

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 02:30 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 81704

District Court No.
A-17-763397-B

JOINT APPENDIX

Vol. 21 of 85

[JA004540-JA004770]

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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

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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 & 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 & 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>
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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
Evidentiary Hearing SLC Exhibit 102²			

¹ 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.

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

ZIONS FIRST NATIONAL BANK
Broadway Office 310 South Main
Salt Lake City, Utah 84101

2995

31-5/1240
3

5/99

DAVID C. BLUM, P.C.
ATTORNEY AT LAW

10 WEST 100 SOUTH SUITE 425
SALT LAKE CITY, UT 84101
801-238-6500

12/11/2007

PAY TO THE
ORDER OF

Echostar Satellite LLC

**10.00

\$

Ten and 00/100*****

DOLLARS

Echostar Satellite LLC

MEMO SSN garnishment

AUTHORIZED SIGNATURE

⑈002995⑈ ⑆124000054⑆ 003 15731 0⑈

GUARANTY SAFETY

DAVID C. BLUM, P.C.

Echostar Satellite LLC

ATTORNEY AT LAW

12/11/2007

2995

SSN garnishment fee

10.00

Business Account SSN garnishment

10.00

Krakauer--00019129

Confidential

JA004540
DISH-Paper-008033

SLC_ DNC_Investigation_0015389
TX 102-003802

CONFIDENTIAL MAIL



7003 2260 0003 2433 0692

Return Receipt Requested

First Class Mail

From:

David C. Blum
CRIPPEN & CLINE, L.C.
10 West 100 South, Suite 425
Salt Lake City, Utah 84101

TO:

Corporation Service Company
Registered Agent for Echostar Satellite, LLC.
2180 South 1300 East, Suite 650
Salt Lake City, UT 84106

Confidential-I

JA004541
DISH-Paper-008034

SLC_ DNC_Investigation_0015390
TX 102-003803



COPY

Retail Services
9601 S. Meridian Blvd.
Englewood, Colorado 80112

November 7, 2007

Via Facsimile: 949-643-7173
Via E-Mail: alex@yourdish.tv

Mr. Alex Tehranchi
Satellite Systems Network
9831 Irvine Center Drive
Irvine, CA 92618

Re: Notice of Alleged Complaint "Do Not Call" Violation

Dear Mr. Tehranchi:

Please be advised that a complaint has been filed by Ms. Jeanette Payne, a consumer, against EchoStar Satellite L.L.C. ("DISH Network"). Ms. Payne is alleging that she had received a call to her home phone number of 317-845-8854 with a caller identification of 800-338-3409. The call was made on September 21, 2006 from a sales representative named Justin Blake. Ms. Payne believes this attempt to contact to be in violation of Telecommunications Consumer Protection Act regulations.

Pursuant to Section 9.1 of your Retailer Agreement you are required, among other things, to comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives and orders. Immediately, you must add this consumer information to your "Do Not Call" registry.

Within five (5) days of receipt of this letter please provide EchoStar Legal Department the specifics of this allegation and any and all corrective measures implemented for the purpose of eliminating this type of consumer interaction. Also provide proof of your compliance with all outbound telemarketing laws, including, but not limited to your Do Not Call Policy, Proof of Do Not Call Registrations, a list of Affiliate Companies with contact information and Outbound Telemarketing Scripts and Caller Identification Numbers for you and your affiliates. This information should be forwarded to:

Echostar Satellite L.L.C.
Retail Services - Reji Musso
9601 S. Meridian Blvd.
Englewood, CO 80112

Additional incidences of this nature may result in disciplinary action up to and including termination of your Retailer Agreement without further warning, as deemed appropriate in our sole and absolute discretion. Dish Network hereby requests that Satellite Systems Network defend and indemnify Dish Network from and against any and all costs that Dish Network incurs therein.

Page 1 of 2

Krakauer--00019131


Confidential

JA004542
DISH-Paper-008035

SLC_ DNC_Investigation_0015391
TX 102-003804

This letter is without prejudice to any rights and remedies that may be available to EchoStar at law, in equity, under contract (including without limitation, its rights to chargeback any and all amounts owing to it pursuant to Section 6 of the Agreement), or otherwise.

Thank you for your attention to this matter.



Robb Origer
Vice President
Retail Services
EchoStar Satellite L.L.C.

cc: Emily Pastorius



COPY

Retail Audit and Risk
9601 S. Meridian Blvd.
Englewood, Colorado 80112

January 17, 2007

Via Facsimile: 949-643-7173

Mr. Alex Tehranchi
Satellite Systems Network
9831 Irvine Center Drive
Irvine, CA 92618

Re: Notice of Alleged Complaint "Do Not Call" Violation

Dear Mr. Tehranchi:

Please be advised that a complaint has been filed by Jeffrey Mitchell, a consumer, against EchoStar Satellite L.L.C. ("DISH Network"). Mr. Mitchell is alleging that he has received frequent and unsolicited calls to his home numbers of 801-224-3754 and 801-224-3764 for the express purpose of selling DISH Network programming and services. Mr. Mitchell has opened the following account, 8255909453231570 (11/7/05), in an effort to positively identify the retailer associated with the alleged violation. Mr. Mitchell believes these events are in violation of Telecommunications Consumer Protection Act regulations.

Pursuant to Section 9.1 of your Retailer Agreement you are required, among other things, to comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives and orders. Immediately, you must add this consumer information to your "Do Not Call" registry.

Within five (5) days of receipt of this letter, you must completely and thoroughly address the circumstances surrounding the allegation(s) and furnish information relative to the specific circumstance that has created this issue and the corrective actions that will eliminate recurrences for Satellite Systems Network providing a written explanation and documentation of the same to EchoStar. This information should be forwarded to:

Echostar Satellite L.L.C.
Retail Services – Reji Musso
9601 S. Meridian Blvd.
Englewood, CO 80112

Additional incidences of this nature may result in disciplinary action up to and including termination of your Retailer Agreement without further warning, as deemed appropriate in our sole and absolute discretion. Dish Network hereby requests that Satellite Systems Network defend and indemnify Dish Network from and against any and all costs that Dish Network incurs therein.

This letter is without prejudice to any rights and remedies that may be available to EchoStar at law, in equity, under contract (including without limitation, its rights to chargeback any and all amounts owing to it pursuant to Section 6 of the Agreement), or otherwise.

Thank you for your attention to this matter.



Robb Origer
Director, Retail Services
EchoStar Satellite L.L.C.

cc: Dana Steele

Confidential-

Krakauer--00019135

JA004546
DISH-Paper-008039

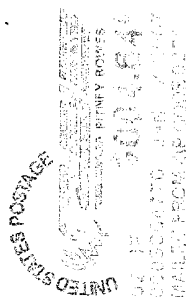
SLC_ DNC_Investigation_0015395
TX 102-003808

SAMINI & ASSOCIATES, APC

1201 Dove St, Suite 400
Newport Beach, California 92660

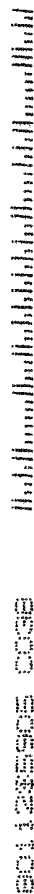


7005 1620 0000 6850 6324



ECHOSTAR COMMUNICATIONS
9601 S. Meridian Boulevard
Englewood, Colorado 80112

Attention: Mr. Reji J. Musso



SAMINI & ASSOCIATES, APC
Attorneys at Law

January 9, 2007

VIA U.S. MAIL – CERTIFIED
RETURN RECEIPT REQUESTED

ECHOSTAR COMMUNICATIONS

9601 S. Meridian Boulevard
Englewood, Colorado 80112

Attention: Mr. Reji J. Musso

Re: *Satellite Systems Network/Fisher Complaint*
Your Reference: Unknown
Our Reference: SSN.100

Gentlemen:

We represent Satellite Systems Network, LLC ("SSN"). We are in receipt of your correspondence dated December 28, 2006 wherein you raise certain complaints lodged by Mr. Gregory Fisher against SSN. A copy of your December 28, 2006 correspondence is attached for your reference.

SSN has requested that we investigate the alleged complaint and respond to your correspondence. Upon review of your correspondence, we have verified that Mr. Fisher was a customer of SSN. However, we require information in addition to what has been provided in your correspondence. Accordingly, we request that you contact the undersigned at your earliest convenience so that we may address the matters set forth in your correspondence.

1201 Dove Street, Suite 400, Newport Beach, California 92660
Tel. 949.724.0900 | Fax. 949.724.0901

X 304

Krakauer--00019136

Confidential-

JA004547
DISH-Paper-008040

SLC_ DNC_Investigation_0015396
TX 102-003809

ECHOSTAR COMMUNICATIONS

Mr. Reji J. Musso

January 9, 2007

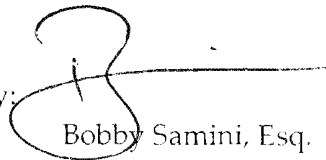
Page 2 of 2

Should you have any comments regarding the foregoing, please contact the undersigned.

Very truly yours,

SAMINI & ASSOCIATES, APC

By:



Bobby Samini, Esq.

BS:

Enclosures

Page 2

Krakauer--00019137

Confidential-

JA004548
DISH-Paper-008041

SLC_ DNC_Investigation_0015397
TX 102-003810



COPY

Retail Audit and Risk
9601 S. Meridian Blvd.
Englewood, Colorado 80112

December 28, 2006

Via Facsimile: 949-643-7173

Mr. Alex Tehranchi
Satellite Systems Network
9831 Irvine Center Drive
Irvine, CA 92618

Re: Notice of Complaint "Do Not Call" Violation

Dear Mr. Tehranchi:

The purpose of this letter is to inform you that Mr. Gregory Fisher, a consumer, has filed a complaint against EchoStar Satellite Corporation ("DISH Network") which has been connected to your company through the consumer's investigation. Mr. Fisher has alleged that he has received communication to his telephone numbers, 937-681-3222, 937-312-1448 and 937-681-3224, with a subsequent sale generated on 11/4/05. The calls have been traced to you and are solicitations for DISH Network programs and services. Mr. Fisher believes these events are in violation of Telecommunications Consumer Protection Act regulations.

Pursuant to Section 9.1 of your Retailer Agreement you are required, among other things, to comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives and orders. Immediately, you must add this consumer information to your "Do Not Call" registry.

Within five (5) days of receipt of this letter, you must completely and thoroughly address the circumstances surrounding the allegation(s) and furnish information relative to the specific circumstance that has created this issue and the corrective actions that will eliminate recurrences for Satellite Systems Network providing a written explanation and documentation of the same to EchoStar. This information should be forwarded to:

Echostar Satellite L.L.C.
Retail Services – Reji Musso
9601 S. Meridian Blvd.
Englewood, CO 80112

Additional incidences of this nature may result in disciplinary action up to and including termination of your Retailer Agreement without further warning, as deemed appropriate in our sole and absolute discretion. Dish Network hereby requests that Satellite Systems Network defend and indemnify Dish Network from and against any and all costs that Dish Network incurs therein.

This letter is without prejudice to any rights and remedies that may be available to EchoStar at law, in equity, under contract (including without limitation, its rights to chargeback any and all amounts owing to it pursuant to Section 6 of the Agreement), or otherwise.

Thank you for your attention to this matter.



