our right to renew this agreement for an additional year. The fees for the services provided under the TT&C agreement are cost plus a fixed margin. We may terminate the TT&C agreement for any reason upon sixty days prior written notice.

*Satellite Procurement Agreement.* We entered into a satellite procurement agreement pursuant to which we have the right, but not the obligation, to engage EchoStar to manage the process of procuring new satellite capacity for DISH Network. The satellite procurement agreement has a two year term expiring on January 1, 2010. The fees for the services to be provided under the satellite procurement agreement are cost plus a fixed margin, which varies depending on the nature of the services provided. We may terminate the satellite procurement agreement for any reason upon sixty days prior written notice.

**“Cost of sales — subscriber promotion subsidies — EchoStar”**

*Receiver Agreement.* EchoStar is currently our sole supplier of set-top box receivers. During the three months ended March 31, 2009 and 2008, we purchased set-top box and other equipment from EchoStar totaling \$320 million and \$372 million, respectively. Of these amounts, \$24 million and \$31 million are included in “Cost of sales — subscriber promotion subsidies — EchoStar” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) for the three months ended March 31, 2009 and 2008, respectively. The remaining amount is included in “Inventories, net” and “Property and equipment, net” on our Condensed Consolidated Balance Sheets.

Under our receiver agreement with EchoStar, we have the right but not the obligation to purchase digital set-top boxes and related accessories, and other equipment from EchoStar for a two year period ending on January 1, 2010. We also have the right, but not the obligation, to extend the receiver agreement annually for up to two years. We have exercised our right to renew this agreement for an additional year. The receiver agreement allows us to purchase receivers and accessories from EchoStar at cost plus a fixed margin, which varies depending on the nature of the equipment purchased. Additionally, EchoStar provides us with standard manufacturer warranties for the goods sold under the receiver agreement. We may terminate the receiver agreement for any reason upon sixty days written notice to EchoStar. EchoStar may terminate the receiver agreement if certain entities were to acquire us. The receiver agreement also includes an indemnification provision, whereby the parties indemnify each other for certain intellectual property matters.

**“General and administrative — EchoStar”**

*Product Support Agreement.* We entered into a product support agreement pursuant to which we have the right, but not the obligation to receive product support from EchoStar (including certain engineering and technical support services) for all digital set-top boxes and related accessories that EchoStar has previously sold and in the future sells to us. The fees for the services provided under the product support agreement are cost plus a fixed margin, which varies depending on the nature of the services provided. The term of the product support agreement is the economic life of such receivers and related accessories, unless terminated earlier. We may terminate the product support

[Table of Contents](#)

**DISH NETWORK CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

agreement for any reason upon sixty days prior written notice. In the event of an early termination of this agreement, we are entitled to a refund of any unearned fees paid to EchoStar for the services.

*Real Estate Lease Agreements.* We entered into certain lease agreements with EchoStar. The rent on a per square foot basis for each of the leases is comparable to per square foot rental rates of similar commercial property in the same geographic area, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises. The term of each of the leases is set forth below:

*Inverness Lease Agreement.* The lease for certain space at 90 Inverness Circle East in Englewood, Colorado, is for a period of two years ending on January 1, 2010.

*Meridian Lease Agreement.* The lease for all of 9601 S. Meridian Blvd. in Englewood, Colorado, is for a period of two years ending on January 1, 2010 with annual renewal options for up to three additional years.

*Santa Fe Lease Agreement.* The lease for all of 5701 S. Santa Fe Dr. in Littleton, Colorado, is for a period of two years ending on January 1, 2010 with annual renewal options for up to three additional years.

*Gilbert Lease Agreement.* The lease for certain space at 801 N. DISH Dr. in Gilbert, Arizona, is for a period of two years ending on January 1, 2010 with annual renewal options for up to three additional years.

*EDN Sublease Agreement.* The sublease for certain space at 211 Perimeter Center in Atlanta, Georgia, is for a period of three years, ending on April 30, 2011.

*Services Agreement.* We entered into a services agreement pursuant to which we have the right, but not the obligation, to receive logistics, procurement and quality assurance services from EchoStar. The fees for the services provided under this services agreement are cost plus a fixed margin, which varies depending on the nature of the services provided. This agreement has a term of two years ending on January 1, 2010. We may terminate the services agreement with respect to a particular service for any reason upon sixty days prior written notice.

***Other Agreements — EchoStar***

*Tax Sharing Agreement.* We entered into a tax sharing agreement with EchoStar which governs our respective rights, responsibilities and obligations after the Spin-off with respect to taxes for the periods ending on or before the Spin-off. Generally, all pre-Spin-off taxes, including any taxes that are incurred as a result of restructuring activities undertaken to implement the Spin-off, will be borne by us, and we will indemnify EchoStar for such taxes. However, we will not be liable for and will not indemnify EchoStar for any taxes that are incurred as a result of the Spin-off or certain related transactions failing to qualify as tax-free distributions pursuant to any provision of Section 355 or Section 361 of the Code because of (i) a direct or indirect acquisition of any of EchoStar's stock, stock options or assets, (ii) any action that EchoStar takes or fails to take or (iii) any action that EchoStar takes that is inconsistent with the information and representations furnished to the IRS in connection with the request for the private letter ruling, or to counsel in connection with any opinion being delivered by counsel with respect to the Spin-off or certain related transactions. In such case, EchoStar will be solely liable for, and will indemnify us for, any resulting taxes, as well as any losses, claims and expenses. The tax sharing agreement terminates after the later of the full period of all applicable statutes of limitations including extensions or once all rights and obligations are fully effectuated or performed.

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*You should read the following discussion and analysis of our financial condition and results of operations together with the condensed consolidated financial statements and notes to the financial statements included elsewhere in this quarterly report. This management's discussion and analysis is intended to help provide an understanding of our financial condition, changes in financial condition and results of our operations and contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are not historical facts, but rather are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results could differ materially from the results contemplated by these forward-looking statements due to a number of factors, including those discussed in our Annual Report on Form 10-K for the year ended December 31, 2008, under the caption "Item 1A. Risk Factors."*

**EXECUTIVE SUMMARY****Overview**

DISH Network's subscriber base decreased by 94,000 subscribers during the three months ended March 31, 2009. Factors common to the pay-TV industry, as well as factors that were specific to DISH Network, each continued to contribute to this decline.

The current overall economic environment has negatively impacted many industries including ours. In addition, the overall growth rate in the pay-TV industry has slowed in recent years as the penetration of pay-TV households approaches 90%. Within this maturing industry, competition has intensified with the rapid growth of fiber-based pay-TV services offered by telecommunications companies. Furthermore, new internet protocol television ("IPTV") products/services have begun to impact the pay-TV industry and such products/services will become more viable competition over time as their quality improves. In spite of these factors that have impacted the entire pay-TV industry, certain of our competitors have been able to achieve relatively strong results in the current environment.

While economic factors have impacted the entire pay-TV industry, our relative performance has been mostly driven by issues specific to DISH Network. In recent years, DISH Network's position as the low cost provider in the pay-TV industry has been eroded by increasingly aggressive promotional pricing used by our competitors to attract new subscribers and similarly aggressive promotions and tactics used to retain existing subscribers. Some competitors have been especially aggressive and effective in marketing the value and quality of their service. Furthermore, our subscriber growth has been adversely affected by signal theft and other forms of fraud and by operational inefficiencies at DISH Network. We have not always met our own standards for performing high quality installations, effectively resolving customer issues when they arise, answering customer calls in an acceptable timeframe, effectively communicating with our subscriber base, reducing calls driven by the complexity of our business, improving the reliability of certain systems and subscriber equipment, and aligning the interests of certain third party retailers and installers to provide high quality service.

Our distribution relationship with AT&T was a substantial contributor to our gross and net subscriber additions over the past several years, accounting for approximately 17% of our gross subscriber additions for the year ended December 31, 2008. This distribution relationship ended on January 31, 2009. During the three months ended March 31, 2009, AT&T contributed 5% of our gross subscriber additions. AT&T has entered into a new distribution relationship with DirecTV. It may be difficult for us to develop alternative distribution channels that will fully replace AT&T and if we are unable to do so, our gross and net subscriber additions may be further impacted, our subscriber churn may increase, and our results of operations may be adversely affected. In addition, approximately one million of our current subscribers were acquired through our distribution relationship with AT&T and subscribers acquired through this channel have historically churned at a higher rate than our overall subscriber base. Although AT&T is not permitted to target these subscribers for transition to another pay-TV service and we and AT&T are required to maintain bundled billing and cooperative customer service for these subscribers, these subscribers may still churn at higher than historical rates following termination of the AT&T distribution relationship.

We have been investing more in advanced technology equipment as part of our subscriber acquisition and retention efforts. Recent initiatives to transmit certain programming only in MPEG-4 and to activate certain new subscribers only with MPEG-4 receivers have accelerated our deployment of MPEG-4 receivers. To meet current demand, we have increased the rate at which we upgrade existing subscribers to HD and DVR receivers. While these efforts

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

may increase our subscriber acquisition and retention costs, we believe that they will help reduce subscriber churn and costs over the long run.

We have also been changing equipment for certain subscribers to free up satellite bandwidth in support of HD and other initiatives. We expect to implement these initiatives at least through the first half of 2009. We believe that the benefit from the increase in available satellite bandwidth outweighs the short-term cost of these equipment changes.

To combat signal theft and improve the security of our broadcast system, we are in the process of replacing our security access devices and expect this initiative to last through the first half of 2009. To combat other forms of fraud, we have taken a wide range of actions including terminating retailers that we believe were in violation of DISH Network's business rules. While these initiatives may inconvenience our subscribers and disrupt our distribution channels in the short-term, we believe that the long-term benefits will outweigh the costs.

To address our operational inefficiency, we continue to make significant investments in staffing, training, information systems, and other initiatives, primarily in our call center and in-home service businesses. These investments are intended to help combat inefficiencies introduced by the increasing complexity of our business, improve customer satisfaction, reduce churn, increase productivity, and allow us to scale better over the long run. We cannot, however, be certain that our increased spending will ultimately be successful in yielding such returns. In the meantime, we may continue to incur higher costs as a result of both our operational inefficiencies and increased spending.

Over the long run, we will use Slingbox "placeshifting" technology and other technologies to maintain and enhance our competitiveness. We may also partner with or acquire companies whose lines of business are complementary to ours should attractive opportunities arise.

The adoption of the above measures has contributed to higher expenses and lower margins. While we believe that the increased costs will be outweighed by longer-term benefits, there can be no assurance when or if we will realize these benefits at all. Programming costs represent a large percentage of our "Subscriber-related expenses." As a result, our margins may face further downward pressure from price escalations in current contracts and the renewal of long-term programming contracts on less favorable pricing terms.

***Liquidity Drivers***

Like many companies, we make general investments in property such as satellites, information technology, and facilities that support our overall business. As a subscriber-based company, however, we also make customer-specific investments to acquire new subscribers and retain existing subscribers. While the general investments may be deferred without impacting the business in the short-term, the customer-specific investments are less discretionary. Our overall objective is to generate sufficient cash flow over the life of each subscriber in order to provide an adequate return against the upfront investment. Once the upfront investment has been made for each subscriber, the subsequent cash flow is generally positive.

From a company standpoint, there are a number of factors that impact our future cash flow compared to the cash flow we generate at a given point in time. The first factor is how successful we are at retaining our current subscribers. As we lose subscribers from our existing base, the positive cash flow from that base is correspondingly reduced. The second factor is how successful we are at maintaining our subscriber-related margins. To the extent our "Subscriber-related expenses" grow faster than our "Subscriber-related revenue," the amount of cash flow that is generated per existing subscriber is reduced. The third factor is the rate at which we acquire new subscribers. The faster we acquire new subscribers, the more our positive ongoing cash flow from existing subscribers is offset by the negative upfront cash flow associated with new subscribers. Finally, our future cash flow is impacted by the rate at which we make general investments and any cash flow from financing activities.

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

As our business has slowed due to the external and internal factors previously discussed, the biggest impact to our cash flow has been a reduction in customer-specific investments to acquire new subscribers. While fewer subscribers might translate into lower ongoing cash flow in the long-term, cash flow is actually aided in the short-term by the reduction in customer-specific investment spending. As a result, a slow down in our business due to external or internal factors does not introduce the same level of short-term liquidity risk as it might in other industries.

***Availability of Credit and Effect on Liquidity***

While the ability to raise capital has generally existed for DISH Network even during the recent market turmoil, the cost of such capital has not been as attractive as in prior periods. Because of the cash flow situation of our company and the absence of any material debt payments over the next two years, the higher cost of capital will not impact our current operations. However, we might be less likely than we would otherwise be to pursue initiatives which could increase shareholder value over the long run, such as making strategic investments, prepaying debt, or buying back our own stock. Alternatively, if we decided to still pursue such initiatives, the cost of doing so would be greater. Currently, we have no existing lines of credit, nor have we historically.

***Future Liquidity***

The most material trends that we experienced in 2008, being the net loss of subscribers and the reduction in subscriber-related margins, have continued into the first quarter of 2009. We lost 102,000 net subscribers in 2008 and an additional 94,000 net subscribers in the first quarter of 2009. Our AT&T agreement expired on February 1, 2009 but we continued to activate new subscribers that had ordered DISH Network service through AT&T prior to February 1<sup>st</sup> through the end of February. Our "Subscriber-related expenses" as a percentage of "Subscriber-related revenue" grew from 51.4% to 52.2% in 2008 and reached 54.1% in the first quarter of 2009. Our "Subscriber-related expenses" continued to be negatively impacted by initiatives to retain subscribers, free up transponder capacity, and improve customer service. Uncertainties about these trends may impact our cash flow and results of operations but, as discussed above, are unlikely to impact current operations.

***The Spin-off***

On January 1, 2008, we completed the separation of the assets and businesses we historically owned and operated into two companies (the "Spin-off"):

- *DISH Network Corporation* — which retained its DISH Network® subscription television business, and
- *EchoStar Corporation* ("EchoStar") — which sells equipment, including set-top boxes and related components, to DISH Network and international customers, and provides digital broadcast operations and satellite services to DISH Network and other customers.

DISH Network and EchoStar now operate as separate publicly traded companies, and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of both companies is owned beneficially by Charles W. Ergen, our Chairman, President and Chief Executive Officer. In connection with the Spin-off, DISH Network entered into certain agreements with EchoStar to define responsibility for obligations relating to, among other things, set-top box sales, transition services, taxes, employees and intellectual property, which impact several of our key operating metrics. Subsequent to the Spin-off, we have entered into certain other agreements with EchoStar and may enter into additional agreements with EchoStar in the future.

[Table of Contents](#)

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

**EXPLANATION OF KEY METRICS AND OTHER ITEMS**

**Subscriber-related revenue.** "Subscriber-related revenue" consists principally of revenue from basic, movie, local, pay-per-view, Latino and international subscription television services, equipment rental fees and other hardware related fees, including fees for DVRs and additional outlet fees from subscribers with multiple receivers, advertising services, fees earned from our DishHOME Protection Plan, equipment upgrade fees, HD programming and other subscriber revenue. Certain of the amounts included in "Subscriber-related revenue" are not recurring on a monthly basis.

**Equipment sales and other revenue.** "Equipment sales and other revenue" principally includes the unsubsidized sales of DBS accessories to retailers and other third-party distributors of our equipment domestically and to DISH Network subscribers.

**Equipment sales, transitional services and other revenue — EchoStar.** "Equipment sales, transitional services and other revenue — EchoStar" includes revenue related to equipment sales, and transitional services and other agreements with EchoStar associated with the Spin-off.

**Subscriber-related expenses.** "Subscriber-related expenses" principally include programming expenses, costs incurred in connection with our in-home service and call center operations, billing costs, refurbishment and repair costs related to receiver systems, subscriber retention and other variable subscriber expenses.

**Satellite and transmission expenses — EchoStar.** "Satellite and transmission expenses — EchoStar" includes the cost of digital broadcast operations provided to us by EchoStar, including satellite uplinking/downlinking, signal processing, conditional access management, telemetry, tracking and control and other professional services. In addition, this category includes the cost of leasing satellite and transponder capacity on satellites from EchoStar.

**Satellite and transmission expenses — other.** "Satellite and transmission expenses — other" includes executory costs associated with capital leases and costs associated with transponder leases and other related services.

**Equipment, transitional services and other cost of sales.** "Equipment, transitional services and other cost of sales" principally includes the cost of unsubsidized sales of DBS accessories to retailers and other distributors of our equipment domestically and to DISH Network subscribers. In addition, this category includes costs related to equipment sales, transitional services and other agreements with EchoStar associated with the Spin-off.

**Subscriber acquisition costs.** In addition to leasing receivers, we generally subsidize installation and all or a portion of the cost of our receiver systems in order to attract new DISH Network subscribers. Our "Subscriber acquisition costs" include the cost of these receiver systems sold to retailers and other distributors of our equipment, the cost of these receiver systems sold directly by us to subscribers, net costs related to our promotional incentives, and costs related to installation and acquisition advertising. We exclude the value of equipment capitalized under our lease program for new subscribers from "Subscriber acquisition costs."

**SAC.** Management believes subscriber acquisition cost measures are commonly used by those evaluating companies in the pay-TV industry. We are not aware of any uniform standards for calculating the "average subscriber acquisition costs per new subscriber activation," or SAC, and we believe presentations of SAC may not be calculated consistently by different companies in the same or similar businesses. Our SAC is calculated as "Subscriber acquisition costs," plus the value of equipment capitalized under our lease program for new subscribers, divided by gross subscriber additions. We include all the costs of acquiring subscribers (e.g., subsidized and capitalized equipment) as our management believes it is a more comprehensive measure of how much we are spending to acquire subscribers. We also include all new DISH Network subscribers in our calculation, including DISH Network subscribers added with little or no subscriber acquisition costs.

**General and administrative expenses.** "General and administrative expenses" consists primarily of employee-related costs associated with administrative services such as legal, information systems, accounting and finance, including non-cash, stock-based compensation expense. It also includes outside professional fees (e.g., legal, information systems and accounting services) and other items associated with facilities and administration.