Robb Origer
Director, Retail Services
EchoStar Satellite L.L.C.

cc: Dana Steele

SAMINI & ASSOCIATES, APC
Attorneys at Law

January 9, 2007

VIA U.S. MAIL - CERTIFIED
RETURN RECEIPT REQUESTED

ECHOSTAR COMMUNICATIONS

9601 S. Meridian Boulevard
Englewood, Colorado 80112

Attention: Mr. Reji J. Musso

Re: *Satellite Systems Network/Fisher Complaint*
Your Reference: Unknown
Our Reference: SSN.100

Gentlemen:

We represent Satellite Systems Network, LLC ("SSN"). We are in receipt of your correspondence dated December 28, 2006 wherein you raise certain complaints lodged by Mr. Gregory Fisher against SSN. A copy of your December 28, 2006 correspondence is attached for your reference.

SSN has requested that we investigate the alleged complaint and respond to your correspondence. Upon review of your correspondence, we have verified that Mr. Fisher was a customer of SSN. However, we require information in addition to what has been provided in your correspondence. Accordingly, we request that you contact the undersigned at your earliest convenience so that we may address the matters set forth in your correspondence.

1201 Dove Street, Suite 400, Newport Beach, California 92660
Tel 949.724.0900 | Fax 949.724.0901

Krakauer--00019140

Confidential-

JA004551
DISH-Paper-008044

SLC_ DNC_Investigation_0015400
TX 102-003813

ECHOSTAR COMMUNICATIONS

Mr. Reji J. Musso

January 9, 2007

Page 2 of 2

Should you have any comments regarding the foregoing, please contact the undersigned.

Very truly yours,

SAMINI & ASSOCIATES, APC

By: 

Bobby Samini, Esq.

BS:

Enclosures

Krakauer--00019141

Confidential-

JA004552
DISH-Paper-008045

SLC_ DNC_Investigation_0015401
TX 102-003814



Retail Audit and Risk
9601 S. Meridian Blvd.
Englewood, Colorado 80112

December 28, 2006

Via Facsimile: 949-643-7173

Mr. Alex Tehranchi
Satellite Systems Network
9831 Irvine Center Drive
Irvine, CA 92618

Re: Notice of Complaint "Do Not Call" Violation

Dear Mr. Tehranchi:

The purpose of this letter is to inform you that Mr. Gregory Fisher, a consumer, has filed a complaint against EchoStar Satellite Corporation ("DISH Network") which has been connected to your company through the consumer's investigation. Mr. Fisher has alleged that he has received communication to his telephone numbers, 937-681-3222, 937-312-1448 and 937-681-3224, with a subsequent sale generated on 11/4/05. The calls have been traced to you and are solicitations for DISH Network programs and services. Mr. Fisher believes these events are in violation of Telecommunications Consumer Protection Act regulations.

Pursuant to Section 9.1 of your Retailer Agreement you are required, among other things, to comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives and orders. Immediately, you must add this consumer information to your "Do Not Call" registry.

Within five (5) days of receipt of this letter, you must completely and thoroughly address the circumstances surrounding the allegation(s) and furnish information relative to the specific circumstance that has created this issue and the corrective actions that will eliminate recurrences for Satellite Systems Network providing a written explanation and documentation of the same to EchoStar. This information should be forwarded to:

Echostar Satellite L.L.C
Retail Services – Reji Musso
9601 S. Meridian Blvd.
Englewood, CO 80112

Additional incidences of this nature may result in disciplinary action up to and including termination of your Retailer Agreement without further warning, as deemed appropriate in our sole and absolute discretion. Dish Network hereby requests that Satellite Systems Network defend and indemnify Dish Network from and against any and all costs that Dish Network incurs therein.

This letter is without prejudice to any rights and remedies that may be available to EchoStar at law, in equity, under contract (including without limitation, its rights to chargeback any and all amounts owing to it pursuant to Section 6 of the Agreement), or otherwise.

Thank you for your attention to this matter.

Robb Origer
Director, Retail Services
EchoStar Satellite L.L.C.

cc: Dana Steele

7005 1620 0000 6850 6374

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
<div> <div>Postage</div> <div>\$ 39</div> </div> <div> <div>Certified Fee</div> <div></div> </div> <div> <div>Return Receipt Fee (Endorsement Required)</div> <div></div> </div> <div> <div>Restricted Delivery Fee (Endorsement Required)</div> <div></div> </div> <div> <div>Total Postage & Fees</div> <div>\$</div> </div>	
<div> <div>Sent To</div> <div>ECHOSTAR COMMUNICATIONS A/E MR. REG. MUSH</div> </div> <div> <div>Street, Apt. No.</div> <div>or PO Box No. 9601 S. Meridian Boulevard</div> </div> <div> <div>City, State, ZIP+4</div> <div>Englewood, Colorado 80112</div> </div>	
<div> <div>PS Form 3800, June 2002</div> <div>See Reverse for Instructions</div> </div>	

Krakauer--00019144

Confidential-

JA004555
DISH-Paper-008048

SLC_ DNC_Investigation_0015404
TX 102-003817

December 13, 2006

Mr. Gregory Fisher
7412 Barr Circle
Dayton OH 45459-3507

**Re: DNC Investigation – 8255909366545967 – 8255909366545967 – 8255909367127310 –
8255909367167019 – 8255909367184303 – 8255909367967947 – 8255909367974257 –
8255909367986046 – 8255909368018385 – 8255909368019326 and 8255909690009680**

Dear Mr. Fisher,

Thank you for your call December 13, 2006, regarding a solicitation phone call to your residence.

DISH Network subscribes to a database that allows us to track all of our outbound phone calls. This database also contains National, State and individual company Do Not Call list information. After researching this database, we have determined that DISH Network has not placed a solicitation call to your home.

We have researched our internal Do Not Call logs and enclosed a copy of your records.

Per your request, we have added all three phone numbers you have used to set up your various account's at DISH Network to our internal Do Not Call List. The numbers we have added are (937) 681-3222, (937) 312-1448 and (937) 681- 3224 along with your name to our DISH Network Do Not Call list for the eleven accounts that you set up and cancelled. This will take effect no later than January 13, 2007 (thirty days from your initial request). After this date, you will not receive any solicitation calls from DISH Network.

DISH Network does not share our company Do Not Call list with retailers, sales partners or any other affiliates. Therefore, based on our investigation – you set up your eleven accounts with various Sales Partners and then called Dish Network directly to cancel the accounts before the installation of services.

Please be aware that we share your concern regarding unwanted calls, and we understand what a nuisance they can be. DISH Network does not condone the practice of making solicitation phone calls to those who have indicated that they do not wish to receive them.

Our policy is to actively seek the identity of solicitors who violate the Telephone Consumer Protection Act (TCPA). If a DISH Network retailer is not in compliance with the TCPA, we will implement a process which includes written documentation and internal sanctions. Based on the attached information it appears that you are setting these accounts up knowingly and willfully with various sales partners. If you receive calls from a solicitor and you do not enter into a business relationship with them, and you ask them to remove your name from their internal Do Not Call List this should eliminate some of the issues.

Additionally, if you continue to receive solicitation calls, we encourage you to add your name to the National and State Do Not Call lists. The number is 888-382-1222 or you can log on to the web site at www.donotcall.gov for the National List. You can call your local state government for information on your state Do Not Call List.

Krakauer--00019145

Confidential-

JA004556
DISH-Paper-008049

SLC_ DNC_ Investigation_0015405
TX 102-003818

Please advise me if I can be of any further assistance to you by contacting me at (720) 514-7749.

Sincerely,

Deb Bowman
TCPA Investigations
DISH Network
deborah.bowman@echostar.com

Enclosure

Cc: Timothy Lanoie

Krakauer--00019146

Confidential-

JA004557
DISH-Paper-008050

SLC_ DNC_Investigation_0015406
TX 102-003819

JEFFREY MITCHELL
ACCOUNT INFO

Account #	First Name	Last Name	Date Established	House #	Street	Apt #	City	State	Zip	Tel #	Partner
8255909453231570	JeffreyJ	Mitchell	11/5/2005	1923	N 280 W		Orem	UT	84057-2130	801-224-3754	Satellite Systems Network
8255909453291012	Jeffrey	Mitchell	12/20/2005	1923	N 280 W		Orem	UT	84057-2130	801-224-3754	American Satellite
8255909453335876	Jeff	Mitchell	1/26/2006	1923	N 280 W	1/2	Orem	UT	84057-2130	801-224-3764	United Satellite
8255909453338508	Jeffrey	Mitchell	1/27/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3754	American Satellite
8255909453351428	JeffreyJ	Mitchell	2/6/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3764	Sterling
8255909453351725	Jeffrey	Mitchell	2/7/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3754	United Satellite
8255909453359181	Jeffrey	Mitchell	2/13/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3754	American Satellite
8255909453384973	Jeffrey	Mitchell	3/7/2006	1925	N 280 W		Orem	UT	84057-2130	801-224-3764	Dish Pronto
8255909453418219	JeffreyJ	Mitchell	3/31/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3754	Marketing Guru
8255909453468768	Jeffery	Mitchell	5/12/2006	1929	N 280 W		Orem	UT	84057-2130	801-224-3754	Brandvein Companies,
8255909453494160	Jeff	Mitchell	6/2/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3764	American Satellite
8255909453508829	JeffreyR	Mitchell	6/12/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3764	American Satellite
8255909453549807	JEFFREYJ	Mitchell	7/13/2006	1923	N 280 W		Orem	UT	84057-2130	801-224-3754	On Site East LLC
8255909453550292	Jeffery	Mitchell	7/14/2006	1923	N 280 W	#1	Orem	UT	84057-2130	801-224-3754	Sterling

#14 - Cancelled through R-Connect - 30 days

Krakauer--00019147

ATTORNEY/CLIENT PRIVILEGE
January 2007

Confidential-

JA004558
DISH-Paper-008051

SLC_ DNC_Investigation_0015407
TX 102-003820

Confidential-I

Krakauer--00019148

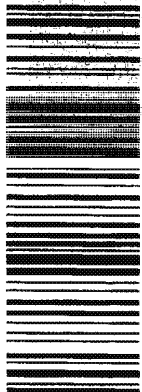
SLC_ DNC_ Investigation_0015408
TX 102-003821

ECHOSTAR

ECHOSTAR SATELLITE CORPORATION

Retail Service Audit
9601 S Meridian Blvd.
Englewood, Colorado 80112

CERTIFIED MAIL™



7005 1160 0003 7177 9972

NOT DELIVERABLE
AS ADDRESSED,
UNABLE TO FORWARD

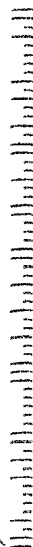
Handwritten: DIRE 135

Alex Tehr
Satellite S
135 Colur
Aliso Vie

927 N1 1 706 C 02 07/23/06 -UD
NOTIFY SENDER OF NEW ADDRESS
DIRECT SATELLITE NETWORK
9831 IRVINE CENTER DR
IRVINE CA 92618-4334

BC: 92618433499 *0420-09509-18-09

92618433499



JA004559
DISH-Paper-008052

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Alex Tehranchi
Satellite Systems Network
135 Columbia
Aliso Viejo, CA 92656

2. Article Number
(Transfer from service label)

7005 1160 0003 7177 9972

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

Krakauer--00019149

Confidential-

JA004560
DISH-Paper-008053

SLC_ DNC_Investigation_0015409
TX 102-003822

7005 1160 0003 7177 9972

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For delivery information visit our website at www.usps.com	
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent To	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
PS Form 3800, June 2002	
See Reverse for instructions	

Krakauer--00019150

Confidential

JA004561
DISH-Paper-008054

SLC_ DNC_Investigation_0015410
TX 102-003823



Retail Services
9601 S. Meridian Blvd.
Englewood, Colorado 80112

7/17/2006

Via US Post Service Certified Mail # 7005 1160 0003 7177 9972

Alex Tehranchi
Satellite Systems Network
135 Columbia
Aliso Viejo, CA 92656

Re: Customer Experience

Dear Alex Tehranchi:

The purpose of this letter is to inform you that DISH Network will be implementing a new program designed to increase the experience of our mutual existing and potential customers' experience.