[Table of Contents](#)

**Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

**Interest expense, net of amounts capitalized.** “Interest expense, net of amounts capitalized” primarily includes interest expense, prepayment premiums and amortization of debt issuance costs associated with our senior debt and convertible subordinated debt securities (net of capitalized interest) and interest expense associated with our capital lease obligations.

**“Other, net.”** The main components of “Other, net” are unrealized gains and losses from changes in fair value of non-marketable strategic investments accounted for at fair value, equity in earnings and losses of our affiliates, gains and losses realized on the sale of investments, and impairment of marketable and non-marketable investment securities.

**Earnings before interest, taxes, depreciation and amortization (“EBITDA”).** EBITDA is defined as “Net income (loss)” plus “Interest expense” net of “Interest income,” “Taxes” and “Depreciation and amortization.” This “non-GAAP measure” is reconciled to net income (loss) in our discussion of “Results of Operations” below.

**DISH Network subscribers.** We include customers obtained through direct sales, and third-party retailers and other distribution relationships in our DISH Network subscriber count. We also provide DISH Network service to hotels, motels and other commercial accounts. For certain of these commercial accounts, we divide our total revenue for these commercial accounts by an amount approximately equal to the retail price of our Classic Bronze 100 programming package (but taking into account, periodically, price changes and other factors), and include the resulting number, which is substantially smaller than the actual number of commercial units served, in our DISH Network subscriber count. Previously, our end of period DISH Network subscriber count was rounded down to the nearest five thousand. However, beginning December 31, 2008, we round to the nearest one thousand.

**Average monthly revenue per subscriber (“ARPU”).** We are not aware of any uniform standards for calculating ARPU and believe presentations of ARPU may not be calculated consistently by other companies in the same or similar businesses. We calculate average monthly revenue per subscriber, or ARPU, by dividing average monthly “Subscriber-related revenue” for the period (total “Subscriber-related revenue” during the period divided by the number of months in the period) by our average DISH Network subscribers for the period. Average DISH Network subscribers are calculated for the period by adding the average DISH Network subscribers for each month and dividing by the number of months in the period. Average DISH Network subscribers for each month are calculated by adding the beginning and ending DISH Network subscribers for the month and dividing by two.

**Subscriber churn rate.** We are not aware of any uniform standards for calculating subscriber churn rate and believe presentations of subscriber churn rates may not be calculated consistently by different companies in the same or similar businesses. We calculate subscriber churn rate for any period by dividing the number of DISH Network subscribers who terminated service during the period by the average monthly DISH Network subscribers during the period, and further dividing by the number of months in the period. When calculating subscriber churn, as is the case when calculating ARPU, the number of subscribers in a given month is based on the average of the beginning-of-month and the end-of-month subscriber counts.

**Free cash flow.** We define free cash flow as “Net cash flows from operating activities” less “Purchases of property and equipment,” as shown on our Condensed Consolidated Statements of Cash Flows.

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued****RESULTS OF OPERATIONS**

*Three Months Ended March 31, 2009 Compared to the Three Months Ended March 31, 2008.*

	For the Three Months Ended March 31,		Variance	
	2009	2008	Amount	%
(In thousands)				
<b>Statements of Operations Data</b>				
<b>Revenue:</b>				
Subscriber-related revenue	\$2,864,939	\$2,810,426	\$ 54,513	1.9
Equipment sales and other revenue	32,346	25,052	7,294	29.1
Equipment sales, transitional services and other revenue — EchoStar	8,036	8,916	(880)	(9.9)
Total revenue	<u>2,905,321</u>	<u>2,844,394</u>	<u>60,927</u>	<u>2.1</u>
<b>Costs and Expenses:</b>				
Subscriber-related expenses	1,550,078	1,444,641	105,437	7.3
<b>% of Subscriber-related revenue</b>	<b>54.1%</b>	<b>51.4%</b>		
Satellite and transmission expenses — EchoStar	80,757	78,253	2,504	3.2
<b>% of Subscriber-related revenue</b>	<b>2.8%</b>	<b>2.8%</b>		
Satellite and transmission expenses — Other	7,021	7,664	(643)	(8.4)
<b>% of Subscriber-related revenue</b>	<b>0.2%</b>	<b>0.3%</b>		
Equipment, transitional services and other cost of sales	40,499	31,814	8,685	27.3
Subscriber acquisition costs	292,203	374,956	(82,753)	(22.1)
General and administrative expenses	136,907	129,530	7,377	5.7
<b>% of Total revenue</b>	<b>4.7%</b>	<b>4.6%</b>		
Depreciation and amortization	223,293	272,368	(49,075)	(18.0)
Total costs and expenses	<u>2,330,758</u>	<u>2,339,226</u>	<u>(8,468)</u>	<u>(0.4)</u>
Operating income (loss)	<u>574,563</u>	<u>505,168</u>	<u>69,395</u>	<u>13.7</u>
<b>Other Income (Expense):</b>				
Interest income	4,784	14,101	(9,317)	(66.1)
Interest expense, net of amounts capitalized	(83,937)	(89,812)	5,875	6.5
Other, net	4,177	(7,028)	11,205	159.4
Total other income (expense)	<u>(74,976)</u>	<u>(82,739)</u>	<u>7,763</u>	<u>9.4</u>
Income (loss) before income taxes	499,587	422,429	77,158	18.3
Income tax (provision) benefit, net	(186,903)	(163,846)	(23,057)	(14.1)
<b>Effective tax rate</b>	<b>37.4%</b>	<b>38.8%</b>		
Net income (loss)	<u>\$ 312,684</u>	<u>\$ 258,583</u>	<u>\$ 54,101</u>	<u>20.9</u>
<b>Other Data:</b>				
DISH Network subscribers, as of period end (in millions)	13.584	13.815	(0.231)	(1.7)
DISH Network subscriber additions, gross (in millions)	0.653	0.730	(0.077)	(10.5)
DISH Network subscriber additions, net (in millions)	(0.094)	0.035	(0.129)	NM
Average monthly subscriber churn rate	1.83%	1.68%	0.15%	8.9
Average monthly revenue per subscriber ("ARPU")	\$ 70.03	\$ 67.93	\$ 2.10	3.1
Average subscriber acquisition cost per subscriber ("SAC")	\$ 659	\$ 709	\$ (50)	(7.1)
EBITDA	\$ 802,033	\$ 770,508	\$ 31,525	4.1

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

**Overview.** Revenue totaled \$2.905 billion for the three months ended March 31, 2009, an increase of \$61 million or 2.1% compared to the same period in 2008. Net income totaled \$313 million, an increase of \$54 million or 20.9%.

DISH Network's net new subscribers continued to decline during the quarter and "Subscriber-related expenses" have continued to increase, negatively impacting our subscriber-related margins. Factors common to the pay-TV industry, as well as factors that were specific to DISH Network, each continued to contribute to this decline. Our "Subscriber-related expenses" continued to be negatively impacted by initiatives to retain subscribers, free up transponder capacity, and improve customer service.

**DISH Network subscribers.** As of March 31, 2009, we had approximately 13.584 million DISH Network subscribers compared to approximately 13.815 million subscribers at March 31, 2008, a decrease of 1.7%. DISH Network added approximately 653,000 gross new subscribers for the three months ended March 31, 2009, compared to approximately 730,000 gross new subscribers during the same period in 2008.

DISH Network lost approximately 94,000 net new subscribers for the three months ended March 31, 2009, compared to adding approximately 35,000 net new subscribers during the same period in 2008. This decrease primarily resulted from the decrease in gross new subscribers discussed above and an increase in our subscriber churn rate. Our percentage monthly subscriber churn for the three months ended March 31, 2009 was 1.83%, compared to 1.68% for the same period in 2008. Given the increasingly competitive nature of our industry and the current weaker economic conditions, especially the downturn in the financial and consumer markets, we may not be able to reduce churn without significantly increasing our spending on customer retention incentives, which would have a negative effect on our results of operations and free cash flow.

We believe our gross and net subscriber additions as well as our subscriber churn have been negatively impacted by weaker economic conditions, aggressive promotional and retention offerings by our competition, the loss of our distribution relationship with AT&T discussed below, the heavy marketing of HD service by our competition, the growth of fiber-based and Internet-based pay TV providers, signal theft and other forms of fraud, and operational inefficiencies at DISH Network. We have not always met our own standards for performing high quality installations, effectively resolving customer issues when they arise, answering customer calls in an acceptable timeframe, effectively communicating with our customer base, reducing calls driven by the complexity of our business, improving the reliability of certain systems and customer equipment, and aligning the interests of certain third party retailers and installers to provide high quality service.

Most of these factors have affected both gross new subscriber additions as well as existing subscriber churn. Our future gross subscriber additions and subscriber churn may continue to be negatively impacted by these factors, which could in turn adversely affect our revenue growth.

Our distribution relationship with AT&T was a substantial contributor to our gross and net subscriber additions over the past several years, accounting for approximately 17% of our gross subscriber additions for the year ended December 31, 2008. This distribution relationship ended on January 31, 2009. During the three months ended March 31, 2009, AT&T contributed 5% of our gross subscriber additions. AT&T has entered into a new distribution relationship with DirecTV. It may be difficult for us to develop alternative distribution channels that will fully replace AT&T and if we are unable to do so, our gross and net subscriber additions may be further impacted, our subscriber churn may increase, and our results of operations may be adversely affected. In addition, approximately one million of our current subscribers were acquired through our distribution relationship with AT&T and subscribers acquired through this channel have historically churned at a higher rate than our overall subscriber base. Although AT&T is not permitted to target these subscribers for transition to another pay-TV service and we and AT&T are required to maintain bundled billing and cooperative customer service for these subscribers, these subscribers may still churn at higher than historical rates following termination of the AT&T distribution relationship.

**Subscriber-related revenue.** DISH Network "Subscriber-related revenue" totaled \$2.865 billion for the three months ended March 31, 2009, an increase of \$55 million or 1.9% compared to the same period in 2008. This increase was primarily related to the increase in "ARPU" discussed below.

[Table of Contents](#)

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

**ARPU.** Monthly average revenue per subscriber was \$70.03 during the three months ended March 31, 2009 versus \$67.93 during the same period in 2008. ARPU is driven by a number of factors including, among other things, price increases and penetration rates of our programming and hardware offerings. The \$2.10 or 3.1% increase in ARPU was primarily attributable to price increases in February 2009 and 2008 on some of our most popular programming packages and changes in the sales mix toward HD programming packages and advanced hardware offerings. As a result of our current promotions, which provide an incentive for subscribers to select HD programming packages and advanced hardware offerings, we continue to see increased penetration in our HD programming and hardware related fees, which include fees for DVRs, rental fees and fees earned from our DishHOME Protection Plan. These increases were partially offset by a decrease in pay-per-view buys and premium movie revenue.

**Equipment sales and other revenue.** "Equipment sales and other revenue" totaled \$32 million during the three months ended March 31, 2009, an increase of \$7 million or 29.1% compared to the same period during 2008. The increase in "Equipment sales and other revenue" primarily resulted from the sales of digital converter boxes, which is a product line developed to support the digital conversion scheduled for June 2009.

**Subscriber-related expenses.** "Subscriber-related expenses" totaled \$1.550 billion during the three months ended March 31, 2009, an increase of \$105 million or 7.3% compared to the same period 2008. The increase in "Subscriber-related expenses" was primarily attributable to higher costs for: (i) customer retention, (ii) call center and in-home service operations, and (iii) programming content, partially offset by a non-recurring programming expense adjustment of approximately \$27 million. The increase in customer retention expense was primarily driven by more upgrading of existing customers to HD and DVR receivers and the changing of equipment for certain subscribers to free up satellite bandwidth in support of HD and other initiatives. We expect to implement the satellite bandwidth initiatives at least through the first half of 2009. We believe that the benefit from the increase in available satellite bandwidth outweighs the short-term cost of these equipment changes. The increases related to call center and in-home service operations were driven in part by our investments in staffing, training, information systems, and other initiatives. These investments are intended to help combat inefficiencies introduced by the increasing complexity of our business and technology, improve customer satisfaction, reduce churn, increase productivity, and allow us to better scale our business over the long run. We cannot, however, be certain that our increased spending will ultimately yield these benefits. In the meantime, we may continue to incur higher costs as a result of both our operational inefficiencies and increased spending. The increase in programming content costs was primarily related to annual price escalation clauses in certain of our programming contracts and the renewal of certain contracts at higher rates. "Subscriber-related expenses" represented 54.1% and 51.4% of "Subscriber-related revenue" during the three months ended March 31, 2009 and 2008, respectively. The increase in this expense to revenue ratio primarily resulted from the increase in "Subscriber-related expenses," partially offset by an increase in ARPU.

In the normal course of business, we enter into contracts to purchase programming content in which our payment obligations are fully contingent on the number of subscribers to whom we provide the respective content. Our programming expenses will continue to increase to the extent we are successful growing our subscriber base. In addition, our "Subscriber-related expenses" may face further upward pressure from price escalations in current contracts and the renewal of long-term programming contracts on less favorable pricing terms.

**Equipment, transitional services and other cost of sales.** "Equipment, transitional services and other cost of sales" totaled \$40 million during the three months ended March 31, 2009, an increase of \$9 million or 27.3% compared to the same period in 2008. The increase primarily resulted from costs associated with the sales of digital converter boxes discussed above, and in charges for defective, slow moving and obsolete inventory.

**Subscriber acquisition costs.** "Subscriber acquisition costs" totaled \$292 million for the three months ended March 31, 2009, a decrease of \$83 million or 22.1% compared to the same period in 2008. This decrease was primarily attributable to the decline in gross new subscribers and the decrease in SAC discussed below.

**SAC.** SAC was \$659 during the three months ended March 31, 2009 compared to \$709 during the same period in 2008, a decrease of \$50, or 7.1%. This decrease was primarily attributable to a shift in the mix of sales from independent retailers to direct sales which resulted in lower incentives paid. In addition, we spent less in advertising costs per subscriber acquisition during the period. The increase in deployment of more advanced set-top boxes, such as HD receivers and HD DVRs, was in large part offset by lower hardware costs for the same receiver model.

[Table of Contents](#)

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

During the three months ended March 31, 2009 and 2008, the amount of equipment capitalized under our lease program for new subscribers totaled \$138 million and \$143 million, respectively. This decrease in capital expenditures under our lease program for new subscribers resulted primarily from lower subscriber growth.

Capital expenditures resulting from our equipment lease program for new subscribers have been, and are expected to continue to be, partially mitigated by, among other things, the redeployment of equipment returned by disconnecting lease program subscribers. However, to remain competitive we upgrade or replace subscriber equipment periodically as technology changes, and the costs associated with these upgrades may be substantial. To the extent technological changes render a portion of our existing equipment obsolete, we would be unable to redeploy all returned equipment and consequently would realize less benefit from the SAC reduction associated with redeployment of that returned lease equipment.

Our SAC calculation does not reflect any benefit from payments we received in connection with equipment not returned to us from disconnecting lease subscribers and returned equipment that is made available for sale rather than being redeployed through our lease program. During the three months ended March 31, 2009 and 2008, these amounts totaled \$38 million and \$31 million, respectively.

Several years ago, we began deploying receivers that utilize 8PSK modulation technology and receivers that utilize MPEG-4 compression technology. These technologies, when fully deployed, will allow more programming channels to be carried over our existing satellites. A majority of our customers today, however, do not have receivers that use MPEG-4 compression and a smaller but still significant percentage do not have receivers that use 8PSK modulation. We may choose to invest significant capital to accelerate the conversion of customers to MPEG-4 and/or 8PSK in order to realize the bandwidth benefits sooner. In addition, given that all of our HD content is broadcast in MPEG-4, any growth in HD penetration will naturally accelerate our transition to these newer technologies and may increase our subscriber acquisition and retention costs. All new receivers that we purchase from EchoStar now have MPEG-4 technology. Although we continue to refurbish and redeploy MPEG-2 receivers, as a result of our HD initiatives and current promotions, most new customers in certain markets will be required to activate higher priced MPEG-4 technology. This limits our ability to redeploy MPEG-2 receivers and, to the extent that our new promotion in certain markets are successful, will accelerate the transition to MPEG-4 technology, resulting in an adverse effect on our SAC.

Our "Subscriber acquisition costs" and "SAC" may materially increase in the future to the extent that we transition to newer technologies, introduce more aggressive promotions, or provide greater equipment subsidies. See further discussion under "*Liquidity and Capital Resources — Subscriber Acquisition and Retention Costs.*"

**General and administrative expenses.** "General and administrative expenses" totaled \$137 million during the three months ended March 31, 2009, an increase of \$7 million or 5.7% compared to the same period in 2008. This increase was primarily attributable to an increase in personnel costs and professional fees to support the DISH Network. "General and administrative expenses" represented 4.7% and 4.6% of "Total revenue" during the three months ended March 31, 2009 and 2008, respectively. The increase in the ratio of the expenses to "Total revenue" was primarily attributable to the changes in expenses discussed above.

**Depreciation and amortization.** "Depreciation and amortization" expense totaled \$223 million during the three months ended March 31, 2009, a \$49 million or 18.0% decrease compared to the same period in 2008. The decrease in "Depreciation and amortization" expense was primarily due to the decline in depreciation expense related to set-top boxes used in our lease programs and the abandonment of a software development project designed to support our IT systems during the three months ended March 31, 2008. The decrease in expense related to set-top boxes resulted from an increase in the number of fully-depreciated set-top boxes still in service and in the capitalization of new advanced equipment which has a longer estimated useful life.

**Interest income.** "Interest income" totaled \$5 million during the three months ended March 31, 2009, a decrease of \$9 million compared to the same period in 2008. This decrease principally resulted from lower cash and marketable investment securities balances and total percentage returns earned on our cash and marketable investment securities during the first quarter of 2009.

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

**Earnings before interest, taxes, depreciation and amortization.** EBITDA was \$802 million during the three months ended March 31, 2009, an increase of \$32 million or 4.1% compared to the same period in 2008. The following table reconciles EBITDA to the accompanying financial statements.

	<b>For the Three Months Ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
	(In thousands)	
EBITDA	\$802,033	\$770,508
Less:		
Interest expense, net	79,153	75,711
Income tax provision (benefit), net	186,903	163,846
Depreciation and amortization	223,293	272,368
Net income (loss)	<u>\$312,684</u>	<u>\$258,583</u>

EBITDA is not a measure determined in accordance with accounting principles generally accepted in the United States, or GAAP, and should not be considered a substitute for operating income, net income or any other measure determined in accordance with GAAP. EBITDA is used as a measurement of operating efficiency and overall financial performance and we believe it to be a helpful measure for those evaluating companies in the pay-TV industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

**Income tax (provision) benefit, net.** Our income tax provision was \$187 million during the three months ended March 31, 2009, an increase of \$23 million compared to the same period in 2008. The increase in the provision was primarily related to the increase in "Income (loss) before income taxes" partially offset by a decrease in the effective state tax rate due to changes in state apportionment percentages.

**Net income (loss).** Net income was \$313 million during the three months ended March 31, 2009, an increase of \$54 million compared to \$259 million for the same period in 2008. The increase was primarily attributable to the changes in revenue and expenses discussed above.

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued****LIQUIDITY AND CAPITAL RESOURCES****Cash, Cash Equivalents and Marketable Investment Securities**

We consider all liquid investments purchased within 90 days of their maturity to be cash equivalents. See "Item 3. — Quantitative and Qualitative Disclosures About Market Risk" for further discussion regarding our marketable investment securities. As of March 31, 2009, our cash, cash equivalents and current marketable investment securities totaled \$1.169 billion compared to \$559 million as of December 31, 2008, an increase of \$610 million. This increase in cash, cash equivalents and current marketable investment securities was primarily related to an increase in cash generated from operations, partially offset by capital expenditures, the repurchase of our common stock and the repayment of debt.

The following discussion highlights our cash flow activities during the three months ended March 31, 2009.

**Cash Flow*****Cash flows from operating activities***

For the three months ended March 31, 2009, we reported net cash flows from operating activities of \$901 million. This amount includes net income adjusted for depreciation and amortization of \$536 million and timing differences between book expense and cash payments related to income taxes of \$179 million, interest expense of \$26 million and other differences related to operating expenses.

***Cash flows from investing activities***

For the three months ended March 31, 2009, we reported net cash outflows from investing activities of \$713 million primarily related to net purchases of marketable investment securities of \$461 million and for capital expenditures totaling \$252 million, of which \$239 million is associated with our subscriber acquisition and retention lease programs. The remaining \$13 million includes \$4 million of non-discretionary spending for satellite capital expenditures and \$9 million of other corporate capital expenditures.

***Cash flows from financing activities***

For the three months ended March 31, 2009, we reported net cash outflows from financing activities of \$23 million resulting from common stock repurchases of \$19 million and repayments of debt of \$5 million.

**Free Cash Flow**

We define free cash flow as "Net cash flows from operating activities" less "Purchases of property and equipment," as shown on our Condensed Consolidated Statements of Cash Flows. We believe free cash flow is an important liquidity metric because it measures, during a given period, the amount of cash generated that is available to repay debt obligations, make investments, fund acquisitions and for certain other activities. Free cash flow is not a measure determined in accordance with GAAP and should not be considered a substitute for "Operating income," "Net income," "Net cash flows from operating activities" or any other measure determined in accordance with GAAP. Since free cash flow includes investments in operating assets, we believe this non-GAAP liquidity measure is useful in addition to the most directly comparable GAAP measure "Net cash flows from operating activities."

During the three months ended March 31, 2009 and 2008, free cash flow was significantly impacted by changes in operating assets and liabilities as shown in the "Net cash flows from operating activities" section of our Condensed Consolidated Statements of Cash Flows included herein. Operating asset and liability balances can fluctuate significantly from period to period and there can be no assurance that free cash flow will not be negatively impacted by material changes in operating assets and liabilities in future periods, since these changes depend upon, among other things, management's timing of payments and control of inventory levels, and cash receipts. In addition to fluctuations resulting from changes in operating assets and liabilities, free cash flow can vary significantly from period to period depending upon, among other things, subscriber growth, subscriber revenue, subscriber churn, subscriber acquisition

[Table of Contents](#)

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

costs including amounts capitalized under our equipment lease programs, operating efficiencies, increases or decreases in purchases of property and equipment and other factors.

The following table reconciles free cash flow to "Net cash flows from operating activities."

	For the Three Months Ended March 31,	
	2009	2008
	(In thousands)	
Free cash flow	\$649,042	\$638,966
Add back:		
Purchases of property and equipment	252,174	266,771
Net cash flows from operating activities	<u>\$901,216</u>	<u>\$905,737</u>

**Subscriber Churn**

DISH Network lost approximately 94,000 net subscribers for the three months ended March 31, 2009, compared to adding approximately 35,000 net new subscribers during the same period in 2008. This decrease primarily resulted from the decrease in gross new subscribers and an increase in our subscriber churn rate of 1.83% compared to 1.68% for the same period in 2008. See "Results of Operations" above for further discussion.

Our distribution relationship with AT&T was a substantial contributor to our gross and net subscriber additions over the past several years, accounting for approximately 17% of our gross subscriber additions for the year ended December 31, 2008. This distribution relationship ended on January 31, 2009. During the three months ended March 31, 2009, AT&T contributed 5% of our gross subscriber additions. AT&T has entered into a new distribution relationship with DirecTV. It may be difficult for us to develop alternative distribution channels that will fully replace AT&T and if we are unable to do so, our gross and net subscriber additions may be further impacted, our subscriber churn may increase, and our results of operations may be adversely affected. In addition, approximately one million of our current subscribers were acquired through our distribution relationship with AT&T and subscribers acquired through this channel have historically churned at a higher rate than our overall subscriber base. Although AT&T is not permitted to target these subscribers for transition to another pay-TV service and we and AT&T are required to maintain bundled billing and cooperative customer service for these subscribers, these subscribers may still churn at higher than historical rates following termination of the AT&T distribution relationship.

**Subscriber Acquisition and Retention Costs**

We incur significant up-front costs to acquire subscribers, including advertising, retailer incentives, equipment, installation, and new customer promotions. While we attempt to recoup these up-front costs over the lives of their subscription, there can be no assurance that we will. We deploy business rules such as higher credit requirements and contractual commitments, and we strive to provide outstanding customer service, to increase the likelihood of customers keeping their DISH Network service over longer periods of time. Our subscriber acquisition costs may vary significantly from period to period.

We incur significant costs to retain our existing customers, mostly by upgrading their equipment to HD and DVR receivers. As with our subscriber acquisition costs, our retention spending includes the cost of equipment and installation. We also offer free programming and/or promotional pricing for limited periods for existing customers in exchange for a commitment. A major component of our retention efforts includes the installation of equipment for customers who move. Our subscriber retention costs may vary significantly from period to period.

**Satellites**

Operation of our subscription television service requires that we have adequate satellite transmission capacity for the programming we offer. Moreover, current competitive conditions require that we continue to expand our offering of new programming, particularly by expanding local HD coverage and offering more HD national channels. While we generally have had in-orbit satellite capacity sufficient to transmit our existing channels and some backup

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

capacity to recover the transmission of certain critical programming, our backup capacity is limited. In the event of a failure or loss of any of our satellites, we may need to acquire or lease additional satellite capacity or relocate one of our other satellites and use it as a replacement for the failed or lost satellite. Such a failure could result in a prolonged loss of critical programming or a significant delay in our plans to expand programming as necessary to remain competitive and cause us to expend a significant portion of our cash to acquire or lease additional satellite capacity.

**Security Systems**

Increases in theft of our signal, or our competitors' signals, could in addition to reducing new subscriber activations, also cause subscriber churn to increase. We use microchips embedded in credit card-sized access cards, called "smart cards," or security chips in our receiver systems to control access to authorized programming content ("Security Access Devices"). Our signal encryption has been compromised in the past and may be compromised in the future even though we continue to respond with significant investment in security measures, such as Security Access Device replacement programs and updates in security software, that are intended to make signal theft more difficult. It has been our prior experience that security measures may be only effective for short periods of time or not at all and that we remain susceptible to additional signal theft. We cannot assure you that we will be successful in reducing or controlling theft of our programming content. During the third quarter of 2008, we began implementing a plan to replace our existing Security Access Devices to re-secure our system, which is expected to take approximately nine to twelve months to complete. We cannot assure you that we will be successful in reducing or controlling theft of our programming content and we may incur additional costs in the future if our Security Access Device replacement plan is not effective.

**Stock Repurchases**

Our board of directors previously authorized stock repurchases of up to \$1.0 billion of our Class A common stock. During the three months ended March 31, 2009, we repurchased 1.9 million shares of our common stock for \$19 million. As of March 31, 2009, we may repurchase up to \$981 million under this plan.

**Other**

We are also vulnerable to fraud, particularly in the acquisition of new subscribers. While we are addressing the impact of subscriber fraud through a number of actions, including eliminating certain payment options for subscribers, there can be no assurance that we will not continue to experience fraud which could impact our subscriber growth and churn. The current economic downturn may create greater incentive for signal theft and subscriber fraud, which could lead to higher subscriber churn and reduced revenue.

**Obligations and Future Capital Requirements**

We expect to fund our future working capital, capital expenditure and debt service requirements from cash generated from operations, existing cash and marketable investment securities balances, and cash generated through new additional capital. The amount of capital required to fund our future working capital and capital expenditure needs varies, depending on, among other things, the rate at which we acquire new subscribers and the cost of subscriber acquisition and retention, including capitalized costs associated with our new and existing subscriber equipment lease programs. The amount of capital required will also depend on the levels of investment necessary to support potential strategic initiatives, including our plans to expand our national and local HD offerings and other strategic opportunities that may arise from time to time. Our capital expenditures vary depending on the number of satellites leased or under construction at any point in time, and could increase materially as a result of increased competition, significant satellite failures, or continued general economic downturn. These factors could require that we raise additional capital in the future.

From time to time we evaluate opportunities for strategic investments or acquisitions that may complement our current services and products, enhance our technical capabilities, improve or sustain our competitive position, or otherwise offer growth opportunities. We may make investments in or partner with others to expand our business into mobile and portable video, data and voice services. Future material investments or acquisitions may require that we obtain additional capital, assume third party debt or incur other long-term obligations.

[Table of Contents](#)**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Continued**

We paid \$712 million to acquire certain 700 MHz wireless licenses, which were granted to us by the FCC in February 2009. In order to commercialize these licenses and satisfy FCC build-out requirements, we may be required to make significant additional investments or partner with others. Depending on the nature and scope of such commercialization and build-out, our investment could vary significantly. Part or all of our licenses may be terminated for failure to satisfy FCC build-out requirements. We currently plan to perform a market test to evaluate different technologies and consumer acceptance over the next year.

Recent developments in the financial markets have made it more difficult for issuers of high yield indebtedness, such as us, to access capital markets at acceptable terms. These developments may have a significant effect on our cost of financing and our liquidity position.

A portion of our investment portfolio is invested in asset backed securities, auction rate securities, mortgage backed securities, special investment vehicles and strategic investments and as a result a portion of our portfolio has restricted liquidity. Liquidity in the markets for these investments has been impacted in the past year and these market conditions have adversely affected our liquidity. In addition, certain of these securities have defaulted or have been materially downgraded, causing us to record impairment charges. If the credit ratings of these securities further deteriorate or the lack of liquidity in the marketplace becomes prolonged, we may be required to record further impairment charges. Moreover, the current significant volatility of domestic and global financial markets has greatly affected the volatility and value of our marketable investment securities. To the extent we require access to funds, we may need to sell these securities under unfavorable market conditions, record further impairment charges and fall short of our financing needs.

**Off-Balance Sheet Arrangements**

In general, we do not engage in off-balance sheet financing activities.

[Table of Contents](#)**Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK****Market Risks Associated With Financial Instruments**

Our investments and debt are exposed to market risks, discussed below.

*Cash, Cash Equivalents and Marketable Investment Securities.* As of March 31, 2009, our restricted and unrestricted cash, cash equivalents and current and noncurrent marketable investment securities had a fair value of \$1.331 billion. Of that amount, a total of \$1.227 billion was invested in: (a) cash; (b) debt instruments of the U.S. Government and its agencies; (c) commercial paper and corporate notes with an overall average maturity of less than one year and rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and (d) instruments with similar risk, duration and credit quality characteristics to the commercial paper described above. The primary purpose of these investing activities has been to preserve principal until the cash is required to, among other things, fund operations, make strategic investments and expand the business. Consequently, the size of this portfolio fluctuates significantly as cash is received and used in our business. As of March 31, 2009, all of the \$1.227 billion was invested in fixed or variable rate instruments. The value of these investments can be impacted by interest rate fluctuations, but while an increase in interest rates would ordinarily adversely impact the fair value of fixed rate investments, we normally hold these investments to maturity. Further, the value could be lowered by credit losses should economic conditions worsen.

*Auction Rate and Mortgage Backed Securities.* As of March 31, 2009, we held investments in auction rate securities (“ARS”) and mortgage backed securities (“MBS”) of \$79 million, which are reported at fair value. Recent events in the credit markets have reduced or eliminated current liquidity for certain of our ARS and MBS investments. As a result, we classify these investments as noncurrent assets as we intend to hold these investments until they recover or mature. A hypothetical 10% adverse change in the price of these investments would result in an approximate \$8 million decrease in the fair value of these investments.

*Strategic Marketable Investment Securities.* In general, our marketable investment securities portfolio includes debt and equity of public companies we hold for strategic and financial purposes. As of March 31, 2009, we held strategic and financial debt and equity investments of public companies with a fair value of \$24 million. These investments, which are concentrated in a small number of companies, are highly speculative and have experienced and continue to experience volatility. The fair value of our strategic and financial debt and equity investments can be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the companies whose securities we have invested in, risks associated with specific industries, and other factors. These investments are subject to significant fluctuations in fair value due to the volatility of the securities markets and of the underlying businesses. A hypothetical 10% adverse change in the price of our public strategic debt and equity investments would result in approximately a \$2 million decrease in the fair value of these investments.

*Other Investment Securities.* We are exposed to risk as it relates to changes in the market value of our other investments which totaled \$41 million as of March 31, 2009. We invest in equity instruments of public and private companies for operational and strategic business purposes. These securities are subject to significant fluctuations in fair value due to volatility of the stock market and the industry in which the companies operate. A hypothetical 10% adverse change in the price of these equity instruments would result in an approximate \$4 million decrease in the value of these investments.

Our ability to realize value from our strategic investments in companies that are not publicly traded depends on the success of those companies’ businesses and their ability to obtain sufficient capital to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them.

*Interest Rate Risk.* Our cash, cash equivalents and marketable investment securities had an average annual return for the three months ended March 31, 2009 of 1.7%. A decrease in interest rates does have the effect of reducing our future annual interest income from this portfolio, since funds would be re-invested at lower rates as the instruments

[Table of Contents](#)**Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK — Continued**

mature. A hypothetical 10% decrease in average interest rates during 2009 would result in a decrease of approximately \$2 million in annual interest income.

*Fixed Rate Debt, Mortgages and Other Notes Payable.* At March 31, 2009, we had fixed-rate debt, mortgages and other notes payable of \$4.821 billion on our Condensed Consolidated Balance Sheets. We estimated the fair value of this debt to be approximately \$4.431 billion using quoted market prices for our publicly traded debt, which constitutes approximately 99% of our debt, and an analysis based on certain assumptions discussed below for our private debt. In completing our analysis for our private debt, we evaluate market conditions, related securities, various public and private offerings, and other publicly available information. In performing this analysis, we make various assumptions regarding credit spreads, volatility, and the impact of these factors on the value of the notes. The fair value of our debt is affected by fluctuations in interest rates. A hypothetical 10% decrease in assumed interest rates would increase the fair value of our debt by approximately \$175 million. To the extent interest rates increase, our costs of financing would increase at such time as we are required to refinance our debt. As of March 31, 2009, a hypothetical 10% increase in assumed interest rates would increase our annual interest expense by approximately \$33 million.

**Derivative Financial Instruments**

In general, we do not use derivative financial instruments for hedging or speculative purposes, but we may do so in the future.

**Item 4. CONTROLS AND PROCEDURES**

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

There has been no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

[Table of Contents](#)**PART II — OTHER INFORMATION****Item 1. LEGAL PROCEEDINGS**

In connection with the Spin-off, we entered into a separation agreement with EchoStar, which provides for, among other things, the division of liability resulting from litigation. Under the terms of the separation agreement, EchoStar has assumed liability for any acts or omissions that relate to its business whether such acts or omissions occurred before or after the Spin-off. Certain exceptions are provided, including for intellectual property related claims generally, whereby EchoStar will only be liable for its acts or omissions that occurred following the Spin-off and we have indemnified EchoStar for any potential liability or damages resulting from intellectual property claims relating to the period prior to the effective date of the Spin-off.