Effective August 1, 2006 EchoStar will begin monitoring inbound and outbound phone calls from your call center(s). By monitoring calls we will provide feedback to you and your business regarding undiscovered customer issues as well as compliance with your EchoStar retailer agreement.

EchoStar expects your cooperation in promptly providing us with requested information as well as your cooperation in facilitating this process. We will be contacting you shortly to obtain information regarding your call centers and to arrange and schedule the call monitoring.

I look forward to implementing a program that will increase our existing and potential customers' experience.

Thank you in advance for your prompt attention to this matter.


Robb Origer
Director, Retail Services
EchoStar Satellite L.L.C.

Snyder, Serena

From: Vendor Inquiries
Sent: Wednesday, October 15, 2008 2:00 PM
To: Kimble, John; Vendor Inquiries
Cc: Musso, Reji; TCPA
Subject: RE: Record #6186 - Kimble - 8257310011384746 - Schoolar

Based upon the information provided, we are able to identify the retailer.

OE# 821970
Contact Name: ALEX TEHRANCHI
Company: SATELLITE SYSTEMS NETWORK
Address: 9831 IRVINE CENTER DR
IRVINE, CA 92618
Phone: 800-615-0241
E-mail: alex@yourdish.tv

*vm states promotions dept
Louie identified Sat Sys
Located Irvine, CA*

Thank you,
Serena Snyder
Retail Services Compliance
Echostar Satellite LLC
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5742 (tel)
720-514-8288 (fax)

-----Original Message-----

From: Kimble, John
Sent: Tuesday, October 14, 2008 3:37 PM
To: Vendor Inquiries
Cc: TCPA
Subject: Record #6186 - Kimble - 8257310011384746 - Schoolar

When I called 800-375-8211, I reached an automated message not identifying retailer/marketer.

Tracked by: TCPA
Record number:6186

Customer Information:
Name - Angela Schoolar
Phone Number where call was received - 5123016838
Did customer request to be placed on DNC List - Yes

The information obtained from the caller:
Phone Number - 8003758211

DNC List Consumer is on:
None

Nature of the complaint:
-Frequent/Persistent calls - Yes
-Rude behavior - No
-Lewd/Obscene conduct - No
-Harassment, a malicious call pattern - No
-Caller hung up when asked for identity or to be added to DNC - No

10/15/2008

Krakauer--00019152

Confidential-

JA004563
DISH-Paper-008056

SLC_ DNC_Investigation_0015412
TX 102-003825

Jaworski, Patrick

SSN

From: Jaworski, Patrick
Sent: Wednesday, January 02, 2008 11:19 AM
To: 'alex@yourdish.tv'
Cc: Musso, Reji; Jaworski, Patrick
Subject: FW: Notice of Alleged Complaint "Do Not Call" Violation - Jeanette Payne
Attachments: Payne_11.7.07.doc

To Mr. Tehranchi:

I have not received a response to this allegation. Please send a response ASAP.

If you have any questions or concerns, please contact me.

Thank you,

Patrick Jaworski
Retail Services Compliance
EchoStar Satellite LLC
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5266 (ph)
720-514-8288 (fax)
patrick.jaworski@echostar.com

From: Jaworski, Patrick
Sent: Thursday, December 20, 2007 9:09 AM
To: 'alex@yourdish.tv'
Cc: Musso, Reji; Jaworski, Patrick
Subject: FW: Notice of Alleged Complaint "Do Not Call" Violation - Jeanette Payne

To Mr. Tehranchi:

Notice of Alleged Complaint "Do Not Call" Violation was sent on the following date, but to date, no information has been received. Please send the information ASAP for this allegation of "Do Not Call" violation.

Customer Name	Date Sent
Jeanette Payne	11/7/07

Also, we do not have the following information for your company. So please send the requested information:

- Do Not Call Policy
- Proof of Do Not Call Registrations

1/8/2008

Krakauer--00019153

Confidential-

JA004564
DISH-Paper-008057

SLC_ DNC_Investigation_0015413
TX 102-003826

- List of Affiliate Companies with the contact information including any 3rd party call centers and anyone generating leads on your behalf
- All Outbound Telemarketing Scripts for employees and affiliates

If you have any questions or concerns, please contact me.

Thank you.

Patrick Jaworski
Retail Services Compliance
Echostar Satellite LLC
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5266 (ph)
720-514-8288 (fax)
patrick.jaworski@echostar.com

From: Jaworski, Patrick
Sent: Wednesday, November 07, 2007 1:11 PM
To: 'alex@yourdish.tv'
Cc: Musso, Reji; Jaworski, Patrick
Subject: Notice of Alleged Complaint "Do Not Call" Violation - Jeanette Payne

To Mr. Tehranchi:

A fax of the Notice of Alleged Complaint "Do Not Call" Violation was sent today. I am also sending a copy of the letter via E-Mail attachment. Please comply with the requirements therein. If you are sending a response via E-mail to Reji Musso, please carbon copy me: patrick.jaworski@echostar.com.

Also, we do not have the following information for your company. So please send the requested information:

- Do Not Call Policy
- Proof of Do Not Call Registrations
- List of Affiliate Companies with the contact information including any 3rd party call centers and anyone generating leads on your behalf
- All Outbound Telemarketing Scripts for employees and affiliates

If you have any questions or concerns, please contact me.

Thank you,

Patrick Jaworski
Retail Services Compliance
Echostar Satellite LLC
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5266 (ph)

1/8/2008

Krakauer--00019154

Confidential-

JA004565
DISH-Paper-008058

SLC_ DNC_Investigation_0015414
TX 102-003827

720-514-8288 (fax)
patrick.jaworski@echostar.com

1/8/2008

Krakauer--00019155

Confidential-

JA004566
DISH-Paper-008059

SLC_ DNC_Investigation_0015415
TX 102-003828

Snyder, Serena

From: Vendor Inquiries
Sent: Tuesday, May 19, 2009 3:21 PM
To: Dougherty, Rebecca
Cc: retailerescalation; Vendor Inquiries; Musso, Reji; Voorhies, Christina; Slater, Joshua
Subject: RE: TCPA - TCPA - 9194719459--re thomas krakauer

Rebecca,

Based upon the information provided, we are able to identify the retailer.

OE# 821970
Contact Name: ALEX TEHRANCHI; SOPHIE TEHRANCHI
Company: SATELLITE SYSTEMS NETWORK
Address: 9831 IRVINE CENTER DR
IRVINE, CA 92618
Phone: 800-615-0241
E-mail: alex@yourdish.tv; sophie@Yourdish.tv

Thank you,
Serena Snyder
Retail Services Compliance
Dish Network
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5742 (tel)
720-514-8288 (fax)
serena.snyder@dishnetwork.com
Please Note New Email Address

-----Original Message-----

From: Slater, Joshua
Sent: Tuesday, May 19, 2009 11:53 AM
To: Vendor Inquiries; Voorhies, Christina
Cc: retailerescalation
Subject: FW: TCPA - TCPA - 9194719459--re thomas krakauer

Please see below.

Is this something your team could assist with?

From: Dougherty, Rebecca
Sent: Tuesday, May 19, 2009 11:48:33 AM
To: POESupport; retailerescalation; TCPA
Subject: FW: TCPA - TCPA - 9194719459--re thomas krakauer
Auto forwarded by a Rule

Hello All, I'm sending a second request re how to proceed with Thomas Krakauer and what you want me to tell him with respect to follow up on this issue.

5/19/2009

Krakauer--00019156

Confidential-

JA004567
DISH-Paper-008060

SLC_ DNC_Investigation_0015416
TX 102-003829

Please read the forwarded email below. Mr. Krakauer phoned today to see what the status was on his DNC issue. I advised him as of yet there is no definite response but I would send this email to all of you again. Please help me to assist Mr Krakauer with the appropriate information or answers to satisfy his concerns about the call he received--he is expecting to hear something back on Thursday.

All the information you need to find the party/parties responsible is included in the email below. Thank you for your rapid assistance regarding this unresolved issue.

Rebecca Dougherty (DNC/Fact Act) 720-514-8555 ext 72058

-----Original Message-----

From: Dougherty, Rebecca
Sent: Sunday, May 10, 2009 10:26 AM
To: Laslo, David
Cc: POESupport; retailerescallation; TCPA
Subject: TCPA - TCPA - 9194719459

Tracked by: TCPA
Record number:11778

Customer Information:
Name - thomas krakauer
Phone Number where call was received - 9194719459

DNC List Consumer is on:
Internal
National

Nature of the complaint:
-Frequent/Persistent calls - No
-Rude behavior - No
-Lewd/Obscene conduct - No
-Harassment, a malicious call pattern - Yes
-Caller hung up when asked for identity or to be added to DNC - No
Comments:

Thomas Krakauer received a call last night, Saturday May 9, from a (retailer/sales partner?) who was claiming to be a Directv employee. Phone number the call was received from is 18003758211 ext 105 callers name was Ken.

The employee (Ken) then proceeded to call Directv and pretended to be Mr Krakauer to get info from his account so he could call Mr Krakauer back and get personal credit info from him including his ssn and his credit card number. When further into the call Mr Krakauer became suspicious he questioned the agent who then told him they were from Dish Network and wanted to sell him Dish Network service.

I searched Mr Krakauer's phone number in echoadmin and found there was a credit check run on him last night. (I did not inform Mr. Krakauer that his credit was run without his knowledge so he is still unaware this happened) The credit score ID is 81472493.

I know we partner with Equifax to track down retailers/sales partners like these. I tried to call the phone number but was sent to an automated system and waited on hold for quite some time but no one picked up. I received the DNC today, Sunday, in the morning and am guessing maybe the operators are not there today or not this early on a Sunday. However, with the phone number and the credit score ID we should be able to track this back to the responsible party.

5/19/2009

Krakauer--00019157

Confidential-

JA004568
DISH-Paper-008061

SLC_ DNC_Investigation_0015417
TX 102-003830

I've told Mr Krakauer I will call him back (and he requested to be called on this issue) as soon as we receive any information on how we will proceed and also gave him my contact info too. I hope it's just one employee at that call center and not a common practice for them.

Looking forward to hearing back from you on how to proceed with Mr Krakauer and what to tell him we are doing regarding this issue.

Thank You. Rebecca Dougherty (DNC/Fact Act) 720-514-8555 ext 72058

5/19/2009

Krakauer--00019158

Confidential-

JA004569
DISH-Paper-008062

SLC_ DNC_Investigation_0015418
TX 102-003831

Snyder, Serena

From: Vendor Inquiries
Sent: Friday, March 20, 2009 4:12 PM
To: Laslo, David
Cc: Vendor Inquiries
Subject: FW: telemarketing issues

David,

Can we please have someone reach out to this customer? 8255909050550745 Kitty Fowler 530-675-2230 please see the details below.

We have tracked the issue and we have also found that one of the phone numbers 800-375-8211 provided identified a retailer. One of the numbers is DISH Network 888-387-6371. And the other one 443-549-3390 is inconclusive to the identity of the retailer.