***Acacia***

During 2004, Acacia Media Technologies (“Acacia”) filed a lawsuit against us and EchoStar in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an intellectual property holding company that seeks to license an acquired patent portfolio. The suit alleges infringement of United States Patent Nos. 5,132,992, 5,253,275, 5,550,863, 6,002,720 and 6,144,702, which relate to certain systems and methods for transmission of digital data. In March 2008, the Court issued an order outlining a schedule for filing dispositive invalidity motions based on its claim constructions. Acacia has agreed to stipulate to invalidity based on the Court’s claim constructions in order to proceed immediately to the Federal Circuit on appeal. The Court, however, has permitted us to file additional invalidity motions.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Broadcast Innovation, L.L.C.***

In 2001, Broadcast Innovation, L.L.C. (“Broadcast Innovation”) filed a lawsuit against us, EchoStar, DirecTV, Thomson Consumer Electronics and others in United States District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (the ‘094 patent) and 4,992,066 (the ‘066 patent). The ‘094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The ‘066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During 2004, the judge issued an order finding the ‘066 patent invalid. Also in 2004, the Court found the ‘094 patent invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In 2005, the United States Court of Appeals for the Federal Circuit overturned the ‘094 patent finding of invalidity and remanded the Charter case back to the District Court. During June 2006, Charter filed a reexamination request with the United States Patent and Trademark Office. The Court has stayed the Charter case pending reexamination, and our case has been stayed pending resolution of the Charter case.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

[Table of Contents](#)**PART II — OTHER INFORMATION — Continued*****Channel Bundling Class Action***

On September 21, 2007, a purported class of cable and satellite subscribers filed an antitrust action against us in the United States District Court for the Central District of California. The suit also names as defendants DirecTV, Comcast, Cablevision, Cox, Charter, Time Warner, Inc., Time Warner Cable, NBC Universal, Viacom, Fox Entertainment Group, and Walt Disney Company. The suit alleges, among other things, that the defendants engaged in a conspiracy to provide customers with access only to bundled channel offerings as opposed to giving customers the ability to purchase channels on an “a la carte” basis. We filed a motion to dismiss, which the Court denied in July 2008. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Enron Commercial Paper Investment***

During October 2001, we received approximately \$40 million from the sale of Enron commercial paper to a third party broker. That commercial paper was ultimately purchased by Enron. During November 2003, an action was commenced in the United States Bankruptcy Court for the Southern District of New York against approximately 100 defendants, including us, who invested in Enron’s commercial paper. The complaint alleges that Enron’s October 2001 purchase of its commercial paper was a fraudulent conveyance and voidable preference under bankruptcy laws. We dispute these allegations. We typically invest in commercial paper and notes that are rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations. At the time of our investment in Enron commercial paper, it was considered to be high quality and low risk. On April 7, 2009, we settled the litigation for an immaterial amount.

***ESPN***

On January 30, 2008, we filed a lawsuit against ESPN, Inc., ESPN Classic, Inc., ABC Cable Networks Group, Soapnet L.L.C., and International Family Entertainment (collectively “ESPN”) for breach of contract in New York State Supreme Court. Our complaint alleges that ESPN failed to provide us with certain high-definition feeds of the Disney Channel, ESPN News, Toon, and ABC Family. ESPN asserted a counterclaim, and then filed a motion for summary judgment, alleging that we owed approximately \$35 million under the applicable affiliation agreements. We brought a motion to amend our complaint to assert that ESPN was in breach of certain most-favored-nation provisions under the affiliation agreements. On April 15, 2009, the trial court granted our motion to amend the complaint, and granted, in part, ESPN’s motion on the counterclaim, finding that we are liable for some of the amount alleged to be owing but that the actual amount owing is disputed and will have to be determined at a later date. We will appeal the partial grant of ESPN’s motion. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Finisar Corporation***

Finisar Corporation (“Finisar”) obtained a \$100 million verdict in the United States District Court for the Eastern District of Texas against DirecTV for patent infringement. Finisar alleged that DirecTV’s electronic program guide and other elements of its system infringe United States Patent No. 5,404,505 (the ‘505 patent).

In July 2006, we and EchoStar, together with NagraStar LLC, filed a Complaint for Declaratory Judgment in the United States District Court for the District of Delaware against Finisar that asks the Court to declare that we do not infringe, and have not infringed, any valid claim of the ‘505 patent. During April 2008, the Federal Circuit reversed the judgment against DirecTV and ordered a new trial. Our case is stayed until the DirecTV action is resolved.

We intend to vigorously prosecute this case. In the event that a Court ultimately determines that we infringe this patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to modify our system architecture. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

[Table of Contents](#)**PART II — OTHER INFORMATION — Continued*****Global Communications***

On April 19, 2007, Global Communications, Inc. (“Global”) filed a patent infringement action against us and EchoStar in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,947,702 (the ‘702 patent), which relates to satellite reception. On October 24, 2007, the United States Patent and Trademark Office granted our request for reexamination of the ‘702 patent and issued an Office Action finding that all of the claims of the ‘702 patent were invalid. At the request of the parties, the District Court stayed the litigation until the reexamination proceeding is concluded and/or other Global patent applications issue.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the ‘702 patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Guardian Media***

On December 22, 2008, Guardian Media Technologies LTD (“Guardian”) filed suit against us, EchoStar, EchoStar Technologies L.L.C., DirecTV and several other defendants in the United States District Court for the Central District of California alleging infringement of United States Patent Nos. 4,930,158 and 4,930,160. Both patents are expired and relate to certain parental lock features.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Katz Communications***

On June 21, 2007, Ronald A. Katz Technology Licensing, L.P. (“Katz”) filed a patent infringement action against us in the United States District Court for the Northern District of California. The suit alleges infringement of 19 patents owned by Katz. The patents relate to interactive voice response, or IVR, technology.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Multimedia Patent Trust***

On February 13, 2009, Multimedia Patent Trust (“MPT”) filed suit against us, EchoStar, DirecTV and several other defendants in the United States District Court for the Southern District of California alleging infringement of United States Patent Nos. 4,958,226, 5,227,878, 5,136,377, 5,500,678 and 5,563,593, which relate to video encoding, decoding and compression technology.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

[Table of Contents](#)**PART II — OTHER INFORMATION — Continued*****Personalized Media Communications***

In February 2008, Personalized Media Communications, Inc. filed suit against us, EchoStar and Motorola, Inc. in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent Nos. 4,694,490, 5,109,414, 4,965,825, 5,233,654, 5,335,277, and 5,887,243, which relate to satellite signal processing.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Retailer Class Actions***

During 2000, lawsuits were filed by retailers in Colorado state and federal courts attempting to certify nationwide classes on behalf of certain of our retailers. The plaintiffs are requesting the Courts declare certain provisions of, and changes to, alleged agreements between us and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. We have asserted a variety of counterclaims. The federal court action has been stayed during the pendency of the state court action. We filed a motion for summary judgment on all counts and against all plaintiffs. The plaintiffs filed a motion for additional time to conduct discovery to enable them to respond to our motion. The state court granted limited discovery which ended during 2004. The plaintiffs claimed we did not provide adequate disclosure during the discovery process. The state court agreed, and denied our motion for summary judgment as a result. In April 2008, the state court granted plaintiff's class certification motion and in January 2009, the state court entered an order excluding certain evidence that we can present at trial based on the prior discovery issues. The state court also denied plaintiffs' request to dismiss our counterclaims. The final impact of the court's evidentiary ruling cannot be fully assessed at this time. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the lawsuit or determine the extent of any potential liability or damages.

***Technology Development Licensing***

On January 22, 2009, Technology Development and Licensing LLC ("TechDev") filed suit against us and EchoStar in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. 35, 952, which relates to certain favorite channel features.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Tivo Inc.***

On January 31, 2008, the U.S. Court of Appeals for the Federal Circuit affirmed in part and reversed in part the April 2006 jury verdict concluding that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. In accordance with Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies" ("SFAS 5"), we previously recorded a total reserve of \$132 million on our Condensed Consolidated Balance Sheets to reflect the April 2006 jury verdict, supplemental damages and pre-judgment interest awarded by the Texas court. This amount also includes the estimated cost of any software infringement prior to implementation of our alternative technology, discussed below, plus interest subsequent to the jury verdict. In its January 2008 decision, the Federal Circuit affirmed the jury's verdict of infringement on Tivo's "software claims," upheld the award of damages from the District Court, and ordered that the stay of the District Court's injunction against us, which was issued pending appeal, be dissolved when the appeal becomes final. The Federal Circuit, however, found that we did not literally infringe Tivo's "hardware claims," and remanded such claims back to the District Court for further proceedings. On

[Table of Contents](#)**PART II — OTHER INFORMATION — Continued**

October 6, 2008, the Supreme Court denied our petition for certiorari. As a result, approximately \$105 million of the total \$132 million reserve was released from an escrow account to Tivo.

We have developed and deployed “next-generation” DVR software to our customers’ DVRs. This improved software is fully operational and has been automatically downloaded to current customers (our “alternative technology”). We have written legal opinions from outside counsel that conclude that our alternative technology does not infringe, literally or under the doctrine of equivalents, either the hardware or software claims of Tivo’s patent. Tivo has filed a motion for contempt alleging that we are in violation of the Court’s injunction. We have vigorously opposed the motion arguing that the Court’s injunction does not apply to DVRs that have received our alternative technology, that our alternative technology does not infringe Tivo’s patent, and that we are in compliance with the injunction. An evidentiary hearing on Tivo’s motion for contempt was held mid- February 2009, the parties’ have submitted their post-trial briefs and we are now awaiting a ruling from the Court. In January 2009, the Patent and Trademark Office (“PTO”) granted our Petition for Re-Examination of the software claims of Tivo’s ‘389 patent, which are the subject of Tivo’s current motion for contempt. The PTO found that there is a ‘substantial new question’ of patentability as to the software claims in light of prior patents that appear to render Tivo’s ‘389 patent invalid as obvious.

If we are unsuccessful in defending against Tivo’s motion for contempt or any subsequent claim that our alternative technology infringes Tivo’s patent, we could be prohibited from distributing DVRs, or could be required to modify or eliminate certain user-friendly DVR features that we currently offer to consumers. In that event we would be at a significant disadvantage to our competitors who could offer this functionality and, while we would attempt to provide that functionality through other manufacturers, the adverse affect on our business could be material. We could also have to pay substantial additional damages.

***Voom***

On May 28, 2008, Voom HD Holdings (“Voom”) filed a complaint against us in New York Supreme Court. The suit alleges breach of contract arising from our termination of the affiliation agreement we had with Voom for the carriage of certain Voom HD channels on the DISH Network satellite television service. In January 2008, Voom sought a preliminary injunction to prevent us from terminating the agreement. The Court denied Voom’s motion, finding, among other things, that Voom was not likely to prevail on the merits of its case. Voom is claiming over \$1.0 billion in damages. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Other***

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business, including among other things, disputes with programmers regarding fees. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity.

**Item 1A. RISK FACTORS**

Item 1A, “Risk Factors,” of our Annual Report on Form 10-K for the year ended December 31, 2008 includes a detailed discussion of our risk factors. During the three months ended March 31, 2009, there were no material changes in risk factors as previously disclosed.

[Table of Contents](#)**PART II — OTHER INFORMATION — Continued****Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS*****Issuer Purchases of Equity Securities***

The following table provides information regarding repurchases of our Class A common stock from January 1, 2009 through March 31, 2009.

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Approximate Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs (a)</u> (In thousands)
January 1 - January 31, 2009	—	\$ —	—	\$ 999,173
February 1 - February 28, 2009	—	\$ —	—	\$ 999,173
March 1 - March 31, 2009	1,948,462	\$ 9.54	1,948,462	\$ 980,580
Total	<u>1,948,462</u>	<u>\$ 9.54</u>	<u>1,948,462</u>	<u>\$ 980,580</u>

- (a) Our board of directors previously authorized stock repurchases of up to \$1.0 billion of our Class A common stock. In November 2008, our board of directors extended the plan and authorized an increase in the maximum dollar value of shares that may be repurchased under the plan, such that we are authorized to repurchase up to \$1.0 billion of our outstanding shares through and including December 31, 2009, subject to a limitation to purchase no more than 20% of our outstanding common stock. As of March 31, 2009, we may repurchase up to \$981 million under this plan. Purchases under our repurchase program may be made through open market purchases, privately negotiated transactions, or Rule 10b5-1 trading plans, subject to market conditions and other factors. We may elect not to purchase the maximum amount of shares allowable under this program and we may also enter into additional share repurchase programs authorized by our Board of Directors.

**Item 6. EXHIBITS*****(a) Exhibits.***

- 31.1 ☐ Section 302 Certification by Chairman and Chief Executive Officer.
- 31.2 ☐ Section 302 Certification by Executive Vice President and Chief Financial Officer.
- 32.1 ☐ Section 906 Certification by Chairman and Chief Executive Officer.
- 32.2 ☐ Section 906 Certification by Executive Vice President and Chief Financial Officer.

☐ Filed herewith.

[Table of Contents](#)**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**DISH NETWORK CORPORATION**

By: /s/ Charles W. Ergen

Charles W. Ergen  
Chairman, President and Chief Executive Officer  
(Duly Authorized Officer)

By: /s/ Robert E. Olson

Robert E. Olson  
Executive Vice President and Chief Financial Officer  
(Principal Financial Officer)

By: /s/ Bernard L. Han

Bernard L. Han  
Executive Vice President and Chief Operating Officer  
(Principal Financial Officer During the Quarter Ended March 31, 2009)

Date: May 11, 2009

# EXHIBIT 28

# EXHIBIT 28

[Click here for Adobe Acrobat version](#)

[Click here for Microsoft Word version](#)

\*\*\*\*\*

NOTICE

\*\*\*\*\*

This document was converted from Microsoft Word.

Content from the original version of the document such as headers, footers, footnotes, endnotes, graphics, and page numbers will not show up in this text version.

All text attributes such as bold, italic, underlining, etc. from the original document will not show up in this text version.

Features of the original document layout such as columns, tables, line and letter spacing, pagination, and margins will not be preserved in the text version.

If you need the complete document, download the Microsoft Word or Adobe Acrobat version.

\*\*\*\*\*

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

AZ Prime One Mortgage Corporation

)  
)  
)  
) File No. EB- 07-TC-578  
) NAL/Acct. No. 200832170010  
) FRN: 0017433095  
)  
)  
)

FORFEITURE ORDER

Adopted: June 15, 2009 Released: June 16, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of \$10,000 against AZ Prime One Mortgage Corporation ("AZ Prime

JA002752  
001627

One") for willful or repeated violations of section 64.1200(c)(2) of the Commission's rules, by making a telephone call for the purpose of delivering a telephone solicitation to a residential telephone consumer who had registered her telephone number on the National Do-Not-Call Registry.

## II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Commission's Notice of Apparent Liability for Forfeiture and need not be reiterated at length.

3. Section 64.1200(c)(2) of the Commission's rules generally prohibits the delivery of telephone solicitations to residential telephone numbers that are contained in the National Do-Not-Call Registry, except in certain limited situations. Under the Communications Act of 1934, as amended ("Act"), and the Commission's rules, a "telephone solicitation" means "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person." Not every promotional call, however, constitutes a prohibited telephone solicitation under this rule. Calls made by or on behalf of a tax-exempt nonprofit organization are not considered to be telephone solicitations. Similarly, calls that are made to a person who either has provided prior express invitation or permission to call or has an established business relationship with the caller are not considered to be telephone solicitations. In addition to these statutory exemptions, section 64.1200(c)(2)(iii) also permits telephone solicitations to National Do-Not-Call registrants in the limited situation in which the caller has a personal relationship with the called party.

3. Entities making telephone solicitations must honor do-not-call registrations no later than 31 days after a number is placed on the National Do-Not-Call Registry, and for a period of no less than five years. To accomplish this, section 64.1200(c)(2)(i)(D) requires entities making telephone solicitations to use a version of the National Do-Not-Call Registry obtained no more than 31 days before any telephone solicitation is made, and to document this process. An entity that does not claim one of the exemptions set forth above is not liable for calling a telephone number on the National Do-Not-Call Registry only if it is able to demonstrate both that it has fully complied with the Commission's standards governing use of the National Do-Not-Call Registry as set out in section 64.1200(c)(2)(i)(A)-(E) of the rules, and that the particular telephone solicitation call was the result of specific error.

4. In order to comply with the Commission's standards, a person or entity initiating a telephone solicitation must first demonstrate that, as part of its routine business practice it has: (1) established and implemented written procedures to comply with the do-not-call rules; (2) trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the do-not-call rules; (3) maintained and recorded a list of telephone numbers the seller may not contact; (4) used a process to prevent telemarketing to any telephone number on any list established pursuant to the do-not-call rules employing a version of the National Do-Not-Call Registry obtained from the administrator of the Registry within a designated time frame, and has maintained records documenting this process; and (5) used a process to ensure that it does not sell, rent, lease, purchase, or use the Registry for any purpose except national do-not-call compliance, and that it has purchased access to the Registry from the Registry administrator without participating in any cost sharing arrangement with any other entity. We reiterate, however, that the "safe harbor" from liability only applies if such person or entity is able to show that the particular violative calls made in spite of adherence to the enumerated do-not-call procedures were the result of specific error.

JA002753  
001628

5. On February 28, 2007, in response to a consumer complaint alleging that AZ Prime One had made a telephone call for the purpose of delivering telephone solicitations to a residential telephone consumer who had registered a telephone number on the National Do-Not-Call Registry, the Bureau issued a citation to AZ Prime One, pursuant to section 503(b)(5) of the Act. The Bureau cited AZ Prime One for delivering one or more telephone solicitations to residential telephone consumers who had registered their telephone numbers on the National Do-Not-Call Registry, in violation of section 64.1200(c)(2) of the Commission's rules. The citation warned AZ Prime One that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation, and included a copy of the consumer complaint that formed the basis of the citation. The citation informed AZ Prime One that within 30 days of the date of the citation, it could either request an interview with Commission staff, or could provide a written statement responding to the citation. AZ Prime One did not request an interview or otherwise respond to the citation.
6. Following the issuance of the citation, the Commission received at least one complaint from a consumer alleging that AZ Prime One had delivered telephone solicitations to a residential telephone consumer who had registered a telephone number on the National Do-Not-Call Registry. The solicitations were for mortgage loans and refinancing. This violation, which occurred after the Bureau's citation, resulted in the issuance of a Notice of Apparent Liability for Forfeiture against AZ Prime One on February 15, 2008 in the amount of \$10,000. The NAL ordered AZ Prime One to either pay the proposed forfeiture amount within thirty (30) days or submit evidence or arguments in response to the NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed. AZ Prime One did not respond to the NAL or pay the proposed forfeiture amount.

### III. DISCUSSION

7. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act. The maximum penalty for such a violation is \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008. In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."
8. Although the Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for violating the prohibition on making telephone solicitations to customers who have registered on the National Do-Not-Call Registry, the Commission has found that a national do-not-call violation implicates the same concern as a violation of the company specific do-not-call rules and, accordingly, justifies the application of the \$10,000 base amount that the Commission previously proposed for company specific do-not call violations. We apply that base amount to the apparent violation.
9. AZ Prime One did not respond to the NAL or pay the proposed forfeiture amount. AZ Prime One has failed to identify facts or circumstances to persuade us that there is a basis for modifying the proposed forfeiture, and we are not aware of any further mitigating circumstances sufficient to warrant a reduction of the forfeiture penalty. For these reasons, and based on the information before us, we hereby impose a total forfeiture of \$10,000 for AZ Prime One willful or repeated violation of section 227 of the Act and the Commission's related rules and orders, as set forth in the

JA002754  
001629

NAL.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. S: 503(b), and section 1.80(f)(4) of the Commission's rules, 47 C.F.R.

S: 1.80(f)(4), and under authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. S:S: 0.111, 0.311, that AZ Prime One Mortgage Corporation IS LIABLE FOR A MONETARY FORFEITURE to the United States Government the sum of \$10,000 for willfully and repeatedly violating section 227(b)(1)(c) of the Communications Act, 47 U.S.C. S: 227(b)(1)(c), section 64.1200(a)(3) of the Commission's rules, 47 C.F.R. S: 64.1200(a)(3), and the related orders as described in the paragraphs above.

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank - Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). AZ Prime One will also send electronic notification on the date said payment is made to Johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

12. IT IS FURTHER ORDERED that a copy of the Forfeiture Order shall be sent by First Class mail and certified mail return receipt requested to AZ Prime One Mortgage Corporation, aka HomePlaceLoans.com, Attention: Kimberly Callan, President; Brian Ramsey, Secretary; and Donald W. Hudspeth, Registered Agent, 7145 E. 1st St., Scottsdale, AZ 85251-5307 and 20601 N. 19th Ave. #100, Phoenix, AZ 85027-3587.

#### FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith

Chief, Enforcement Bureau

See 47 C.F.R. S: 64.1200(c)(2).

AZ Prime One Mortgage Corporation, 23 FCC Rcd 1964 (Enf. Bur. 2008)

47 C.F.R. S: 64.1200(c)(2).

47 U.S.C. S:227(a)(3); 47 C.F.R. S:64.1200(f)(12).

47 U.S.C S: 227(a)(3); 47 C.F.R. S: 64.1200(f)(12).

Section 64.1200(c)(2)(ii) of our rules requires that prior express

JA002755  
001630

invitation or permission "must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed." 47 C.F.R. S: 64.1200(c)(2)(ii).

For do-not-call purposes, the term "established business relationship" means "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party." 47 C.F.R. S: 64.1200(f)(4). The established business relationship exception does not apply when a telephone subscriber has made a company-specific do-not-call request. A company-specific do-not-call request terminates an established business relationship for telemarketing purposes even if the requester continues to do business with the company. 47 C.F.R. S: 64.1200(f)(4)(i); see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd 14014, 14070, para. 96 (2003); Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 7 FCC Rcd 8752, 8766 n.47, 8770 n.63 (1992); see also H.R. Rep. 102-317, 1st Sess., 102nd Cong. at 15 (1991); Charvat v. Dispatch Consumer Services, Inc., 95 Ohio St. 3d 505, 769 N.E.2d 829 (2002).

The term "personal relationship" means "any family member, friend, or acquaintance of the telemarketer making the call." 47 C.F.R. S: 64.1200(f)(14).

The 31-day requirement applies to telephone solicitations made on or after January 1, 2005. Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Order, 19 FCC Rcd 19215 (2004). Previously, the Commission's rules provided that do-not-call registrations had to be honored within 3 months. Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd 14014, 14040, para. 38 (2003). The 3-month provision applied to telephone solicitations made before January 1, 2005.

47 C.F.R. S:64.1200(c)(2)(1)(A)-(E).

Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-578, issued to AZ Prime One Mortgage Company on February 28, 2007.

See 47 U.S.C. S: 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities for violations of the Act or of the Commission's rules and orders).

Commission staff mailed the citation to AZ Prime One Mortgage Company , Attn: Brian Ramsey, President, 7145 East 1st Street, Scottsdale, Arizona 85251-5307.

See n.2 supra; see also 47 U.S.C. S: 503(b)(1).

Section 503(b)(2)(C) provides for forfeitures of up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. S: 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C)

JA002756  
001631

first to \$11,000 and more recently to \$16,000. See 47 C.F.R. S:1.80(b)(3); Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation, 15 FCC Rcd 18221 (2000)(forfeiture maximum for this type of violator set at \$11,000); Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000).

See 47 U.S.C. S: 503(b)(2)(D); see also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (Forfeiture Policy Statement), recon. denied, 15 FCC Rcd 303 (1999).

The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) (Forfeiture Policy Statement).

Dynasty Mortgage, LLC, Order of Forfeiture, 22 FCC Rcd 9453, 9469, para. 43 (2007).

47 U.S.C. S: 504(a).

(...continued from previous page)

(continued....)

Federal Communications Commission DA 09-1328

5

Federal Communications Commission DA 09-1328

JA002757  
001632

# EXHIBIT 29

# EXHIBIT 29

JA002758  
001633

TX 102-002020

LM

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :

Acting by Attorney General, :

Thomas W. Corbett, Jr. :

Petitioner :

v. :

DISH NETWORK, LLC :

Respondent :

Docket No.

388 M.D. 2009

2009 JUL 15 A 10:14

RECEIVED  
JUL 15 2009  
CLERK OF COURT  
JUL 15 2009

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, and avers that, pursuant to Section 201-5 of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("Consumer Protection Law"), the parties hereto consent to the filing of the attached *Assurance of Voluntary Compliance* in the Commonwealth Court of Pennsylvania. The parties further agree that the Court shall maintain continuing jurisdiction over this Assurance in accordance with Section 201-5 of the Consumer Protection Law, 73 P.S. § 201-5.

JA002759  
001634



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>

<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.*

---

*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 Attorney's General Offices (or other state agencies responsible for Complaint mediation) for resolution of Consumer Complaints. DISH Network shall provide the Attorney's 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

---

<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.

---

<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
------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

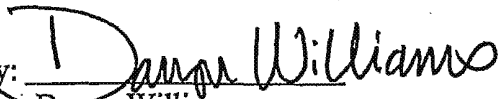
Troy King  
Attorney General of Alabama

  
\_\_\_\_\_  
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)

JA002794  
001669

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: Dena Rosen Givich for Rebecca  
Rebecca Salisbury Salisbury  
Assistant Attorney General

Date: June 24, 2009

FOR THE STATE OF ARKANSAS:



---

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 31<sup>st</sup> day of July, 2009

JOHN W. SUTHERS  
Attorney General



---

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](mailto:Andrew.McCallin@State.CO.US)

Attorney for the State of Colorado

JA002798  
001673

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

JA002799  
001674

**In the matter of:**

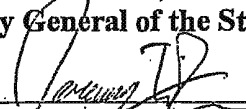
**DISH NETWORK, L.L.C.,** )  
**a Colorado Limited Liability Company** )

**Signature Page**

***FOR THE STATE OF DELAWARE:***

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

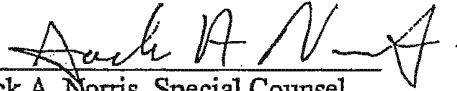
By: \_\_\_\_\_

  
Jeremy Eicher #5093  
Deputy Attorney General  
Delaware Department of Justice  
Fraud and Consumer Protection Division  
820 North French Street, 5<sup>th</sup> Floor  
Wilmington, Delaware 19801  
(302) 577-8600 (telephone)  
(302) 577-6499 (facsimile)

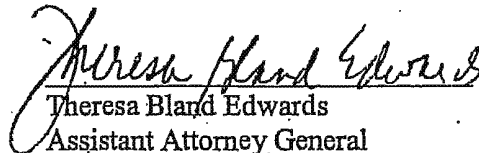
Date: \_\_\_\_\_

C/11/09

BILL McCOLLUM  
ATTORNEY GENERAL  
STATE OF FLORIDA



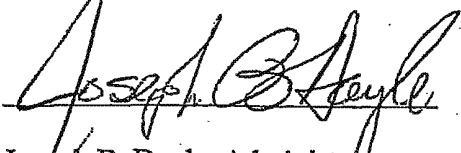
Jack A. Norris, Special Counsel  
Florida Attorney General's Office  
Multistate Litigation  
110 S.E. 6<sup>th</sup> Street  
Fort Lauderdale, FL 33301  
BAR no: 0364861  
Date: 6-29-2009



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

JA002801  
001676

FOR THE STATE OF GEORGIA



Joseph B. Doyle, Administrator  
Fair Business Practices Act


Date: JUNE 10, 2009

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

JA002803  
001678

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

JA002804  
001679

FOR THE STATE OF INDIANA

Gregory F. Zoeller  
Attorney General of Indiana

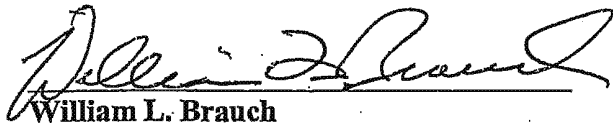
By:   
Jeremy R. Comeau  
Deputy Attorney General  
Atty. No. 26310-53  
Office of Attorney General  
Indiana Government Center South  
302 West Washington Street, 5<sup>th</sup> Floor  
Indianapolis, IN 46204  
317.232.6317  
jcomeau@atg.in.gov

542901

JA002805  
001680

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

**For the Iowa Attorney General:**



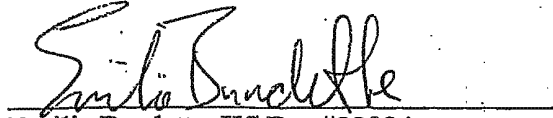
**William L. Brauch**  
Special Assistant Attorney General  
Director-Consumer Protection Division

Date: June 23, 2009

JA002806  
001681

SLC\_ DNC\_Investigation\_0013921  
TX 102-002068

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@mcpslaw.com  
spetersen@mcpslaw.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.myneer@ag.ky.gov

JA002808  
001683

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

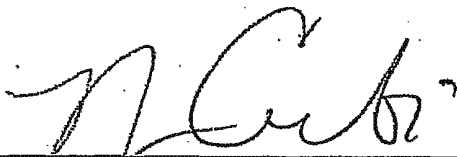
JA002809  
001684

SLC\_ DNC\_Investigation\_0013924

TX 102-002071

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

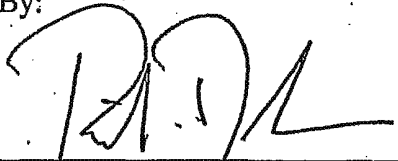
JA002810  
001685

SLC\_ DNC\_Investigation\_0013925  
TX 102-002072

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

JA002812  
001687

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

**Dated: June 18, 2009**

By:

**Kathy Fitzgerald (P91454)**  
**Assistant Attorney General**  
**Consumer Protection Division**  
**P.O. Box 30213**  
**Lansing, MI 48909**  
**(517) 335-0855**

JA002813  
001688

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

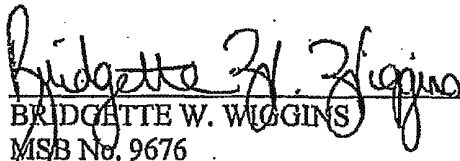
JA002814  
001689

SLC\_ DNC\_Investigation\_0013929  
TX 102-002076

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

Dated: June 19, 2009

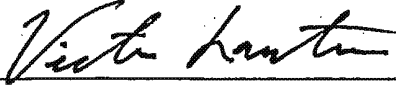
JIM HOOD  
Attorney General of the State of Mississippi

  
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

JA002815  
001690

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: 

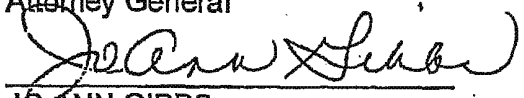
Leslie C. Levy  
Assistant Attorney General  
Nebraska Department of Justice  
2115 State Capitol Building  
Lincoln NE 68509  
402.471.2811

Date: 6.23.09

JA002818  
001693

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

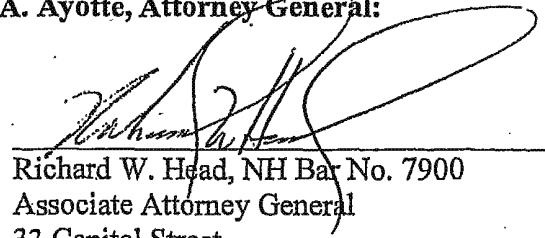
8 Las Vegas, Nevada 89101

9 702-486-3789

10 Attorneys for Plaintiff, State of Nevada  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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

JA002821  
001696

In the matter of:

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

For the State of New Mexico:  
Gary K. King  
Attorney General

By: Lawrence Otero  
Lawrence Otero  
Assistant Attorney General  
Office of the Attorney General  
P.O. Drawer 1508  
Santa Fe, NM 87504  
Ph: (505) 827-6704  
Fx: (505) 827-6685

Date: 18 June 2009

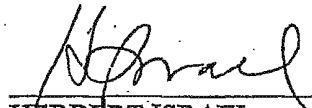
JA002822  
001697

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

JA002823  
001698

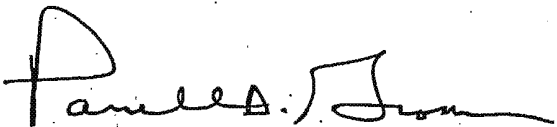
SLC\_ DNC\_Investigation\_0013938  
TX 102-002085

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



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)

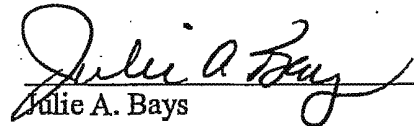
Dated this 23<sup>rd</sup> day of June, 2009

JA002824  
001699

**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

JA002825  
001700

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.

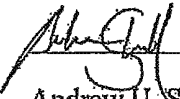
6

7 Circuit Court Judge  
8 Marion County, State of Oregon

9 ACCEPTANCE OF DOJ

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

11 JOHN R. KROGER  
12 Attorney General for the State of Oregon

13 By:   
14 Andrew U. Shull (OR Bar #024541)  
15 Assistant Attorney General  
16 Oregon Department of Justice  
17 1162 Court Street, NE  
18 Salem, OR 97301-4096  
19 andrew.shull@doj.state.or.us  
20 (Appearance In Oregon Only)

21

22

23

24

25

26

End Page—ASSURANCE OF VOLUNTARY COMPLIANCE / [DN, LLC]  
DM1477839-v1

OREGON DEPARTMENT OF JUSTICE  
1162 Court Street NE  
Salem, OR 97301-4096  
TEL: (503) 934-4400 / FAX: (503) 378-5017

JA002826  
001701

SLC\_ DNC\_Investigation\_0013941  
TX 102-002088

**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

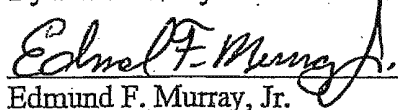
DATE: July 2, 2009

JA002827  
001702

SLC\_ DNC\_Investigation\_0013942  
TX 102-002089

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

JA002828  
001703

SLC\_ DNC\_Investigation\_0013943  
TX 102-002090

FOR THE STATE OF SOUTH CAROLINA:

Mary Frances Jowers

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)

JA002829  
001704

SLC\_ DNC\_Investigation\_0013944

TX 102-002091

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

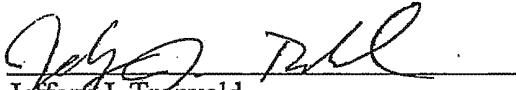
FOR THE STATE OF SOUTH DAKOTA

LAWRENCE E. LONG  
ATTORNEY GENERAL

By:

Date:

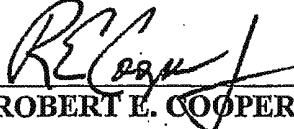
6/23/09

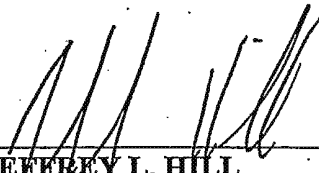
  
\_\_\_\_\_  
Jeffrey J. Tronvold

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

JA002830  
001705

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

JA002831  
001706

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  
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

JA002832  
001707

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

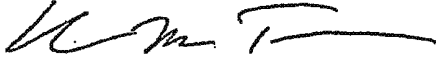
David B. Irvin  
Senior Assistant Attorney General and Chief  
Antitrust and Consumer Litigation Section

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

JA002835  
001710

FOR THE STATE OF WASHINGTON

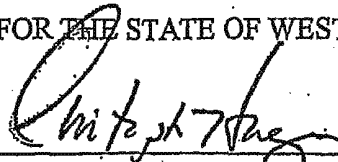
ROBERT M. MCKENNA  
Attorney General



---

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

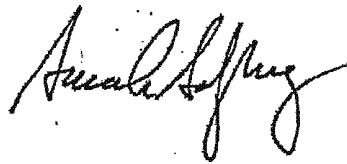
Nelle R. Rohlich

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

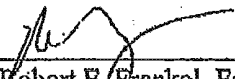


---

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

JA002839  
001714

**ON BEHALF OF RESPONDENT:**

  
Robert E. Frankel, Esq.  
Attorney ID: 67962  
9601 S. Meridian Blvd.  
Englewood, CO 80126

Counsel for DISH Network L.L.C.

JA002840  
001715

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.