OE# 821970
Contact Name: ALEX TEHRANCHI
Company: SATELLITE SYSTEMS NETWORK
Address: 9831 IRVINE CENTER DR
IRVINE, CA 92618
Phone: 800-615-0241
E-mail: alex@yourdish.tv

Thank you for your assistance and let us know if you need any additional information.

Thank you,
Serena Snyder
Retail Services Compliance
Dish Network
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5742 (tel)
720-514-8288 (fax)

From: Support, Audit
Sent: Tuesday, March 10, 2009 8:01 AM
To: Vendor Inquiries
Subject: FW: telemarketing issues

From: Steve Boone [mailto:videobusters@hotmail.com]
Sent: Saturday, March 07, 2009 12:15 PM
To: Support, Audit
Subject: FW: telemarketing issues

From: videobusters@hotmail.com
To: audit.support@dishnetwork.com; videobusters@hotmail.com; scboone73@yahoo.com
Subject: telemarketing issues

3/20/2009

Krakauer--00019159

Confidential-

JA004570
DISH-Paper-008063

SLC_ DNC_Investigation_0015419
TX 102-003832

Date: Sat, 7 Mar 2009 10:55:52 -0800

I have had some of our local and loyal customers call me recently stating that they are receiving calls from telemarketers representing themselves as Dish Network. I have told them if they call again to get info and let me know. It seems these companies are just going through a list of numbers since one of the calls was to a customers phone they only list as a business phone. This has happened in the past and it seems that the threats Dish makes about companies telemarketing and misrepresenting themselves doesn't work unless they start pulling licenses and informing all of us that Dish is serious about it. Otherwise it is just an empty threat and these type of companies know it. I have asked for follow up responses in the past when I report these companies and I seem to get a generic response and never hear about it again. I have told these customers to contact Dish direct also to complain. This seems to be very unfair to companies like ours that follow the rules.

The first company calls and when the customer starts asking questions they just hang up. I know this because I told the customer what to ask. The 2 numbers they use are:
800-375-8211 888-387-6371

The second company calls and says they are from Dish Network but on the second call to the customer I had them get the name and where they are from. They are called Dish Co 443-549-3390. They seem, per the customer to be very pushy about getting your information.

My customers are tired of this and of being harassed and lied to by these companies. If you would like to speak with one of the customers they said they have no problem talking with you. Kitty Fowler 530-675-2230

As I stated before, I have turned in telemarketers before with no response from Dish about it. One actually stated he used to be the Vice President of Dish! This has to stop! If Dish makes rules with consequences then I would hope they will follow through with it.

I would appreciate follow up on this matter. Please let us know what you have done about this.
Thank You

Jim Ouellette
Video Busters
530-675-2770
#7276

Windows Live™: Keep your life in sync. [Check it out.](#)

Hotmail® is up to 70% faster. Now good news travels really fast. [Find out more.](#)

— 888-387-6371 Kathy - Marketing Dept Thornton office operator OJ7

— 800-375-8211 - original call - promotions dept - PR press # I can't see. Free St. Aust. PSN dba Satellite Systems Network located in CA

— 443 549 3390 - VM telephone removal system made "No ID"

3/20/2009

Krakauer--00019160

Confidential-

JA004571
DISH-Paper-008064

SLC_DNC_Investigation_0015420
TX 102-003833

Jaworski, Patrick

From: Jaworski, Patrick
Sent: Wednesday, November 07, 2007 1:11 PM
To: 'alex@yourdish.tv'
Cc: Musso, Reji; Jaworski, Patrick
Subject: Notice of Alleged Complaint "Do Not Call" Violation - Jeanette Payne
Attachments: Payne_11.7.07.doc

To Mr. Tehranchi:

A fax of the Notice of Alleged Complaint "Do Not Call" Violation was sent today. I am also sending a copy of the letter via E-Mail attachment. Please comply with the requirements therein. If you are sending a response via E-mail to Reji Musso, please carbon copy me: patrick.jaworski@echostar.com.

Also, we do not have the following information for your company. So please send the requested information:

- Do Not Call Policy
- Proof of Do Not Call Registrations
- List of Affiliate Companies with the contact information including any 3rd party call centers and anyone generating leads on your behalf
- All Outbound Telemarketing Scripts for employees and affiliates

If you have any questions or concerns, please contact me.

Thank you.

Patrick Jaworski
Retail Services Compliance
Echostar Satellite LLC
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5266 (ph)
720-514-8288 (fax)
patrick.jaworski@echostar.com

11/7/2007

Krakauer--00019161

Confidential-

JA004572
DISH-Paper-008065

SLC_ DNC_Investigation_0015421
TX 102-003834

**OE RETAILER AMENDMENT
TO
ECHOSTAR RETAILER AGREEMENT**

This OE Retailer Amendment to EchoStar Retailer Agreement (the "Amendment") is made and effective as of December 31, 2006, by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("EchoStar"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112; and SATELLITE SYSTEMS NETWORK, having a place of business at 9831 IRVINE CENTER DR IRVINE, CA 92618 ("Retailer").

WHEREAS, EchoStar and Retailer have previously entered into an EchoStar Retailer Agreement, as such agreement may have previously been amended (the "EchoStar Retailer Agreement"); and

WHEREAS, the parties wish to amend the EchoStar Retailer Agreement as described below;

NOW, THEREFORE, in consideration of the benefits that will accrue to each party as a result of the matters described below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree to amend the EchoStar Retailer Agreement as follows:

1. Section 1.13 shall be deleted in its entirety and replaced with the following:

1.13 "DISH DBS System" means a satellite receiver, which for purposes of this Agreement shall mean a single standalone consumer electronics device, and related components packaged therewith (if any), intended to be utilized solely for the reception of Programming delivered by satellite transponders owned, leased and/or otherwise operated or utilized by EchoStar and/or any of its Affiliates, which is: (i) sold directly to Retailer by EchoStar or an EchoStar Affiliate under the "EchoStar" brand name or the brand name of an EchoStar Affiliate; (ii) sold directly to Retailer by a Third Party Manufacturer pursuant to authorization granted by EchoStar under the brand name of such Third Party Manufacturer; or (iii) sold (or leased if the applicable Promotional Program involves leasing equipment to consumers) directly by EchoStar or an EchoStar Affiliate under the "EchoStar" brand name or the brand name of an EchoStar Affiliate to a consumer for whom Retailer correctly and completely performed the order entry tasks related to the provisioning of Eligible Residential Programming for the corresponding new Residential Subscriber Account using the OE Tool.

2. Section 1.44 shall be deleted in its entirety and replaced with the following:

1.44 "Residential Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Residential Subscriber who purchased a DISH DBS System directly from EchoStar (solely with respect to Qualifying Residential Subscribers for whom Retailer correctly and completely performed the order entry tasks related to the provisioning of Residential Programming using the OE Tool) or a DISH DBS System or Promotional Certificate directly from Retailer (in all other cases) and for whom Eligible Residential Programming has been activated by EchoStar and which customer account remains active and in good standing.

3. A new Section 1.56 shall be added as follows:

1.56 "OE Tool" means EchoStar's proprietary web-based order entry tool or any successor tool(s) thereto as designated by EchoStar at Any Time in its Sole Discretion, upon notice to Retailer. Retailer acknowledges and agrees that neither it nor any of its Affiliates, employees, agents, sub-agents, or independent contractors has any right, title or interest in, to or under the OE Tool and that in no event shall Retailer permit any person or entity to use the OE Tool except as specifically permitted under the terms and conditions of this Agreement and applicable Business Rules. Retailer shall provide network elements for interconnection of the OE Tool with its own systems and at its sole cost and expense.

4. The following new sentence shall be added immediately following the last sentence of Section 2.9:

In the event that Retailer performs any order entry tasks related to the provisioning of Eligible Residential Programming for a new Residential Subscriber Account using the OE Tool, Retailer shall be responsible for scheduling the installation of DISH DBS Systems, related accessories and other equipment for the applicable Qualifying Residential Subscriber in accordance with and subject to the terms and conditions of this Agreement and the Business Rules otherwise applicable to such scheduling and EchoStar shall have the right (but not the obligation) to perform (directly and indirectly through its installation subcontractors and otherwise) any and all installation and maintenance services in connection therewith without any obligation or liability to Retailer whatsoever.

5. Clause (IV) of Section 6.2.5 shall be amended by inserting the text "OR (XI)" between "V" and "BELOW"; and line 3 of clause (V) of Section 6.2.5 shall be amended by inserting "AND EXCEPT AS OTHERWISE PROVIDED IN (XI) BELOW" between "ECHOSTAR" and the comma that immediately follows.

6. A new clause (XI) shall be added to Section 6.2.5 as follows:

(XI) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (IV) OR (V) ABOVE, ADDITIONAL RESIDENTIAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS THAT: (A) ARE SOLD (OR LEASED IF THE APPLICABLE PROMOTIONAL PROGRAM INVOLVES LEASING EQUIPMENT TO CONSUMERS) DIRECTLY BY ECHOSTAR OR AN AFFILIATE OF ECHOSTAR TO A QUALIFYING RESIDENTIAL SUBSCRIBER FOR WHOM RETAILER CORRECTLY AND COMPLETELY PERFORMED THE ORDER ENTRY TASKS RELATING TO THE PROVISIONING OF ELIGIBLE RESIDENTIAL PROGRAMMING FOR A NEW RESIDENTIAL SUBSCRIBER ACCOUNT USING THE OE TOOL AND (B) RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL PROGRAMMING FOR A NEW RESIDENTIAL SUBSCRIBER ACCOUNT.

7. The first sentence of Section 6.5.5 shall be deleted in its entirety and replaced with the following:

Retailer shall not be entitled to any Incentives with respect to the activation by EchoStar of a DISH DBS System unless: (i) all of the individual components comprising the applicable DISH DBS System (e.g., receivers, dishes and LNBFs) are confirmed by EchoStar as having been purchased by Retailer directly from either: (a) EchoStar or an Affiliate of EchoStar, or (b) a Third Party Manufacturer; or (ii) the DISH DBS System is delivered pursuant to (a) a Promotional Certificate that is confirmed by EchoStar as having been purchased by Retailer directly from EchoStar or an Affiliate of EchoStar, or (b) an order entry correctly and completely performed by Retailer using the OE Tool.

8. Except as expressly modified herein, this Amendment is not intended to, and does not, alter, amend or modify all or any part of the EchoStar Retailer Agreement. The distribution of this Amendment shall not be construed as an admission or acknowledgement by EchoStar that an agreement exists between Retailer and EchoStar, that if an agreement exists, such agreement is in full force and effect, that Retailer is not in breach or default thereunder. Nothing contained herein shall serve to revive an EchoStar Retailer Agreement that has been terminated pursuant to Section 10.2, 10.3 or 10.4 thereof. Furthermore, nothing contained herein shall constitute a waiver by either party or any of its Affiliates of any rights or remedies they may have under the terms and conditions of the EchoStar Retailer Agreement.

9. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the EchoStar Retailer Agreement.

10. This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof. The parties specifically acknowledge there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Amendment.