JA002841  
001716

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 \_\_\_\_\_

**WRITTEN CONSENT OF THE SOLE MEMBER  
OF  
DISH NETWORK L.L.C.  
AS OF  
JULY 9, 2009**

The undersigned, being the sole member (the "Member") of DISH Network L.L.C., a Colorado limited liability company (the "Company"), in lieu of holding a meeting, hereby adopts the following resolution by written consent in accordance with the Colorado Limited Liability Company Act, as amended (the "Act"):

NOW, THEREFORE, BE IT RESOLVED, that: (a) the form, terms and provisions of the assurance of voluntary compliance with the Commonwealth of Pennsylvania, Office of Attorney General, attached hereto as Exhibit A ("Assurance of Voluntary Compliance"), be, and the same hereby are, authorized, ratified and adopted in all respects, with such non-material modifications, changes, or amendments to the terms and conditions of the Assurance of Voluntary Compliance as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Company (each, a "proper officer" and collectively, the "proper officers"), or any one of them, shall in their discretion approve; and (b) the execution and delivery of the Assurance of Voluntary Compliance by any proper officer, with such non-material modifications, changes, or amendments to the terms and conditions of the Assurance of Voluntary Compliance as any proper officer shall approve, shall constitute conclusive evidence: (i) of such approval; and (ii) that the Assurance of Voluntary Compliance has been authorized, ratified, and adopted hereby; and further

RESOLVED, that the proper officers of the Company and its subsidiaries be and each one of them acting alone or with one or more proper officers hereby is, authorized, empowered and directed to consummate in the name of and on behalf of the Company, the Assurance of Voluntary Compliance with such non-material modifications, changes, or amendments to the terms and conditions of the Assurance of Voluntary Compliance as the proper officers (or any one of them) shall in their discretion approve; and further

RESOLVED, that the proper officers of the Company be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Company, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to

enable the Company to accomplish the purposes and to carry out the intent of the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers within the terms of the foregoing resolutions be, and the same hereby are, ratified, and confirmed in all respects.

[signature page follows]

IN WITNESS WHEREOF, the undersigned, constituting the sole member of the Company, waives all notices, evidences its approval of the foregoing actions relating to the Assurance of Voluntary Compliance, and gives its full ratification thereto as of the date first written above.

**SOLE MEMBER**

DISH DBS Corporation

By: 

Name: R. Stanton Dodge

Title: Executive Vice President,  
General Counsel and Secretary

Exhibit A

Assurance of Voluntary Compliance

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

Acting by Attorney General,  
Thomas W. Corbett, Jr.

Petitioner

v.

DISH NETWORK, LLC

Respondent

Docket No.

M.D. 2009

CERTIFICATE OF SERVICE

I, Thomas J. Blessington, Senior Deputy Attorney General, Pennsylvania Office of Attorney General, Bureau of Consumer Protection, hereby certify that on the date set forth below, I caused to be served a true and correct copy of the Assurance of Voluntary Compliance in the above-captioned matter upon the person(s) listed below via first class mail, postage prepaid:

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

Helen Mac Murray, Esquire  
Shaun K. Petersen, Esquire  
Mac Murray, Petersen & Shuster LLP  
6530 West Campus Oval, Suite 210  
P.O. Box 365  
New Albany, OH 43054


JA002850  
001725

SLC\_ DNC\_Investigation\_0013965

TX 102-002112

Robert E. Frankel, Esquire  
DISH Network, L.L.C.  
9601 S. Meridian Blvd.  
Englewood, CO 80112

Dated: 7-16-09

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

JA002851  
001726

# EXHIBIT 30

# EXHIBIT 30

27

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**F I L E D**  
**AUG 10 2009**  
**CLERK'S OFFICE**  
**DETROIT**

UNITED STATES OF AMERICA,  
Plaintiff,

v.

VISION QUEST, LLC, and

BRIAN K. CAVETT, individually and as a  
member of VISION QUEST, LLC,  
Defendants.

Case No.:2:09-cv-11102-AJT-VMM

STIPULATED JUDGMENT AND  
ORDER FOR PERMANENT  
INJUNCTION

Plaintiff, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has commenced this action by filing the complaint herein, and defendants Vision Quest, L.L.C., and Brian Cavett, have waived service of the summons and complaint. Plaintiff, and the above-named Defendants, have agreed to settlement of this action.

**THEREFORE**, on the joint motion of the parties, it is hereby **ORDERED**,  
**ADJUDGED AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.
2. Plaintiff, and Defendants consent to jurisdiction and venue in this District.

3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 5(m)(1)(A), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.

5. Defendants have entered into this Stipulated Judgment and Order for Permanent Injunction ("Order") freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.

7. Defendants have agreed that this Order does not entitle Defendants to obtain attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, and Defendants further waive any rights to attorneys' fees that may arise under said provision of law.

8. Entry of this Order is in the public interest.

#### **DEFINITIONS**

For the purpose of this Order, the following definitions shall apply:

1. "Asset" means any legal or equitable interest in, or right or claim to, any real or personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. "Customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

3. "Defendants" means Vision Quest, L.L.C, and Brian Cavett.

4. "Established business relationship" means a relationship between the seller and a person based on: (a) the person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

5. "National Do Not Call Registry" means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

6. "Outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

7. "Person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

8. "Representatives" means Defendants' successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

9. "Seller" means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in

exchange for consideration, whether or not such person is under the jurisdiction of the Federal Trade Commission.

10. "Telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

11. "Telemarketing" means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

12. The "Telemarketing Sales Rule" or "Rule" means the FTC Rule entitled "Telemarketing Sales Rule," 16 C.F.R. § 310, attached hereto as Appendix A, or as it may be amended.

**ORDER**

**I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

**IT IS ORDERED** that, in connection with telemarketing, Defendants and their Representatives are hereby permanently restrained and enjoined from engaging in, causing other persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including but not limited to:

A. Initiating any outbound telephone call to any person at a telephone number on the National Do Not Call Registry unless the seller proves that:

1. the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or

2. the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telephone calls made by or on behalf of the seller; or

B. Initiating any outbound telephone call to a person when that person has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or

C. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area code that are on the National Do Not Call Registry; or

D. Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in 16 C.F.R. §310.4(b)(4)(iii), unless:

- (1) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:
  - (a) the seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;
  - (b) the seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
  - (c) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and
  - (d) includes such person's telephone number and signature. The term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law; and
- (2) in any such call to induce the purchase of any good or service, the seller or telemarketer:

- (a) allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and
- (b) within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by 16 C.F.R. § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:
  - (i) in the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:
    - (A) automatically add the number called to the seller's entity-specific Do Not Call list;
    - (B) once invoked, immediately disconnect the call; and
    - (C) be available for use at any time during the message; and
  - (ii) in the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

- (A) automatically adds the number called to the seller's entity-specific Do Not Call list;
  - (B) immediately thereafter disconnects the call; and is accessible at any time throughout the duration of the telemarketing campaign; and
  - (C) Complies with all other requirements of the Telemarketing Sales Rule and other applicable federal and state laws.
- (iii) Any call that complies with all applicable requirements of this paragraph [D] of this order shall not be deemed to violate 16 C.F.R. § 310.4(b)(1)(iv).

*Provided, however,* that if the Commission promulgates any rule that modifies or supersedes the Telemarketing Sales Rule, in whole or part, Defendants shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such rule.

## **II. CIVIL PENALTY**

### **IT IS FURTHER ORDERED** that:

A. Judgment in the amount of Six Hundred Ninety Thousand Dollars (\$690,000.00) is hereby entered against Defendants Vision Quest, L.L.C, and Brian Cavett, jointly and severally, as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A). Based upon Defendants' sworn representations in financial statements provided to the Commission, full payment for the foregoing is suspended contingent

upon the accuracy and completeness of the financial statements as set forth in subparagraph B and C of this Paragraph.

B. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and supporting documents submitted to the Commission and dated February 5, 2009, all of which include material information upon which Plaintiff relied in negotiating and agreeing to this Order.

C. If, upon motion by Plaintiff, this Court finds that Defendants failed to disclose any material asset, materially misrepresented the value of any asset, made any other material misrepresentation or omission in the sworn financial statements described above, then this Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of a civil penalty in the full amount of the judgment (\$690,000.00) by any Defendant who made such material misstatement or omission. Provided, however, that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court.

D. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to Plaintiff and the FTC their taxpayer identifying number(s) (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

E. This judgment represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). Defendants agree that the facts as alleged in

the complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Order.

F. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Plaintiff may initiate to enforce this Order.

### **III. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that for a period of five (5) years from the date of entry of this Order, Defendants, and their successors and assigns, shall maintain and make available to the Plaintiff or Commission, within seven (7) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.

### **IV. DISTRIBUTION OF ORDER BY DEFENDANTS AND ACKNOWLEDGMENT OF RECEIPT**

**IT IS FURTHER ORDERED** that Defendants, and their successors and assigns, shall within thirty (30) days of the entry of this Order, provide a copy of this Order with Appendix A to all of their owners, principals, members, officers, and directors, as well as managers, agents, servants, employees, and attorneys having decision-making authority with respect to the subject matter of this Order; secure from each such person a signed statement acknowledging receipt of a copy of this Order; and shall, within ten (10) days of complying with this Paragraph, file an affidavit with the Court and serve the Commission, by mailing a copy thereof, to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600

Pennsylvania Ave., N.W., Washington, D.C. 20580, setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Order has been provided.

#### **V. NOTIFICATION OF BUSINESS CHANGES**

**IT IS FURTHER ORDERED** that each Defendant, and its successors and assigns, shall notify the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, at least thirty (30) days prior to any change in such Defendant's business, including, but not limited to, merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change, which may affect such Defendant's obligations under this Order.

#### **VI. NOTIFICATION OF INDIVIDUAL'S AFFILIATION**

**IT IS FURTHER ORDERED** that Defendant Brian Cavett shall, for a period of five (5) years from the date of entry of this Order, notify Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, within thirty (30) days of his affiliation with a new business or employment whose activities include telemarketing or his affiliation with a new business or employment in which his duties involve the sale or offering for sale of satellite programming.

#### **VII. COMMUNICATION WITH DEFENDANTS**

**IT IS FURTHER ORDERED** that for the purposes of compliance reporting, Plaintiff and the Commission are authorized to communicate directly with Defendants.

**VIII. FEES AND COSTS**

**IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

**IX. SEVERABILITY**

**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

**X. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

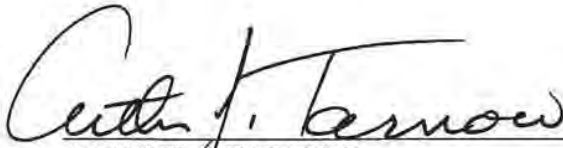
**XI. COMPLETE SETTLEMENT**

The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

**JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

**IT IS SO ORDERED.**

DATED: 8-10-09

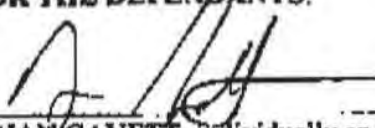
  
ARTHUR J. TARNOW  
United States District Judge

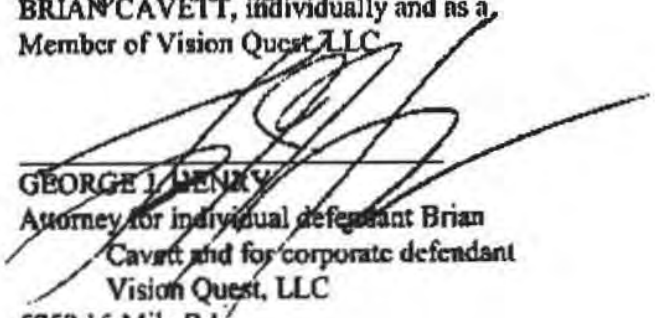
WE CONSENT TO ENTRY of the above Stipulated Judgment and Order for Permanent Injunction:

Dated: July 16, 2009

Dated: July 8, 2009

**FOR THE DEFENDANTS:**

  
BRIAN CAVETT, individually and as a  
Member of Vision Quest, LLC

  
GEORGE J. HENRY  
Attorney for individual defendant Brian  
Cavett and for corporate defendant  
Vision Quest, LLC  
5758 15 Mile Rd.  
Sterling Heights, MI 48310  
Telephone: (586) 977-9900  
Fax: (586) 977-9905  
E-mail: ghenry@consolidatedagencies.com  
P54393

*Signatures continue . . .*

**FOR PLAINTIFF THE UNITED STATES  
OF AMERICA:**

Dated: July 10, 2009

TONY WEST  
Assistant Attorney General  
Civil Division  
U.S. DEPARTMENT OF JUSTICE

TERRENCE BERG  
United States Attorney

OF COUNSEL:

  
LOIS C. GREISMAN

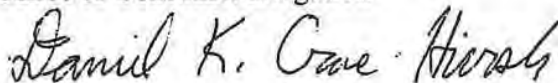
Associate Director for Marketing Practices

RUSSELL DEITCH  
GARY IVENS  
Attorneys  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580

  
CAROLYN BELL HARBIN

Assistant U.S. Attorney  
U.S. Attorney's Office for the  
Eastern District of Michigan  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226  
Telephone: 313-226-9114  
Fax: 313-226-3800  
Email: Carolyn.Bell-Harbin@usdoj.gov  
P27350

EUGENE M. THIROLF, Director  
KENNETH L. JOST, Deputy Director  
Office of Consumer Litigation



DANIEL K. CRANE-HIRSCH  
Trial Attorney  
Office of Consumer Litigation  
U.S. Department of Justice  
PO Box 386  
Washington, D.C. 20044  
Telephone: 202-616-8242  
Fax: 202-514-8742  
E-mail: Daniel.Crane-Hirsch@usdoj.gov

Federal Trade Commission

§ 310.1

**ALTERNATIVE FUELED VEHICLE BUYERS GUIDE**

**Before Selecting An Alternative Fueled Vehicle Consider:**

- ☒ **FUEL TYPE AND AVAILABILITY:** Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
- ☒ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit [www.fueleconomy.gov](http://www.fueleconomy.gov).
- ☒ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
- ☒ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.
- ☒ **EMISSIONS:** Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit [www.epa.gov/greenvehicle](http://www.epa.gov/greenvehicle).

**Additional Information**

**DEPARTMENT OF ENERGY (DOE)**  
For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, [www.afdc.doe.gov](http://www.afdc.doe.gov).

**NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)**  
For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-8393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 308.  
For more information call toll-free (877) FTC-HELP or visit [www.ftc.gov](http://www.ftc.gov).

7.5 inches

← 7 inches →

**Figure 6**

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004]

**PART 310—TELEMARKETING SALES  
RULE**

Sec.

310.1 Scope of regulations in this part.

310.2 Definitions.

310.3 Deceptive telemarketing acts or practices.

310.4 Abusive telemarketing acts or practices.

310.5 Recordkeeping requirements.

310.6 Exemptions.

310.7 Actions by states and private persons.

310.8 Fee for access to the National Do Not Call Registry.

310.9 Severability.

AUTHORITY: 15 U.S.C. 6101-6108.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless otherwise noted.

**§ 310.1 Scope of regulations in this part.**

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108, as amended.

## § 310.2

## 16 CFR Ch. I (1-1-09 Edition)

## § 310.2 Definitions.

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(1) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(2) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.

**Federal Trade Commission****§310.3**

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog

which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

**§310.3 Deceptive telemarketing acts or practices.**

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays<sup>1</sup> for goods or services offered, failing to disclose

<sup>1</sup> When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by §310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

*Continued*

**§ 310.3**

truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;<sup>2</sup>

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and

directing a customer to have a courier pick up payment or authorization for payment.

<sup>2</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with § 310.3(a)(1)(i) of this Rule.

**16 CFR Ch. I (1-1-09 Edition)**

conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

## Federal Trade Commission

## § 310.3

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,<sup>3</sup> or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.<sup>4</sup> Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;<sup>5</sup>

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

<sup>3</sup>Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

<sup>4</sup>Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

<sup>5</sup>For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§ 310.3(a)(3)(i)(A)-(G) and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(b) *Assisting and facilitating.* It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§ 310.3(a), (c) or (d), or § 310.4 of this Rule.

(c) *Credit card laundering.* Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into

**§ 310.4**

the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions.* It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

**§ 310.4 Abusive telemarketing acts or practices.**

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a

**16 CFR Ch. I (1-1-09 Edition)**

person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the

**Federal Trade Commission****§310.4**

goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a

violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature<sup>6</sup> of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer

<sup>6</sup>For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

**§ 310.4**

does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;<sup>7</sup> and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to

<sup>7</sup> For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

**16 CFR Ch. I (1-1-09 Edition)**

§ 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate § 310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with § 310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to § 310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating § 310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

**Federal Trade Commission****§310.4**

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating §310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating §310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone

number of the seller on whose behalf the call was placed<sup>6</sup>; and

(iv) The seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with §310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

<sup>6</sup>This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

**§310.5****16 CFR Ch. I (1-1-09 Edition)**

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the charitable organization on behalf of which the request is being made; and

(2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar. 29, 2004; 73 FR 51204, Aug. 29, 2008]

**§310.5 Recordkeeping requirements.**

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;<sup>9</sup>

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations or records of express informed consent or

express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

[68 FR 4669, Jan. 29, 2003, as amended at 51204, Aug. 29, 2008]

**§310.6 Exemptions.**

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

<sup>9</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule.

**Federal Trade Commission****§310.8**

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer, *provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this

exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of non-durable office or cleaning supplies; *provided*, however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of non-durable office or cleaning supplies.

**§310.7 Actions by states and private persons.**

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

**§310.8 Fee for access to the National Do Not Call Registry.**

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by

**§310.8**

§310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$54 for each area code of data accessed, up to a maximum of \$14,850; *provided*, however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

**16 CFR Ch. I (1-1-09 Edition)**

(d) Each person who pays, either directly or through another person, the annual fee set forth in §310.8(c), each person excepted under §310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under §310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under §310.8(c) must first pay \$54 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under §310.8(c) must first pay \$27 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of

**Federal Trade Commission****§311.4**

this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006; 73 FR 43355, July 25, 2008]

**§310.9 Severability.**

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

**PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL****Sec.**

- 311.1 Definitions.
- 311.2 Stayed or invalid parts.
- 311.3 Preemption.
- 311.4 Testing.
- 311.5 Labeling.
- 311.6 Prohibited acts.

**AUTHORITY:** 42 U.S.C. 6363(d).

**SOURCE:** 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

**§311.1 Definitions.**

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil, consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a re-

sult of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

**§311.2 Stayed or invalid parts.**

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

**§311.3 Preemption.**

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of §311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by §311.5 of this part.

**§311.4 Testing.**

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institutes of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API"), Publication 1509, Thirteenth Edition, January 1995. API Publication 1509, Thirteenth Edition has been updated to API Publication 1509, Fifteenth Edition, April 2002. API Publication 1509, Fifteenth Edition, April 2002, is incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials incorporated by reference may be obtained from: API, 1220 L Street, NW., Washington, DC 20005. Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or at the National Archives and Records Administration ("NARA"). For information on the availability of this material at

# EXHIBIT 31

# EXHIBIT 31

JA002880  
001755

TX 102-002142

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	Case No. 2:09-cv-11100-MOB-PJK
v.	)	
	)	STIPULATED JUDGMENT
NEW EDGE SATELLITE, INC.,	)	AND ORDER FOR
and	)	PERMANENT INJUNCTION
	)	
DEREK LAVICTOR, individually and	)	
as an officer of NEW EDGE	)	
SATELLITE, INC.,	)	
Defendants.	)	
	)	

Plaintiff, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), has commenced this action by filing the complaint herein, and defendants New Edge Satellite, Inc., and Derek LaVictor, have waived service of the summons and complaint. Plaintiff, and the above-named Defendants, have agreed to settlement of this action.

**THEREFORE**, on the joint motion of the parties, it is hereby **ORDERED**,  
**ADJUDGED AND DECREED** as follows:

**FINDINGS**

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.
2. Plaintiff, and Defendants consent to jurisdiction and venue in this District.

3. The activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. The complaint states a claim upon which relief may be granted against Defendants under Sections 5(a), 5(m)(1)(A), 13(b), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b.

5. Defendants have entered into this Stipulated Judgment and Order for Permanent Injunction (“Order”) freely and without coercion. Defendants further acknowledge that they have read the provisions of this Order and are prepared to abide by them.

6. Defendants hereby waive all rights to appeal or otherwise challenge or contest the validity of this Order.

7. Defendants have agreed that this Order does not entitle Defendants to obtain attorneys’ fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, and Defendants further waive any rights to attorneys’ fees that may arise under said provision of law.

8. Entry of this Order is in the public interest.

#### **DEFINITIONS**

For the purpose of this Order, the following definitions shall apply:

1. “Asset” means any legal or equitable interest in, or right or claim to, any real or personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. “Customer” means any person who is or may be required to pay for goods or services offered through telemarketing.

3. “Defendants” means New Edge Satellite, Inc., and Derek LaVictor.

4. “Established business relationship” means a relationship between the seller and a person based on: (a) the person’s purchase, rental, or lease of the seller’s goods or services or a financial transaction between the person and seller, within the eighteen (18) months immediately preceding the date of the telemarketing call; or (b) the person’s inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

5. “National Do Not Call Registry” means the National Do Not Call Registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

6. “Outbound telephone call” means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

7. “Person” means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

8. “Representatives” means Defendants’ successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

9. “Seller” means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration, whether or not such person is under the jurisdiction of the Federal Trade Commission.

10. “Telemarketer” means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

11. “Telemarketing” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer’s call or in a substantially similar catalog.

12. The “Telemarketing Sales Rule” or “Rule” means the FTC Rule entitled “Telemarketing Sales Rule,” 16 C.F.R. § 310, attached hereto as Appendix A, or as it may be amended.

## **ORDER**

### **I. PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

**IT IS ORDERED** that, in connection with telemarketing, Defendants and their Representatives are hereby permanently restrained and enjoined from engaging in, causing other

persons to engage in, or assisting other persons to engage in, violations of the Telemarketing Sales Rule, including but not limited to:

A. Initiating any outbound telephone call to any person at a telephone number on the National Do Not Call Registry unless the seller proves that:

1. the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or

2. the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telephone calls made by or on behalf of the seller; or

B. Initiating any outbound telephone call to a person when that person has previously stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made by or on behalf of the charitable organization for which a charitable contribution is being solicited; or

C. Initiating any outbound telephone call to a telephone number within a given area code without first paying the required annual fee for access to the telephone numbers within that area code that are on the National Do Not Call Registry; or

D. Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in 16 C.F.R. § 310.4(b)(4)(iii), unless:

- (1) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:
  - (a) the seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;
  - (b) the seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
  - (c) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and
  - (d) includes such person's telephone number and signature. The term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law; and
- (2) in any such call to induce the purchase of any good or service, the seller or telemarketer:
  - (a) allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and
  - (b) within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by 16 C.F.R. § 310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

- (i) in the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:
  - (A) automatically add the number called to the seller's entity-specific Do Not Call list;
  - (B) once invoked, immediately disconnect the call; and
  - (C) be available for use at any time during the message; and
- (ii) in the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:
  - (A) automatically adds the number called to the seller's entity-specific Do Not Call list;
  - (B) immediately thereafter disconnects the call; and is accessible at any time throughout the duration of the telemarketing campaign; and
  - (C) Complies with all other requirements of the Telemarketing Sales Rule and other applicable federal and state laws.

- (iii) Any call that complies with all applicable requirements of this paragraph [D] of this order shall not be deemed to violate 16 C.F.R. §310.4(b)(1)(iv).

*Provided, however,* that if the Commission promulgates any rule that modifies or supersedes the Telemarketing Sales Rule, in whole or part, Defendants shall comply fully and completely with all applicable requirements thereof, on and after the effective date of any such rule.

## **II. CIVIL PENALTY**

**IT IS FURTHER ORDERED** that:

A. Judgment in the amount of Five Hundred Seventy Thousand Dollars (\$570,000.00) is hereby entered against Defendants New Edge Satellite, Inc., and Derek LaVictor, jointly and severally, as a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A). Based upon Defendants' sworn representations in financial statements provided to the Commission, full payment for the foregoing is suspended contingent upon the accuracy and completeness of the financial statements as set forth in subparagraph B and C of this Paragraph.

B. Plaintiff's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' sworn financial statements and supporting documents submitted to the Commission and dated January 25, 2009, all of which include material information upon which Plaintiff relied in negotiating and agreeing to this Order.

C. If, upon motion by Plaintiff, this Court finds that Defendants failed to disclose any material asset, materially misrepresented the value of any asset, made any other material

misrepresentation or omission in the sworn financial statements described above, then this Order shall be reopened and suspension of the judgment shall be lifted for the purpose of requiring payment of a civil penalty in the full amount of the judgment (\$570,000.00) by any Defendant who made such material misstatement or omission. *Provided, however*, that in all other respects this Order shall remain in full force and effect, unless otherwise ordered by the Court.

D. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to Plaintiff and the FTC their taxpayer identifying number(s) (social security numbers or employer identification numbers) which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

E. This judgment represents a civil penalty owed to the United States Government, is not compensation for actual pecuniary loss, and, therefore, is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7). Defendants agree that the facts as alleged in the complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Order.

F. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the Plaintiff may initiate to enforce this Order.

### **III. RECORD KEEPING PROVISIONS**

**IT IS FURTHER ORDERED** that for a period of five (5) years from the date of entry of this Order, Defendants, and their successors and assigns, shall maintain and make available to

the Plaintiff or Commission, within seven (7) days of the receipt of a written request, business records demonstrating compliance with the terms and provisions of this Order.

**IV. DISTRIBUTION OF ORDER BY DEFENDANTS AND  
ACKNOWLEDGMENT OF RECEIPT**

**IT IS FURTHER ORDERED** that Defendants, and their successors and assigns, shall within thirty (30) days of the entry of this Order, provide a copy of this Order with Appendix A to all of their owners, principals, members, officers, and directors, as well as managers, agents, servants, employees, and attorneys having decision-making authority with respect to the subject matter of this Order; secure from each such person a signed statement acknowledging receipt of a copy of this Order; and shall, within ten (10) days of complying with this Paragraph, file an affidavit with the Court and serve the Commission, by mailing a copy thereof, to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, setting forth the fact and manner of its compliance, including the name and title of each person to whom a copy of the Order has been provided.

**V. NOTIFICATION OF BUSINESS CHANGES**

**IT IS FURTHER ORDERED** that each Defendant, and its successors and assigns, shall notify the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, at least thirty (30) days prior to any change in such Defendant's business, including, but not limited to, merger, incorporation, dissolution, assignment, and sale, which results in the emergence of a successor

corporation, the creation or dissolution of a subsidiary or parent, or any other change, which may affect such Defendant's obligations under this Order.

#### **VI. NOTIFICATION OF INDIVIDUAL'S AFFILIATION**

**IT IS FURTHER ORDERED** that Defendant Derek LaVictor shall, for a period of five (5) years from the date of entry of this Order, notify Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, within thirty (30) days of his affiliation with a new business or employment whose activities include telemarketing or his affiliation with a new business or employment in which his duties involve the sale or offering for sale of satellite programming.

#### **VII. COMMUNICATION WITH DEFENDANTS**

**IT IS FURTHER ORDERED** that for the purposes of compliance reporting, Plaintiff and the Commission are authorized to communicate directly with Defendants.

#### **VIII. FEES AND COSTS**

**IT IS FURTHER ORDERED** that each party to this Order hereby agrees to bear its own costs and attorneys' fees incurred in connection with this action.

#### **IX. SEVERABILITY**

**IT IS FURTHER ORDERED** that the provisions of this Order are separate and severable from one another. If any provision is stayed or determined to be invalid, the remaining provisions shall remain in full force and effect.

**X. RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

**XI. COMPLETE SETTLEMENT**

The parties hereby consent to entry of the foregoing Order which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete and final settlement of this action.

**JUDGMENT IS THEREFORE ENTERED** in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

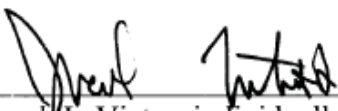
**IT IS SO ORDERED.**

DATED: August 28, 2009

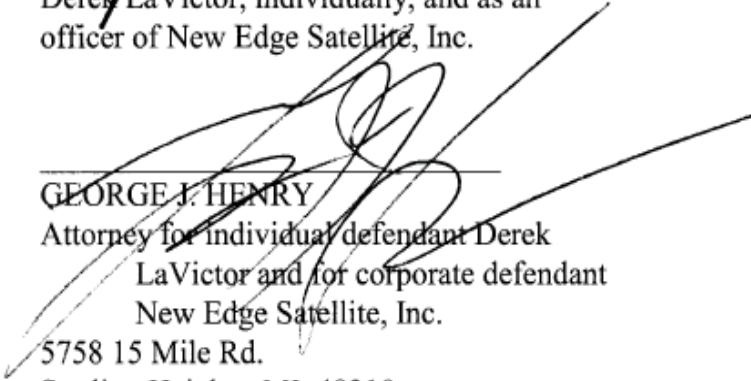
s/Marianne O. Battani  
MARIANNE O. BATTANI  
United States District Judge

**FOR THE DEFENDANTS:**

Dated: August 6, 2009

  
Derek LaVictor, individually, and as an  
officer of New Edge Satellite, Inc.

Dated: August 6, 2009

  
GEORGE J. HENRY  
Attorney for individual defendant Derek  
LaVictor and for corporate defendant  
New Edge Satellite, Inc.  
5758 15 Mile Rd.  
Sterling Heights, MI 48310  
Telephone: (586) 977-9900  
Fax: (586) 977-9905  
E-mail: ghenry@consolidatedagencies.com  
P54393

*Signatures continue . . .*

**FOR PLAINTIFF THE UNITED STATES  
OF AMERICA:**

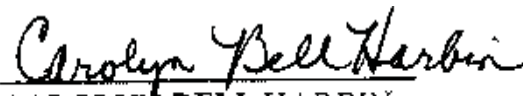
Dated: August 14, 2009

TONY WEST  
Assistant Attorney General  
Civil Division  
U.S. DEPARTMENT OF JUSTICE

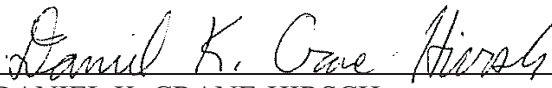
TERRENCE BERG  
United States Attorney

OF COUNSEL:  
  
LOIS C. GREISMAN  
Associate Director for Marketing Practices

RUSSELL DEITCH  
GARY IVENS  
Attorneys  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580

  
CAROLYN BELL HARBIN  
Assistant U.S. Attorney  
U.S. Attorney's Office for the  
Eastern District of Michigan  
211 W. Fort Street, Suite 2001  
Detroit, MI 48226  
Telephone: 313-226-9114  
Fax: 313-226-3800  
Email: Carolyn.Bell-Harbin@usdoj.gov  
P27350

EUGENE M. THIROLF, Director  
KENNETH L. JOST, Deputy Director  
Office of Consumer Litigation

  
DANIEL K. CRANE-HIRSCH  
Trial Attorney  
Office of Consumer Litigation  
U.S. Department of Justice  
PO Box 386  
Washington, D.C. 20044  
Telephone: 202-616-8242  
Fax: 202-514-8742  
E-mail: Daniel.Crane-Hirsch@usdoj.gov

## **APPENDIX A**

JA002895  
001770

TX 102-002157

Federal Trade Commission

§310.1

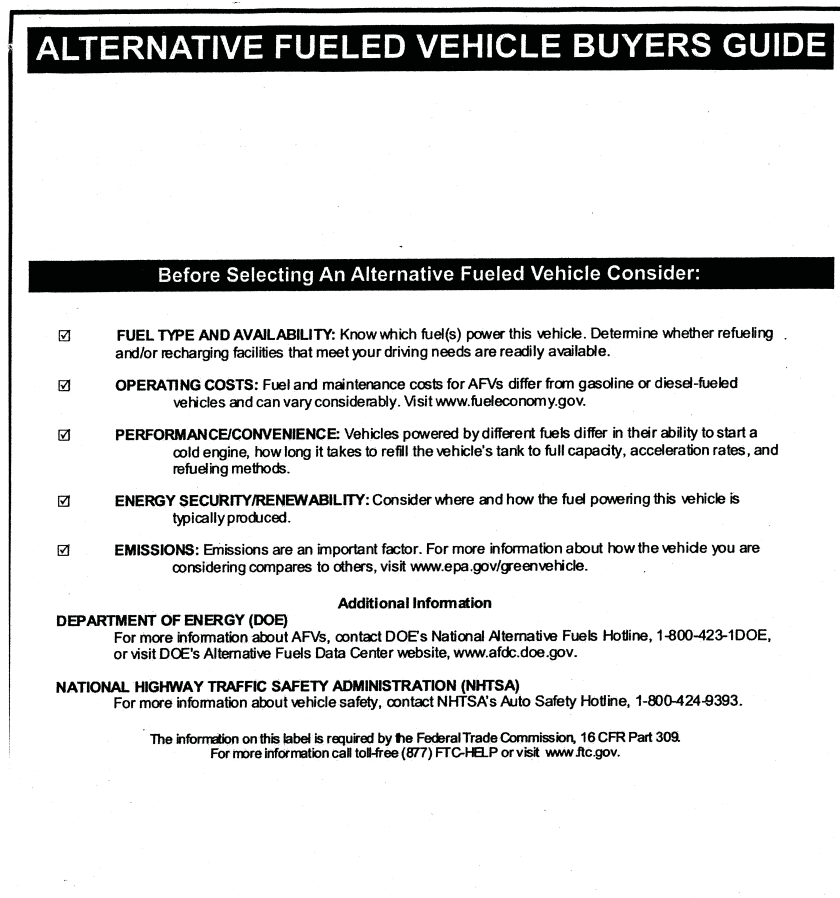


Figure 6

[60 FR 26955, May 19, 1995, as amended at 69 FR 55339, Sept. 14, 2004]

PART 310—TELEMARKETING SALES  
RULE310.9<sup>3</sup> 310.8<sup>3</sup> Call Registry. Severability. Fee for access to the National Do Not Sec.

AUTHORITY: 15 U.S.C. 6101–6108.

310.1 Scope of regulations in this part.  
otherwise noted.

SOURCE: 68 FR 4669, Jan. 29, 2003, unless 310.2 Definitions.

310.4<sup>3</sup> 310.3ices. Abusive telemarketing acts or prac- Deceptive telemarketing acts or prac- §310.1<sup>3</sup> part. Scope of regulations in this

353

Appendix

Stipulated Judgment and Permanent Order of Injunction  
AJA002896  
001771

TX 102-002158

## Federal Trade Commission

§310.1

tices. This part implements the Tele310.5 Recordkeeping requirements.  
marketing and Consumer Fraud and 310.6 Exemptions. Abuse Prevention  
Act, 15 U.S.C. 6101- 310.7 Actions by states and private persons. 6108, as amended.

**§310.2 Definitions.**

(a) *Acquirer* means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) *Attorney General* means the chief legal officer of a state.

(c) *Billing information* means any data that enables any person to access a customer's or donor's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account, or debit card.

(d) *Caller identification service* means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(e) *Cardholder* means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(f) *Charitable contribution* means any donation or gift of money or any other thing of value.

(g) *Commission* means the Federal Trade Commission.

(h) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(i) *Credit card* means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(j) *Credit card sales draft* means any record or evidence of a credit card transaction.

(k) *Credit card system* means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(l) *Customer* means any person who is or may be required to pay for goods or services offered through telemarketing.

(m) *Donor* means any person solicited to make a charitable contribution.

(n) *Established business relationship* means a relationship between a seller and a consumer based on:

(i) the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller, within the eighteen (18) months immediately preceding the date of a telemarketing call; or

(ii) the consumer's inquiry or application regarding a product or service offered by the seller, within the three (3) months immediately preceding the date of a telemarketing call.

(o) *Free-to-pay conversion* means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(p) *Investment opportunity* means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(q) *Material* means likely to affect a person's choice of, or conduct regarding, goods or services or a charitable contribution.