11. RETAILER AND ECHOSTAR HEREBY REPRESENT, WARRANT, ACKNOWLEDGE AND AGREE THAT: (A) THEIR INDEPENDENT COUNSEL HAS REVIEWED, OR THEY HAVE BEEN GIVEN A REASONABLE OPPORTUNITY FOR THEIR INDEPENDENT COUNSEL TO REVIEW (BUT DECLINED SUCH REVIEW), THIS AMENDMENT; (B) THE TERMS AND CONDITIONS OF THIS AMENDMENT, AND EACH AND EVERY PARAGRAPH AND EVERY PART HEREOF, HAVE BEEN COMPLETELY AND CAREFULLY READ BY, AND EXPLAINED TO, THE PARTIES; (C) THE TERMS AND CONDITIONS OF THIS AMENDMENT ARE FULLY AND COMPLETELY UNDERSTOOD BY EACH PARTY AND EACH PARTY IS COGNIZANT OF ALL OF SUCH TERMS AND CONDITIONS AND THE EFFECT OF EACH AND ALL OF SUCH TERMS AND CONDITIONS; AND (D) THIS AMENDMENT IS MADE AND ENTERED INTO VOLUNTARILY BY EACH PARTY, FREE OF UNDUE INFLUENCE, COERCION, DURESS, MENACE OR FRAUD OF ANY KIND WHATSOEVER, AND HAS BEEN EXECUTED BY EACH PARTY OF THEIR OWN FREE WILL.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Amendment to be signed and/or accepted electronically by their duly authorized representatives as of the date first written above.

ECHOSTAR SATELLITE L.L.C.

By: _____
Name:
Title:

RETAILER

Retailer Number: **821970**

Retailer Company Name: **SATELLITE SYSTEMS NETWORK**
(please print)

Street Address: **9831 IRVINE CENTER DR**
(please print)

City, State, Zip Code: **IRVINE, CA 92618**
(please print)

By: _____
(signature)
Name (please print): **ALEX TEHRANCHI**
Title (please print): **PRESIDENT**

**[SIGNATURE PAGE OF OE RETAILER AMENDMENT
TO ECHOSTAR RETAILER AGREEMENT]**

ECHOSTAR RETAILER AGREEMENT

This EchoStar Retailer Agreement (the "Agreement") is made and effective as of December 31, 2006 (the "Effective Date"), by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("EchoStar"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112; and " ", having a place of business at **9831 IRVINE CENTER DR IRVINE, CA 92618** ("Retailer").

INTRODUCTION

A. EchoStar is engaged, among other things, in the business of providing digital direct broadcast satellite ("DBS") services under the name DISH Network.

B. Retailer, acting as an independent contractor, desires to become authorized on a non-exclusive basis to market, promote and solicit orders for Programming (as defined below) (an "Authorized Retailer"), in accordance with and subject to the terms and conditions of this Agreement.

C. EchoStar desires to appoint Retailer as an Authorized Retailer in accordance with and subject to the terms and conditions of this Agreement.

AGREEMENT

1. **DEFINITIONS.** In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "Additional Incentives" means Additional Residential Incentives, Additional Residential MDU Incentives, Additional Commercial Incentives and Additional Bulk Incentives, as such terms are defined in Sections 6.2.1, 6.2.2, 6.2.3 and 6.2.4, respectively.

1.2 "Affiliate" means any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity.

1.3 "Any Time" means any time and from time to time.

1.4 "Bulk Incentives" means Monthly Bulk Incentives and Additional Bulk Incentives, as such terms are defined in Sections 6.1.4 and 6.2.4, respectively.

1.5 "Bulk Programming" means the Programming that EchoStar makes generally available for viewing in Guest Properties and bulk-billed MDU Properties, in each case assuming 100% penetration, subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Bulk Programming offered and/or any restrictions applicable to such Bulk Programming at Any Time in its Sole Discretion.

1.6 "Bulk Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Bulk Subscriber who purchased a DISH DBS System directly from Retailer and for whom Eligible Bulk Programming has been activated by EchoStar and which customer account remains active and in good standing.

1.7 "Business Rule(s)" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule by EchoStar which is communicated to Retailer by EchoStar or an Affiliate of EchoStar either directly (including without limitation via e-mail) or through any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a "Retailer Chat", e-mail, facts blast, or posting on EchoStar's retailer web site. Retailer agrees that EchoStar has the right to modify any Business Rule at Any Time in its Sole Discretion, upon notice to Retailer.

1.8 "Chargeback" means EchoStar's right to reclaim Incentives pursuant to the terms and conditions of this Agreement, any Promotional Program or applicable Business Rules.

1.9 "Commercial Incentives" means Monthly Commercial Incentives and Additional Commercial Incentives, as such terms are defined in Sections 6.1.3 and 6.2.3, respectively.

1.10 "Commercial Location" means a Public Commercial Location and/or a Private Commercial Location, as those terms are defined below in Sections 1.33 and 1.29, respectively.

1.11 "Commercial Programming" means the Programming that EchoStar makes generally available for viewing in Commercial Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Commercial Programming offered and/or any restrictions applicable to such Commercial Programming at Any Time in its Sole Discretion.

1.12 "Commercial Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Commercial Subscriber who purchased a DISH DBS System directly from Retailer and for whom Eligible Commercial Programming has been activated by EchoStar and which customer account remains active and in good standing.

1.13 "DISH DBS System" means a satellite receiver, which for purposes of this Agreement shall mean a single standalone consumer electronics device, and related components packaged therewith (if any), intended to be utilized solely for the reception of Programming delivered by satellite transponders owned, leased and/or otherwise operated or utilized by EchoStar and/or any of its Affiliates, which is: (i) sold directly to Retailer by EchoStar or an EchoStar Affiliate under the "EchoStar" brand name or the brand name of an EchoStar Affiliate; or (ii) sold directly to Retailer by a Third Party Manufacturer pursuant to authorization granted by EchoStar under the brand name of such Third Party Manufacturer.

1.14 "DISH Network Subscriber" shall have the meaning set forth in Section 9.5.

1.15 "EFT" means the electronic transfer of funds from one financial institution to another.

1.16 "Eligible Bulk Programming" means the Bulk Programming packages designated by EchoStar as qualifying for the payment of Bulk Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.17 "Eligible Commercial Programming" means the Commercial Programming packages designated by EchoStar as qualifying for the payment of Commercial Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.18 "Eligible Residential MDU Programming" means the Residential MDU Programming packages designated by EchoStar as qualifying for the payment of Residential MDU Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.19 "Eligible Residential Programming" means the Residential Programming packages designated by EchoStar as qualifying for the payment of Residential Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.20 "Guest Property" means a hotel, motel, hospital, other healthcare facility or any other similar type of facility located in the Territory that regularly permits overnight or otherwise short-term stays by individuals. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Guest Property or is more appropriately considered another type of location.

1.21 "Incentives" mean Monthly Incentives together with any Additional Incentives, as such terms are defined in Sections 1.25 and 1.1, respectively.

1.22 "Institutional/Residential Location" means a property located in the Territory that displays Programming in a non-public, common viewing area within a property that is owned or operated by a government or commercial entity, in which employees are being provided residential living accommodations to facilitate the requirements of their job responsibilities. For example (and without limitation of the foregoing), non-public, common viewing areas within fire stations, oil rigs and coast guard stations are typically Institutional/Residential Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes an Institutional/Residential Location or is more appropriately considered another type of location.

1.23 "Laws" shall have the meaning set forth in Section 9.1.

1.24 "MDU Property" means a dormitory, apartment building, condominium complex, retirement community or other type of multifamily living establishment located in the Territory that affords residents living quarters. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes an MDU Property (and, if so, what type of MDU Property, e.g., bulk-billed, non-bulk-billed or other) or is more appropriately considered another type of location.

1.25 "Monthly Incentives" means Monthly Residential Incentives, Monthly Residential MDU Incentives, Monthly Commercial Incentives and Monthly Bulk Incentives, as such terms are defined in Sections 6.1.1, 6.1.2, 6.1.3 and 6.1.4, respectively.

1.26 "Other Agreement(s)" means any agreement(s) between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand.

1.27 "Permitted Subcontractors" shall have the meaning set forth in Section 7.1.

1.28 "Prepaid Card" means a card, serialized certificate, approval code sequence and/or other identifier issued in connection with a Promotional Program offered by EchoStar which is sold directly to Retailer by EchoStar or an Affiliate of EchoStar for resale by Retailer directly to a consumer and which, among other things, provides such consumer with certain rights to receive Residential Programming for a fixed duration or in a certain amount.

1.29 "Private Commercial Location" means a place of business located in the Territory that may be accessible to the public, and is not classified within the hospitality industry. For example (and without limitation of the foregoing), office reception areas or waiting rooms and the private offices of attorneys, doctors/dentists, and other business professionals are typically Private Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Private Commercial Location, or is more appropriately considered another type of location.

1.30 "Programming" means DISH Network video, audio, data and interactive programming services. EchoStar reserves the right to change the Programming offered and/or any restrictions applicable to such Programming at Any Time in its Sole Discretion.

1.31 "Promotional Certificate" means a serialized certificate issued in connection with a Promotional Program offered by EchoStar which is sold directly to Retailer by EchoStar or an Affiliate of EchoStar for resale by Retailer directly to a consumer which, among other things, entitles such consumer to a DISH DBS System (or the use of such system, if the applicable Promotional Program involves leasing equipment to consumers) and may include installation of such DISH DBS System.

1.32 "Promotional Program" means: (i) a promotional offer, as determined by EchoStar, which Retailer may present to consumers in connection with Retailer's marketing, promotion and solicitation of orders for Programming; (ii) the Incentives, if applicable and as determined by EchoStar at Any Time in its Sole Discretion, which Retailer may receive in connection with such promotional offer; and (iii) the Business Rules, as determined by EchoStar, setting forth the terms and conditions governing each such promotional offer and any corresponding Incentives. EchoStar reserves the right to discontinue any Promotional Program or change the Business Rules associated therewith at Any Time in its Sole Discretion, upon notice to Retailer.

1.33 "Public Commercial Location" means a place of business located in the Territory that: (i) is generally accessible to the public, (ii) is typically classified within the hospitality industry, (iii) typically serves food and/or liquor for immediate consumption, and (iv) is typically registered with a fire occupancy certificate. No satellite master antenna television or private cable system in a commercial or residential multiple dwelling unit (i.e., hotels, hospitals, dormitories, etc.) shall be considered a Public Commercial Location; provided, however, that a place of business located within such multiple dwelling units that otherwise meets the definition of a Public Commercial Location (e.g., a restaurant within a hotel or hospital) may be considered a Public Commercial Location. For example (and without limitation of the foregoing), bars, restaurants, clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Public Commercial Location, or is more appropriately considered another type of location.

1.34 "Qualifying Bulk Subscriber" means a commercial enterprise providing Bulk Programming on a bulk basis, assuming 100% penetration, to a Guest Property and/or a bulk-billed MDU Property that orders Eligible Bulk Programming, that timely pays for all Bulk Programming ordered in full, that has not violated any of the terms and conditions set forth in an EchoStar Commercial Customer Agreement, and that has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Bulk Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

1.35 "Qualifying Commercial Subscriber" means a commercial enterprise operating a business at a Commercial Location that orders Eligible Commercial Programming, that timely pays for all Commercial Programming ordered in full, that has not violated any of the terms and conditions set forth in an EchoStar Commercial Customer Agreement, and that has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Commercial Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

1.36 "Qualifying Residential MDU Subscriber" means an individual at a non-bulk-billed MDU Property who orders

Eligible Residential MDU Programming, who timely pays for all Residential MDU Programming ordered in full, who has not violated any of the terms and conditions set forth in an EchoStar Residential Customer Agreement, and who has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Residential MDU Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

1.37 "Qualifying Residential Subscriber" means an individual at a Residential Location or an Institutional/Residential Location who orders Eligible Residential Programming, who timely pays for all Residential Programming ordered in full, who has not violated any of the terms and conditions set forth in an EchoStar Residential Customer Agreement, and who has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

1.38 "Residential Incentives" means Monthly Residential Incentives and Additional Residential Incentives, as such terms are defined in Sections 6.1.1 and 6.2.1, respectively.

1.39 "Residential Location" means a single family residential dwelling (i.e., single family houses, apartments, condominiums or other dwellings used primarily for residential purposes), located in the Territory; provided, however, that in no case shall any satellite master antenna television system or private cable system in a residential multiple dwelling unit or any similar programming reception system (e.g., dormitories, etc.) be considered a Residential Location. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Residential Location or is more appropriately considered another type of location.

1.40 "Residential MDU Incentives" means Monthly Residential MDU Incentives and Additional Residential MDU Incentives, as such terms are defined in Sections 6.1.2 and 6.2.2, respectively.

1.41 "Residential MDU Programming" means the Programming that EchoStar makes generally available for viewing in non-bulk-billed MDU Properties subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Residential MDU Programming offered and/or any restrictions applicable to such Residential MDU Programming at Any Time in its Sole Discretion.

1.42 "Residential MDU Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Residential MDU Subscriber who purchased a DISH DBS System directly from Retailer and for whom Eligible Residential MDU Programming has been activated by EchoStar and which customer account remains active and in good standing.

1.43 "Residential Programming" means the Programming that EchoStar makes generally available for viewing in Residential Locations and Institutional/Residential Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Residential Programming offered and/or any restrictions applicable to such Residential Programming at Any Time in its Sole Discretion.

1.44 "Residential Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Residential Subscriber who purchased a DISH DBS System, Promotional Certificate or Prepaid Card directly from Retailer and for whom Eligible Residential Programming has been activated by EchoStar and which customer account remains active and in good standing.

1.45 "Retailer Account" means the bank account, including without limitation account and ABA routing numbers, designated by Retailer in the manner prescribed by EchoStar at Any Time in its Sole Discretion, which Retailer may change from time to time by providing at least sixty (60) days' prior written notice to EchoStar.

1.46 "Sole Discretion" means a person's or entity's sole and absolute discretion for any reason or no reason.

1.47 "Subscriber Accounts" means Residential Subscriber Accounts, Residential MDU Subscriber Accounts, Commercial Subscriber Accounts and Bulk Subscriber Accounts, as such terms are defined in Sections 1.44, 1.42, 1.12 and 1.6, respectively.

1.48 "Term" shall have the meaning set forth in Section 10.1 below.

1.49 "Territory" shall have the meaning set forth in Section 2.2 below.

1.50 "Third Party Manufacturer" means a third party manufacturer authorized by EchoStar or any Affiliate of EchoStar to market, distribute and sell DISH DBS Systems under its own brand name.

1.51 "Unit" means: (i) solely in the case of hospitals and other healthcare facilities, each television on the premises; (ii) solely in the case of all Guest Properties other than hospitals and other healthcare facilities, each room in the Guest Property; and (iii) solely in the case of bulk-billed or non-bulk-billed MDU Properties, each separate living quarters in the bulk-billed or non-bulk-billed MDU Property.

2. APPOINTMENT; TERRITORY.

2.1 **Appointment.** EchoStar hereby appoints Retailer as a non-exclusive Authorized Retailer to market, promote and solicit orders for Programming, subject to all of the terms and conditions of this Agreement and all Business Rules (which are hereby incorporated into this Agreement by reference in their entirety). The appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same DBS service which may be operated by EchoStar and/or its Affiliates under a different name in the future. Retailer's authorization hereunder is limited to: (i) the solicitation of orders for Residential Programming from, and the marketing, advertising and promotion of Residential Programming to, consumers at Residential Locations and Institutional/Residential Locations; (ii) the solicitation of orders for Residential MDU Programming from, and the marketing, advertising and promotion of Residential MDU Programming to, consumers at non-bulk-billed MDU Properties; (iii) the solicitation of orders for Commercial Programming from, and the marketing, advertising and promotion of Commercial Programming to, commercial enterprises operating businesses at Commercial Locations; and (iv) the solicitation of orders for Bulk Programming from, and the marketing, advertising and promotion of Bulk Programming to, commercial enterprises providing Bulk Programming on a bulk-basis, assuming 100% penetration, to Guest Properties and bulk-billed MDU Properties.

2.2 **Territory.** Retailer's authorization hereunder, and any actions it undertakes in connection with, or in furtherance of, this Agreement, shall be limited solely to the area within the geographic boundaries of the United States and its territories and possessions (the "Territory").

2.3. **Acceptance.** Retailer hereby accepts its appointment as an Authorized Retailer and agrees to use its best efforts to continuously and actively advertise, promote and market Programming and to solicit orders therefor, subject to and in accordance with all of the terms and conditions of this Agreement. Retailer understands that it may hold itself out to the public as an Authorized Retailer of EchoStar only after fulfilling, and for so long as it continues to fulfill, all of the duties, obligations, requirements and other terms and conditions contained in this Agreement and all Business Rules, and only during the Term of this Agreement.

2.4 **Non-Exclusivity.** Retailer acknowledges that: (i) nothing in this Agreement is intended to confer, nor shall it be construed as conferring, any exclusive territory or any other exclusive rights upon Retailer; (ii) EchoStar and its Affiliates make absolutely no statements, promises, representations, warranties, covenants or guarantees as to the amount of business or revenue that Retailer may expect to derive from participation in this Agreement or any Promotional Program; (iii) Retailer may not realize any business, revenue or other economic benefit whatsoever as a result of its participation in this Agreement or any Promotional Program; (iv) nothing contained herein shall be construed as a guarantee of any minimum amount of Incentives or any minimum amount of other payments, income, revenue or other economic benefit in any form whatsoever; (v) EchoStar currently offers, and at Any Time, in the future may offer in its Sole Discretion, others the opportunity to act as an Authorized Retailer or to solicit orders for Programming in the same geographic area in which Retailer is located and elsewhere; (vi) EchoStar and its Affiliates shall be entitled, among other things, to: (a) market, promote and solicit orders for Programming, (b) distribute, sell, lease and otherwise transfer possession of DISH Network satellite receivers, promotional certificates, prepaid cards, related accessories and other equipment, and (c) perform installation and maintenance services (directly and indirectly through subcontractors or otherwise) for DISH Network satellite receivers, related accessories and/or other equipment, in each case throughout the Territory and in direct or indirect competition with Retailer, without any obligation or liability to Retailer whatsoever, and without providing Retailer with any notice thereof; and (vii) EchoStar shall be free to cease or suspend provision of the Programming offered in whole or in part at Any Time in its Sole Discretion, and shall incur no liability to Retailer by virtue of any such cessation or suspension.

2.5 **Certain Purchases by Retailer.** In the event that Retailer orders any DISH DBS Systems, related accessories, other equipment, Promotional Certificates and/or Prepaid Cards from Echosphere L.L.C. or any of its Affiliates (collectively, "Echosphere" for purposes of this Section 2.5), Retailer shall order such products by phone order, via Echosphere online ordering or by written purchase order (each, a "Purchase Order") issued during the Term of this Agreement. A Purchase Order shall be a binding commitment by Retailer. Any failure to confirm a Purchase Order shall not be deemed acceptance by Echosphere. Purchase Orders of Retailer shall state only the: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. Any additional terms and conditions stated in a Purchase Order shall not be binding upon Echosphere unless expressly agreed to in writing by Echosphere. In no event shall Echosphere be liable for any delay, or failure to fulfill, any Purchase Order (or any portion thereof), regardless of the cause of such delay or failure. In the event of any conflict between the terms and conditions of a Purchase Order and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. In the event of any ambiguity between or among the terms and conditions of this Agreement and the terms and conditions of any Purchase Order, EchoStar shall have the sole and exclusive authority to interpret and/or make a final determination in its Sole Discretion concerning any issue arising from such ambiguity. Echosphere shall be considered a third party beneficiary of Retailer's obligations under this Agreement. Retailer hereby acknowledges and agrees that Echosphere has no obligation to re-purchase DISH DBS Systems, related accessories, other equipment,

Promotional Certificates or Prepaid Cards back from Retailer at any time or for any reason or no reason.

2.6 Certain Prohibited Transactions. Retailer agrees that as a condition precedent to its eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System, Promotional Certificate or Prepaid Card to any person or entity whom Retailer knows or reasonably should know: (i) is not an end-user and/or intends to resell, lease or otherwise transfer it for use by another individual or entity; (ii) intends to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location; (iii) intends to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property; (iv) intends to use it, or to allow others to use it in Canada, Mexico or at any other location outside of the Territory; or (v) intends to have, or to allow others to have, Programming authorized for a DISH DBS System under a single DISH Network account or Prepaid Card that has or will have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property). It shall be Retailer's sole and exclusive responsibility to investigate and determine whether any direct or indirect sale, lease or other transfer by Retailer would be in violation of this Section 2.6. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional Certificate or Prepaid Card to a person or entity who uses it or allows others to use it to: (a) view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, or (b) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, then Retailer agrees to pay to EchoStar upon demand: (1) the difference between the amount actually received by EchoStar for the Prepaid Card or the Programming authorized for the corresponding DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (2) the total amount of any admission charges or similar fees imposed and/or collected for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional Certificate or Prepaid Card to a person or entity who has, or allows others to have, Programming authorized for a DISH DBS System under a single DISH Network account or Prepaid Card that at any time has Programming activated for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of bulk-billed MDU Properties), and Retailer knew or reasonably should have known that the person or entity intended to have, or allow others to have, Programming authorized for the DISH DBS System under such an account or Prepaid Card, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Prepaid Card or the Programming authorized under the single account, as applicable, and the full retail price for such Programming or the full amount that EchoStar would have received for multiple Prepaid Cards in each case had each DISH DBS System authorized under the single account or Prepaid Card been authorized under a separate account or Prepaid Card, as applicable. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 2.6, ECHOSTAR SHALL BE ENTITLED TO CHARGE BACK AT ANY TIME (EVEN AFTER THE TERMINATION OR EXPIRATION OF THIS AGREEMENT) THE INCENTIVES, IF ANY, PAID TO RETAILER BY ECHOSTAR WITH RESPECT TO ANY SUBSCRIBER ACCOUNT AFFECTED BY SUCH BREACH OR DEFAULT. IN THE EVENT THAT RETAILER WISHES TO DISPUTE ANY SUCH CHARGEBACK, RETAILER SHALL FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 15 BELOW. ECHOSTAR'S CALCULATION OF AMOUNTS OWING TO ECHOSTAR FROM RETAILER UNDER THIS SECTION 2.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 2.6 are without prejudice to any other rights and remedies that EchoStar and/or any of its Affiliates may have under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

2.7 Pre-Activations. Retailer shall not, prior to installation, directly or indirectly activate ("Pre-Activate") any DISH DBS System, nor shall Retailer directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System, Promotional Certificate or Prepaid Card to any person or entity who Retailer knows or reasonably should have known intends to Pre-Activate a DISH DBS System.

2.8 Financing; Making Payments on Behalf of End-Users. Retailer shall not directly or indirectly provide financing for the purchase of any Programming or make any payment to EchoStar for Programming or otherwise on behalf of any end-user of a DISH DBS System, nor shall Retailer directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System, Promotional Certificate or Prepaid Card to any person or entity who Retailer knows or reasonably should have known intends to provide financing for the purchase of any Programming or make any payment to EchoStar for Programming or otherwise on behalf of any end-user of a DISH DBS System.