(r) *Merchant* means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(s) *Merchant agreement* means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(t) *Negative option feature* means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by

## Federal Trade Commission

§310.1

the seller as acceptance of the offer.

(u) *Outbound telephone call* means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

(v) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(w) *Preacquired account information* means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(x) *Prize* means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(y) *Prize promotion* means:

(i) A sweepstakes or other game of chance; or

(ii) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(z) *Seller* means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(aa) *State* means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(bb) *Telemarketer* means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(cc) *Telemarketing* means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently

than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

(dd) *Upselling* means soliciting the purchase of goods or services following an initial transaction during a single telephone call. The upsell is a separate telemarketing transaction, not a continuation of the initial transaction. An "external upsell" is a solicitation made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer. An "internal upsell" is a solicitation made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer.

### §310.3 Deceptive telemarketing acts or practices.

(a) *Prohibited deceptive telemarketing acts or practices.* It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays<sup>1</sup> for goods or services offered, failing to disclose

<sup>1</sup> When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by § 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or

*Continued*

truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer;<sup>2</sup>

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a

## Federal Trade Commission

§310.1

statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and, if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning; and the no-purchase/no-payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate;

(v) All material costs or conditions to receive or redeem a prize that is the subject of the prize promotion;

(vi) In the sale of any goods or services represented to protect, insure, or otherwise limit a customer's liability in the event of unauthorized use of the customer's credit card, the limits on a cardholder's liability for unauthorized use of a credit card pursuant to 15 U.S.C. 1643; and

(vii) If the offer includes a negative option feature, all material terms and

directing a customer to have a courier pick up payment or authorization for payment.

<sup>2</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the disclosure requirements under the Truth in Lending Act and Regulation Z shall constitute compliance with §310.3(a)(1)(i) of this Rule.

conditions of the negative option feature, including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or

condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability;

(vii) A seller's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity;

(viii) That any customer needs offered goods or services to provide protections a customer already has pursuant to 15 U.S.C. 1643; or

(ix) Any material aspect of a negative option feature including, but not limited to, the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charge(s), the date(s) the charge(s) will be submitted for payment, and the specific steps the customer must take to avoid the charge(s).

(3) Causing billing information to be submitted for payment, or collecting or attempting to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z,<sup>3</sup> or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.<sup>4</sup> Such authorization shall be deemed verifiable if any of the following means is employed:

(i) Express written authorization by the customer or donor, which includes the customer's or donor's signature;<sup>5</sup>

(ii) Express oral authorization which is audio-recorded and made available upon request to the customer or donor, and the customer's or donor's bank or other billing entity, and which evidences clearly both the customer's or donor's authorization of payment for the goods or services

## Federal Trade Commission

§310.1

or charitable contribution that are the subject of the telemarketing transaction and the customer's or donor's receipt of all of the following information:

(A) The number of debits, charges, or payments (if more than one);

(B) The date(s) the debit(s), charge(s), or payment(s) will be submitted for payment;

(C) The amount(s) of the debit(s), charge(s), or payment(s);

(D) The customer's or donor's name;

(E) The customer's or donor's billing information, identified with sufficient specificity such that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction;

<sup>3</sup> Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

<sup>4</sup> Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.*, and Regulation E, 12 CFR part 205.

<sup>5</sup> For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(F) A telephone number for customer or donor inquiry that is answered during normal business hours; and

(G) The date of the customer's or donor's oral authorization; or

(iii) Written confirmation of the transaction, identified in a clear and conspicuous manner as such on the outside of the envelope, sent to the customer or donor via first class mail prior to the submission for payment of the customer's or donor's billing information, and that includes all of the information contained in §§310.3(a)(3)(ii)(A)-(G)

and a clear and conspicuous statement of the procedures by which the customer or donor can obtain a refund from the seller or telemarketer or charitable organization in the event the confirmation is inaccurate; *provided*, however, that this means of authorization shall not be deemed verifiable in instances in which goods or services are offered in a transaction involving a free-to-pay conversion and preacquired account information.

(4) Making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution.

(ii) *Assisting and facilitating*. It is a deceptive telemarketing act or practice and a violation of this

Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

(iii) *Credit card laundering*. Except as expressly permitted by the applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant, or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(d) *Prohibited deceptive acts or practices in the solicitation of charitable contributions*. It is a fraudulent charitable solicitation, a deceptive telemarketing act or practice, and a violation of this Rule for any telemarketer soliciting charitable contributions to misrepresent, directly or by implication, any of the following material information:

(1) The nature, purpose, or mission of any entity on behalf of which a charitable contribution is being requested;

(2) That any charitable contribution is tax deductible in whole or in part;

(3) The purpose for which any charitable contribution will be used;

(4) The percentage or amount of any charitable contribution that will go to a charitable organization or to any particular charitable program;

(5) Any material aspect of a prize promotion including, but not limited to: the odds of being able to receive a prize; the nature or value of a prize; or

## Federal Trade Commission

§310.1

that a charitable contribution is required to win a prize or to participate in a prize promotion; or

(6) A charitable organization's or telemarketer's affiliation with, or endorsement or sponsorship by, any person or government entity.

**§310.4 Abusive telemarketing acts or practices.**

(a) *Abusive conduct generally.* It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person;

(5) Disclosing or receiving, for consideration, unencrypted consumer account numbers for use in

telemarketing; *provided*, however, that this paragraph shall not apply to the disclosure or receipt of a customer's or donor's billing information to process a payment for goods or services or a charitable contribution pursuant to a transaction;

(6) Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor. In any telemarketing transaction, the seller or telemarketer must obtain the express informed consent of the customer or donor to be charged for the goods or services or charitable contribution and to be charged using the identified account. In any telemarketing transaction involving preacquired account information, the requirements in paragraphs (a)(6)(i) through (ii) of this section must be met to evidence express informed consent.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the seller or telemarketer must:

(A) obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

(B) obtain from the customer his or her express agreement to be charged for the goods or services and to be charged using the account number pursuant to paragraph (a)(6)(i)(A) of this section; and,

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (a)(6)(i) of this section, the seller or telemarketer must:

(A) at a minimum, identify the account to be charged with sufficient specificity for the customer or donor to understand what account will be charged; and

(B) obtain from the customer or donor his or her express agreement to be charged for the goods or services and to be charged using the account number identified pursuant to paragraph (a)(6)(ii)(A) of this section; or

(7) Failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's carrier, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing call; *provided* that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller or charitable

## Federal Trade Commission

§310.1

organization on behalf of which a telemarketing call is placed, and the seller's or charitable organization's customer or donor service telephone number, which is answered during regular business hours.

(b) *Pattern of calls.* (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with §310.4(b)(1)(iii);

(iii) Initiating any outbound telephone call to a person when:

(A) that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered or made on behalf of the charitable organization for which a charitable contribution is being solicited; or

(B) that person's telephone number is on the "do-not-call" registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller

(i) has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature<sup>6</sup> of that person; or

(ii) has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

(iv) Abandoning any outbound telephone call. An outbound telephone call is "abandoned" under this section if a person answers it and the telemarketer

include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

does not connect the call to a sales representative within two (2) seconds of the person's completed greeting.

(v) Initiating any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in § 310.4(b)(4)(iii), unless:

(A) in any such call to induce the purchase of any good or service, the seller has obtained from the recipient of the call an express agreement, in writing, that:

(i) The seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to place prerecorded calls to such person;

(ii) The seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) Evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller; and

(iv) Includes such person's telephone number and signature;<sup>7</sup> and

(B) In any such call to induce the purchase of any good or service, or to induce a charitable contribution from a member of, or previous donor to, a non-profit charitable organization on whose behalf the call is made, the seller or telemarketer:

(i) Allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call; and

(ii) Within two (2) seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures required by §310.4(d) or (e), followed immediately by a disclosure of one or both of the following:

(A) In the case of a call that could be answered in person by a consumer, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a Do Not Call request pursuant to

<sup>7</sup> For purposes of this Rule, the term "signature" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

<sup>6</sup> For purposes of this Rule, the term "signature" shall

## Federal Trade Commission

§310.1

§310.4(b)(1)(iii)(A) at any time during the message. The mechanism must:

(1) Automatically add the number called to the seller's entity-specific Do Not Call list;

(2) Once invoked, immediately disconnect the call; and

(3) Be available for use at any time during the message; and

(B) In the case of a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a Do Not Call request pursuant to §310.4(b)(1)(iii)(A). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(1) Automatically adds the number called to the seller's entity-specific Do Not Call list;

(2) Immediately thereafter disconnects the call; and

(3) is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) Complies with all other requirements of this part and other applicable federal and state laws.

(C) Any call that complies with all applicable requirements of this paragraph (v) shall not be deemed to violate §310.4(b)(1)(iv) of this part.

(D) This paragraph (v) shall not apply to any outbound telephone call that delivers a prerecorded healthcare message made by, or on behalf of, a covered entity or its business associate, as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

(2) It is an abusive telemarketing act or practice and a violation of this Rule for any person to sell, rent, lease, purchase, or use any list established to comply with §310.4(b)(1)(iii)(A), or maintained by the Commission pursuant to §310.4(b)(1)(iii)(B), for any purpose except compliance with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on such lists.

(3) A seller or telemarketer will not be liable for violating §310.4(b)(1)(ii) and (iii) if it can demonstrate that, as part of the seller's or telemarketer's routine business practice:

(i) It has established and implemented written procedures to comply with §310.4(b)(1)(ii) and (iii);

(ii) It has trained its personnel, and any entity assisting in its compliance, in the procedures

established pursuant to §310.4(b)(3)(i);

(iii) The seller, or a telemarketer or another person acting on behalf of the seller or charitable organization, has maintained and recorded a list of telephone numbers the seller or charitable organization may not contact, in compliance with §310.4(b)(1)(iii)(A);

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to §310.4(b)(3)(iii) or §310.4(b)(1)(iii)(B), employing a version of the "do-not-call" registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

(v) The seller or a telemarketer or another person acting on behalf of the seller or charitable organization, monitors and enforces compliance with the procedures established pursuant to §310.4(b)(3)(i); and

(vi) Any subsequent call otherwise violating §310.4(b)(1)(ii) or (iii) is the result of error.

(4) A seller or telemarketer will not be liable for violating §310.4(b)(1)(iv) if:

(i) The seller or telemarketer employs technology that ensures abandonment of no more than three (3) percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues.

(ii) The seller or telemarketer, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(iii) Whenever a sales representative is not available to speak with the person answering the call within two (2) seconds after the person's completed greeting, the seller or telemarketer promptly plays a recorded message that states the name and telephone number of the seller on whose behalf the call was placed<sup>8</sup>; and

(iv) The seller or telemarketer, in accordance with §310.5(b)-(d), retains records establishing compliance with §310.4(b)(4)(i)-(iii).

(c) *Calling time restrictions.* Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between

## Federal Trade Commission

§310.1

8:00 a.m. and 9:00 p.m. local time at the called person's location.

(d) *Required oral disclosures in the sale of goods or services.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call or internal or external upsell to induce the purchase of goods or services to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the seller;
- (2) That the purpose of the call is to sell goods or services;
- (3) The nature of the goods or services; and
- (4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered and that any purchase or payment will not increase the person's chances of winning. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion; *provided*, however, that, in any internal upsell for the sale of goods or services, the seller or telemarketer must provide the disclosures listed in this section only to the extent that the information in the upsell differs from the disclosures provided in the initial telemarketing transaction.

<sup>8</sup>This provision does not affect any seller's or telemarketer's obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

(e) *Required oral disclosures in charitable solicitations.* It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer, in an outbound telephone call to induce a charitable contribution, to fail to disclose truthfully, promptly, and in a clear and conspicuous manner to the person receiving the call, the following information:

- (1) The identity of the charitable organization on behalf of which the request is being made; and
- (2) That the purpose of the call is to solicit a charitable contribution.

[68 FR 4669, Jan. 29, 2003, as amended at 69 FR 16373, Mar.

29, 2004; 73 FR 51204, Aug. 29, 2008]

**§310.5 Recordkeeping requirements.**

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

- (1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;
- (2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;
- (3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;<sup>9</sup>
- (4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales or solicitations; *provided*, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and
- (5) All verifiable authorizations or records of express informed consent or

<sup>9</sup>For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with §310.5(a)(3) of this Rule. express agreement required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by §310.5(a) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by §310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by written agreement, allocate responsibility between themselves for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be,

## Federal Trade Commission

§310.1

need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such agreement exists, the seller shall be responsible for complying with §§310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with §310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

[68 FR 4669, Jan. 29, 2003, as amended at 51204, Aug. 29, 2008]

**§310.6 Exemptions.**

(a) Solicitations to induce charitable contributions via outbound telephone calls are not covered by §310.4(b)(1)(iii)(B) of this Rule.

(b) The following acts or practices are exempt from this Rule:

(1) The sale of pay-per-call services subject to the Commission's Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 CFR Part 308, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(2) The sale of franchises subject to the Commission's Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," ("Franchise Rule") 16 CFR Part 436, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(3) Telephone calls in which the sale of goods or services or charitable solicitation is not completed, and payment or authorization of payment is not required, until after a face-to-face sales or donation presentation by the seller or charitable organization, *provided*, however, that this exemption does not apply to the requirements of §§310.4(a)(1), (a)(7), (b), and (c);

(4) Telephone calls initiated by a customer or donor that are not the result of any solicitation by a seller, charitable organization, or telemarketer,

*provided*, however, that this exemption does not apply to any instances of upselling included in such telephone calls;

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided*, however, that this exemption does not apply to calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or advertisements involving goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls;

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in §310.3(a)(1) of this Rule, for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in §310.3(d) of this Rule for any requested charitable contribution; *provided*, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, business opportunities other than business arrangements covered by the Franchise Rule, or goods or services described in §§310.3(a)(1)(vi) or 310.4(a)(2)-(4); or to any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided*, however, that §310.4(b)(1)(iii)(B) and §310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

**§310.7 Actions by states and private persons.**

(a) Any attorney general or other officer of a state authorized by the state to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to

## Federal Trade Commission

§310.1

its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, and shall include a copy of the state's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the state or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this Section shall prohibit any attorney general or other authorized state official from proceeding in state court on the basis of an alleged violation of any civil or criminal statute of such state.

**§310.8 Fee for access to the National Do Not Call Registry.**

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under §310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by §310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §310.4(b)(1)(iii)(B)(i) or (ii), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is \$54 for each area code of data accessed, up to a maximum of \$14,850; *provided*,

however, that there shall be no charge to any person for accessing the first five area codes of data, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) Each person who pays, either directly or through another person, the annual fee set forth in §310.8(c), each person excepted under §310.8(c) from paying the annual fee, and each person excepted from paying an annual fee under §310.4(b)(1)(iii)(B), will be provided a unique account number that will allow that person to access the registry data for the selected area codes at any time for the twelve month period beginning on the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, each person required to pay the fee under §310.8(c) must first pay \$54 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, each person required to pay the fee under §310.8(c) must first pay \$27 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent

## Federal Trade Commission

§310.1

telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

consisting of such re-refined or otherwise processed used oil and new oil or additives.

(d) *Recycled oil* means processed used oil that the manufacturer has determined, pursuant to section 311.4 of this part, is substantially equivalent to new oil for use as engine oil.

(e) *Used oil* means any synthetic oil or oil that has been refined from crude oil, which has been used and, as a re

[68 FR 45144, July 31, 2003, as amended at 69 FR 45585, July 30, 2004; 70 FR 43280, July 27, 2005; 71 FR 43054, July 31, 2006; 73 FR 43355, July 25, 2008]

**§310.9 Severability.**

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

## PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL

Sec.

311.1 Definitions.

311.2 Stayed or invalid parts.

311.3 Preemption.

311.4 Testing.

311.5 Labeling.

311.6 Prohibited acts.

AUTHORITY: 42 U.S.C. 6363(d).

SOURCE: 60 FR 55421, Oct. 31, 1995, unless otherwise noted.

**§311.1 Definitions.**

As used in this part:

(a) *Manufacturer* means any person who re-refines or otherwise processes used oil to remove physical or chemical impurities acquired through use or who blends such re-refined or otherwise processed used oil with new oil or additives.

(b) *New oil* means any synthetic oil or oil that has been refined from crude oil and which has not been used and may or may not contain additives. Such term does not include used oil or recycled oil.

(c) *Processed used oil* means re-refined or otherwise processed used oil or blend of oil,

## Federal Trade Commission

§310.1

sult of such use, has been contaminated by physical or chemical impurities.

(f) *Re-refined oil* means used oil from which physical and chemical contaminants acquired through use have been removed.

**§311.2 Stayed or invalid parts.**

If any part of this rule is stayed or held invalid, the rest of it will remain in force.

**§311.3 Preemption.**

No law, regulation, or order of any State or political subdivision thereof may apply, or remain applicable, to any container of recycled oil, if such law, regulation, or order requires any container of recycled oil, which container bears a label in accordance with the terms of §311.5 of this part, to bear any label with respect to the comparative characteristics of such recycled oil with new oil that is not identical to that permitted by §311.5 of this part.

**§311.4 Testing.**

To determine the substantial equivalency of processed used oil with new oil for use as engine oil, manufacturers or their designees must use the test procedures that were reported to the Commission by the National Institutes of Standards and Technology ("NIST") on July 27, 1995, entitled "Engine Oil Licensing and Certification System," American Petroleum Institute ("API"), Publication 1509, Thirteenth Edition, January 1995. API Publication 1509, Thirteenth Edition has been updated to API Publication 1509, Fifteenth Edition, April 2002. API Publication 1509, Fifteenth Edition, April 2002, is incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials incorporated by reference may be obtained from: API, 1220 L Street, NW., Washington, DC 20005. Copies may be inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or at the National Archives and Records Administration ("NARA"). For information on the availability of this material at

353

Appendix

Stipulated Judgment and Permanent Order of Injunction  
A

JA002908  
001783

TX 102-002170