2.9 Installation Services. Retailer represents, warrants, covenants and agrees that all installation and after-sales services performed by Retailer and its employees and Permitted Subcontractors in connection with the sale, lease or other transfer of DISH DBS Systems, Promotional Certificates and/or Prepaid Cards will be performed by Retailer and its employees and Permitted Subcontractors, in full compliance with all applicable Laws, and subject to all of the terms, conditions, standards and guidelines set forth

in the DISH Network Installation Manual (located on the retailer web site), as such terms, conditions, standards and guidelines may be changed at Any Time by EchoStar and/or any of its Affiliates (including, without limitation, Dish Network Service L.L.C. and Dish Network California Service Corporation (collectively, "DNSLLC")) in their Sole Discretion, upon notice to Retailer. In addition to (and without limitation of) the foregoing, Retailer represents, warrants, covenants and agrees that any and all related accessories and/or other equipment installed for, or otherwise provided to, a consumer in fulfillment of, or otherwise in connection with, such installation and after-sales services shall strictly comply with any and all specifications and other terms and conditions, including without limitation any approved part number and/or vendor lists, as set forth by EchoStar and/or any of its Affiliates (including without limitation DNSLLC) in applicable Business Rules at Any Time in their Sole Discretion.

2.10 Prior Retailer Agreements.

2.10.1 IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY ECHOSTAR RETAILER AGREEMENT, INCENTIVIZED RETAILER AGREEMENT, COMMISSIONED RETAILER AGREEMENT, COMMISSIONED DEALER AGREEMENT OR ANY OTHER AGREEMENT WITH ECHOSTAR OR ANY OF ITS AFFILIATES RELATING TO THE MARKETING, PROMOTION, ADVERTISING OR SOLICITATION OF ORDERS FOR PROGRAMMING BY RETAILER AND THE PAYMENT OF CERTAIN AMOUNTS BY ECHOSTAR THEREFOR (EACH A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE, THEN UPON EXECUTION OF THIS AGREEMENT BY RETAILER (WHETHER VIA SIGNATURE OR ELECTRONIC ACCEPTANCE): (I) ALL PRIOR RETAILER AGREEMENTS SHALL BE AUTOMATICALLY TERMINATED, EXCEPT THAT THE PROVISIONS (EXCLUDING ANY PROVISIONS RELATED TO THE PAYMENT OF COMMISSIONS OR INCENTIVES) IN SUCH PRIOR RETAILER AGREEMENTS THAT EXPRESSLY SURVIVE AND SUCH OTHER RIGHTS AND OBLIGATIONS THEREUNDER AS WOULD LOGICALLY BE EXPECTED TO SURVIVE TERMINATION OR EXPIRATION SHALL CONTINUE IN FULL FORCE AND EFFECT FOR THE PERIOD SPECIFIED OR FOR A REASONABLE PERIOD OF TIME UNDER THE CIRCUMSTANCES IF NO PERIOD IS SPECIFIED; (II) ALL INCENTIVES, COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE DUE TO RETAILER UNDER SUCH PRIOR RETAILER AGREEMENTS SHALL BE PAYABLE BY ECHOSTAR TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) EXCEPT AS SET FORTH IN SECTION 2.10.1(I), ALL RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND ALL PRIOR RETAILER AGREEMENTS SHALL BE OF NO FURTHER FORCE OR EFFECT.

2.10.2 RETAILER AND ITS AFFILIATES HEREBY ACKNOWLEDGE AND AGREE THAT THEY DO NOT, AS OF THE EFFECTIVE DATE, HAVE ANY CLAIMS OR CAUSES OF ACTION AGAINST ECHOSTAR OR ANY OF ITS AFFILIATES FOR ANY ACTS OR OMISSIONS THAT MAY HAVE OCCURRED PRIOR TO THE EFFECTIVE DATE AND, IN CONSIDERATION OF RETAILER BEING APPOINTED AS AN AUTHORIZED RETAILER HEREUNDER BY ECHOSTAR, RETAILER AND ITS AFFILIATES HEREBY WAIVE ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION, WITH THE SOLE EXCEPTION OF ANY CLAIMS OR CAUSES OF ACTION FOR WHICH RETAILER PROVIDES WRITTEN NOTICE TO ECHOSTAR IN THE SAME FORM REQUIRED FOR A NOTICE OF CLAIM UNDER SECTION 15 BELOW WITHIN NINETY (90) DAYS (OR THE SHORTEST PERIOD OF TIME ALLOWED BY APPLICABLE LAW IF SUCH PERIOD IS MORE THAN 90 DAYS) AFTER THE DATE THAT RETAILER EXECUTES THIS AGREEMENT (WHETHER VIA SIGNATURE OR ELECTRONIC ACCEPTANCE). ECHOSTAR SHALL HAVE THE SAME RIGHTS WITH RESPECT TO REQUESTS FOR ADDITIONAL INFORMATION AND ACCESS TO RETAILER'S BOOKS AND RECORDS IN CONNECTION WITH ANY SUCH CLAIMS AND CAUSES OF ACTION AS ECHOSTAR HAS UNDER SECTION 17.9 BELOW. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 2.10.2 WITH RESPECT TO A PARTICULAR CLAIM AND/OR CAUSE OF ACTION SHALL CONSTITUTE A WAIVER BY RETAILER AND ITS AFFILIATES WITH RESPECT TO THE RELEVANT CLAIM AND/OR CAUSE OF ACTION. HOWEVER, NOTWITHSTANDING ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NOTHING CONTAINED IN THIS AGREEMENT WILL WAIVE ANY RIGHT RETAILER MAY HAVE IN THE CLAIMS BROUGHT IN THE FOLLOWING CLASS ACTION LAWSUITS IN THE EVENT THE FOLLOWING LAWSUITS ARE CERTIFIED: CASE NO. 00-CV-1989, STYLED *JOHN DEJONG, D/B/A ANEXWAVE, @ AND JOE KELLY, D/B/A AKEL-TRONICS, @ AND JAGUAR TECHNOLOGIES, INC. V. ECHOSTAR SATELLITE CORPORATION*, UNITED STATES DISTRICT COURT, DISTRICT OF COLORADO; CASE NO. 00-CV-3130, STYLED *AIR COMMUNICATION & SATELLITE, INC. ET AL. V. ECHOSTAR SATELLITE CORPORATION*, DISTRICT COURT, ARAPAHOE COUNTY, COLORADO. IN THE EVENT THAT NO PRIOR RETAILER AGREEMENT IS IN EFFECT AS OF THE EFFECTIVE DATE, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE INCENTIVES FOR NEW SUBSCRIBER ACCOUNTS ACTIVATED FROM AND AFTER THE EFFECTIVE DATE, NOTWITHSTANDING PAYMENT BY ECHOSTAR OF ANY INCENTIVES, COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE TO RETAILER PRIOR TO THE EFFECTIVE DATE. THIS AGREEMENT SHALL NOT AMEND, MODIFY, ALTER OR CHANGE ANY TERMS OR CONDITIONS OF ANY LEASE PLAN DEALER AGREEMENT, OR ANY SIMILAR AGREEMENT RELATING TO LEASING, WHICH IS NOW EXISTING OR LATER MADE WITH ECHOSTAR OR ANY OF ITS AFFILIATES.

2.11 **Promotional Programs.** Retailer shall be eligible to participate in such Promotional Programs as EchoStar and/or any of its Affiliates may make available to Retailer at Any Time in their Sole Discretion. Retailer agrees to be bound by, and to use its best efforts to support, all of the terms and conditions of (and all of such terms and conditions are hereby incorporated into this Agreement by reference in their entirety) the Promotional Programs in which Retailer elects to participate. Retailer acknowledges and

agrees that: (i) under no circumstances shall EchoStar or any of its Affiliates have at any time any obligation to offer any Promotional Programs to Retailer, or if Promotional Programs are offered to others, to permit Retailer to be eligible to participate in them; (ii) EchoStar and its Affiliates may, at Any Time in their Sole Discretion, add, discontinue, substitute, modify, amend or otherwise alter any or all of the terms and conditions of any Promotional Programs; and (iii) if EchoStar and/or any of its Affiliates offer any Promotional Programs to Retailer, then Retailer shall only be eligible to participate in each such Promotional Program if and to the extent that it meets all of the qualification criteria and other terms and conditions as EchoStar and/or its Affiliates may establish at Any Time in their Sole Discretion. In the event of any conflict or inconsistency between the terms and conditions of a Promotional Program and/or applicable Business Rules and the terms or conditions of this Agreement, the terms and conditions of this Agreement shall control. In the event of any ambiguity between or among the terms and conditions of a Promotional Program, Business Rule and/or this Agreement, EchoStar shall have the sole and exclusive authority to interpret and/or make a final determination in its Sole Discretion concerning any issue arising from such ambiguity.

2.12 MDU Property / Guest Properties. Retailer shall ensure that no Guest Property or bulk-billed MDU Property directly or indirectly engages in: (i) the reselling of Bulk Programming (i.e., the property cannot charge more for Bulk Programming than they pay to EchoStar for such Bulk Programming); (ii) the retransmission or rebroadcast of any Programming, except with the express written consent of EchoStar which consent EchoStar may withhold in its Sole Discretion; or (iii) modifying, adding to, or deleting any of the Bulk Programming offered. In addition to (and without limitation of) the foregoing, Retailer shall not directly or indirectly engage, and shall ensure that no Guest Property or bulk-billed MDU Property directly or indirectly engages, in any act or omission through which EchoStar and/or any of its Affiliates could be deemed a cable operator or any other similar term, including without limitation any act or omission arising from or relating to the crossing of a public right of way by a provider of video programming services, in each case as defined under any applicable Laws ("Cable Operator"). Retailer shall promptly notify EchoStar if it is aware of or suspects (a) a change in the number of Units at any Guest Property or bulk-billed MDU Property subscribing to Bulk Programming or (b) any act or omission as set forth in the immediately preceding sentence through which EchoStar and/or any of its Affiliates could be deemed a Cable Operator. Retailer further understands and agrees that bulk-billed MDU Properties, non-bulk-billed MDU Properties and Guest Properties may require the purchase of commercially-invoiced DISH DBS Systems, if required and in such case, as further described in applicable Business Rules and adjustable at Any Time in EchoStar's Sole Discretion.

3. REPRESENTATIONS AND WARRANTIES. The parties hereto make the following representations and warranties with the specific intent to induce the other party into entering into this Agreement and recognize that the other party would not enter into this Agreement but for the following representations and warranties:

3.1 Each party hereto represents and warrants that the execution (whether via signature or electronic acceptance), delivery and performance of this Agreement have been duly authorized and that it has the full right, power and authority to execute, deliver and perform this Agreement.

3.2 Each party hereto represents and warrants that the signature of its duly authorized representative below or its electronic acceptance of this Agreement, as applicable, is genuine and that the person signing or electronically accepting this Agreement on behalf of such party is authorized by such party to sign and/or electronically accept this Agreement on its behalf.

3.3 Retailer represents and warrants that: (i) it is a valid and existing entity in compliance with all Laws related to the maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not currently violating and has never violated any Laws; (iv) neither it nor any of its Affiliates has ever engaged in any of the acts prohibited under Section 2.6, 2.7, 2.8, 2.9, 2.12, 6.10, 6.14, 7, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9 or 14 below; (v) neither it nor any of its Affiliates has ever engaged in any acts that would have resulted in automatic termination or be considered a default or breach under any current or former EchoStar Retailer Agreement, Incentivized Retailer Agreement, Commissioned Retailer Agreement, Commissioned Dealer Agreement, Distributor Retailer Agreement, Non-Incentivized Retailer Agreement, Non-Commissioned Retailer Agreement, or Non-Commissioned Dealer Agreement with EchoStar and/or any of its Affiliates or under any other current or former Other Agreement; (vi) it is not dependent upon EchoStar and/or any Affiliates of EchoStar for a major part of Retailer's business; and (vii) it either sells or could sell other products or services in addition to EchoStar products or services that compete with EchoStar products or services.

3.4 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT IT UNDERSTANDS FULLY EACH AND EVERY ONE OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

3.5 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE ITS INDEPENDENT COUNSEL REVIEW THIS AGREEMENT PRIOR TO EXECUTION (WHETHER VIA SIGNATURE OR ELECTRONIC ACCEPTANCE). EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT EITHER THIS AGREEMENT HAS BEEN ACTUALLY REVIEWED BY ITS INDEPENDENT COUNSEL OR THAT SUCH PARTY HAS DECLINED TO HAVE ITS INDEPENDENT COUNSEL DO SO.

3.6 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT IS NOT RELYING UPON, AND IT HAS NOT BEEN INDUCED INTO ENTERING INTO THIS AGREEMENT BY, ANY STATEMENTS, PROMISES,

REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS, GUARANTEES, ACTS OR OMISSIONS NOT EXPRESSLY SET FORTH HEREIN.

3.7 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS NOT BEEN COERCED INTO ENTERING INTO THIS AGREEMENT AND THAT IT HAS ENTERED INTO THIS AGREEMENT OF ITS OWN FREE WILL AND FREE OF INFLUENCE OR DURESS.

3.8 RETAILER REPRESENTS AND WARRANTS THAT BEFORE IT PARTICIPATES IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW THE TERMS AND CONDITIONS OF SUCH PROMOTIONAL PROGRAM AND ASSOCIATED BUSINESS RULES OR HAVE THEM REVIEWED BY ITS INDEPENDENT COUNSEL.

3.9 EACH PARTY HERETO REPRESENTS, WARRANTS, ACKNOWLEDGES AND AGREES THAT: (I) THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND EACH AND EVERY PARAGRAPH AND EVERY PART HEREOF, HAVE BEEN COMPLETELY AND CAREFULLY READ BY, AND EXPLAINED TO, SUCH PARTY; AND (II) THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE FULLY AND COMPLETELY UNDERSTOOD BY SUCH PARTY AND SUCH PARTY IS COGNIZANT OF ALL OF SUCH TERMS AND CONDITIONS AND THE EFFECT OF EACH AND ALL OF SUCH TERMS AND CONDITIONS.

4. **PROGRAMMING.**

4.1 **Programming.** EchoStar shall determine at Any Time, in its Sole Discretion, the Programming for which Retailer may solicit orders. EchoStar may expand, reduce or otherwise modify the content of any Programming packages or add or delete any Programming (either in a package or a-la-carte) at Any Time in its Sole Discretion. All such changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date.

4.2 **Changes.** If at any time or for any reason or no reason EchoStar changes the content of any Programming package, Retailer's authority to solicit orders for the prior Programming package shall immediately cease.

5. **PRICES.** EchoStar shall determine the retail prices for Programming at Any Time in its Sole Discretion. Retailer will only solicit orders for Programming at the retail prices set by EchoStar from time to time. EchoStar may increase, decrease or otherwise modify those prices at Any Time in its Sole Discretion. Any price changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date. Retailer shall not represent that Programming may be purchased or otherwise obtained on any other terms and conditions except as authorized in writing by EchoStar.

6. **INCENTIVES.** In consideration of Retailer's continuing efforts to market, promote and solicit orders for Programming and Retailer's continuing efforts to service DISH Network Subscribers after initial activation, Retailer may be eligible to receive the Incentives set forth below.

6.1 **Monthly Incentives.**

6.1.1 **Monthly Residential Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System or Promotional Certificate that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates (in the case of DISH DBS Systems and Promotional Certificates), or a Third Party Manufacturer (solely with respect to DISH DBS Systems); (ii) is re-sold by Retailer directly to a Qualifying Residential Subscriber; and (iii) results in the activation of Eligible Residential Programming for a new Residential Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential Incentive"), in accordance with applicable Business Rules. Solely for the purposes of this Section 6.1.1 and solely with respect to DISH DBS Systems activated under a Promotional Program involving the leasing of equipment by EchoStar to end users, a DISH DBS System (a) for which title is automatically transferred from Retailer to EchoStar pursuant to the Business Rules applicable to such Promotional Program, and (b) which is leased by EchoStar directly to a Qualifying Residential Subscriber pursuant to such Business Rules, in each case during the Term of this Agreement, shall be deemed to be re-sold by Retailer directly to such Qualifying Residential Subscriber for purposes of clause (ii) above. The amount of such Monthly Residential Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.2 Monthly Residential MDU Incentives. Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Residential MDU Subscriber; and (iii) results in the activation of Eligible Residential MDU Programming for a new Residential MDU Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential MDU Incentive"), in accordance with applicable Business Rules. Solely for the purposes of this Section 6.1.2 and solely with respect to DISH DBS Systems activated under a Promotional Program involving the leasing of equipment by EchoStar to end users, a DISH DBS System (a) for which title is automatically transferred from Retailer to EchoStar pursuant to the Business Rules applicable to such Promotional Program, and (b) which is leased by EchoStar directly to a Qualifying Residential MDU Subscriber pursuant to such Business Rules, in each case during the Term of this Agreement, shall be deemed to be re-sold by Retailer directly to such Qualifying Residential MDU Subscriber for purposes of clause (ii) above. The amount of such Monthly Residential MDU Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.3 Monthly Commercial Incentives. Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Commercial Subscriber; and (iii) results in the activation of Eligible Commercial Programming for a new Commercial Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Commercial Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Commercial Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW COMMERCIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY COMMERCIAL INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY COMMERCIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.4 Monthly Bulk Incentives. Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Bulk Subscriber; and (iii) results in the activation of Eligible Bulk Programming for a new Bulk Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Bulk Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Bulk Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW BULK SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY BULK INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY BULK INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.2 Additional Incentives.

6.2.1 Additional Residential Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential Incentives with respect to new Residential Subscriber Accounts, such as, co-op accrual, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Residential Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to

time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.2 Additional Residential MDU Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential MDU Incentives with respect to new Residential MDU Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential MDU Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Residential MDU Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.3 Additional Commercial Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Commercial Incentives with respect to new Commercial Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Commercial Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Commercial Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.4 Additional Bulk Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Bulk Incentives with respect to new Bulk Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Bulk Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Bulk Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.5 RETAILER ACKNOWLEDGES AND AGREES THAT:

(I) UNDER NO CIRCUMSTANCES SHALL ECHOSTAR HAVE AT ANY TIME ANY OBLIGATION TO OFFER ANY ADDITIONAL INCENTIVES TO RETAILER, OR IF ADDITIONAL INCENTIVES ARE OFFERED TO OTHERS, TO ALTER OR AMEND APPLICABLE BUSINESS RULES TO PERMIT RETAILER TO BE ELIGIBLE TO RECEIVE THEM;

(II) ECHOSTAR MAY AT ANY TIME AND FROM TIME TO TIME, IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, ADD, DISCONTINUE, SUBSTITUTE, MODIFY OR OTHERWISE ALTER ANY OR ALL OF THE TERMS AND CONDITIONS OF ANY PROMOTIONAL PROGRAM INVOLVING THE PAYMENT OF ADDITIONAL INCENTIVES;

(III) IF ECHOSTAR OFFERS ANY ADDITIONAL INCENTIVES TO RETAILER THROUGH ANY PROMOTIONAL PROGRAM, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE THE ADDITIONAL INCENTIVES IF AND TO THE EXTENT THAT IT MEETS ALL OF THE QUALIFICATION CRITERIA AND OTHER TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BUSINESS RULES (IF ANY) AND THIS AGREEMENT;

(IV) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (V) BELOW, ADDITIONAL RESIDENTIAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS OR PROMOTIONAL CERTIFICATES THAT: (A) ARE SOLD TO RETAILER BY ECHOSTAR OR AN AFFILIATE OF ECHOSTAR (IN THE CASE OF DISH DBS SYSTEMS AND PROMOTIONAL CERTIFICATES) OR A THIRD PARTY MANUFACTURER (SOLELY WITH RESPECT TO DISH DBS SYSTEMS); (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL PROGRAMMING FOR A NEW RESIDENTIAL SUBSCRIBER ACCOUNT;

(V) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, SOLELY WITH RESPECT TO PROMOTIONAL PROGRAMS INVOLVING THE LEASING OF EQUIPMENT

BY ECHOSTAR, ADDITIONAL RESIDENTIAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS (A) THAT ARE SOLD TO RETAILER BY ECHOSTAR, AN AFFILIATE OF ECHOSTAR, OR A THIRD PARTY MANUFACTURER; (B) FOR WHICH TITLE IS AUTOMATICALLY TRANSFERRED DIRECTLY FROM RETAILER TO ECHOSTAR PURSUANT TO THE BUSINESS RULES APPLICABLE TO SUCH PROMOTIONAL PROGRAM; (C) THAT ARE LEASED BY ECHOSTAR DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER; AND (D) THAT RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL PROGRAMMING FOR A NEW RESIDENTIAL SUBSCRIBER ACCOUNT;

(VI) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (VII) BELOW, ADDITIONAL RESIDENTIAL MDU INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS THAT: (A) ARE SOLD TO RETAILER BY ECHOSTAR OR ANY OF ITS AFFILIATES OR A THIRD PARTY MANUFACTURER; (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING RESIDENTIAL MDU SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL MDU PROGRAMMING FOR A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT;

(VII) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, SOLELY WITH RESPECT TO PROMOTIONAL PROGRAMS INVOLVING THE LEASING OF EQUIPMENT BY ECHOSTAR, ADDITIONAL RESIDENTIAL MDU INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS (A) THAT ARE SOLD TO RETAILER BY ECHOSTAR, AN AFFILIATE OF ECHOSTAR, OR A THIRD PARTY MANUFACTURER; (B) FOR WHICH TITLE IS AUTOMATICALLY TRANSFERRED DIRECTLY FROM RETAILER TO ECHOSTAR PURSUANT TO THE BUSINESS RULES APPLICABLE TO SUCH PROMOTIONAL PROGRAM; (C) THAT ARE LEASED BY ECHOSTAR DIRECTLY TO A QUALIFYING RESIDENTIAL MDU SUBSCRIBER; AND (D) THAT RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL MDU PROGRAMMING FOR A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT;

(VIII) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, ADDITIONAL COMMERCIAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS THAT: (A) ARE SOLD TO RETAILER BY ECHOSTAR OR ANY OF ITS AFFILIATES OR A THIRD PARTY MANUFACTURER; (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING COMMERCIAL SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE COMMERCIAL PROGRAMMING FOR A NEW COMMERCIAL SUBSCRIBER ACCOUNT;

(IX) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, ADDITIONAL BULK INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS THAT: (A) ARE SOLD TO RETAILER BY ECHOSTAR OR ANY OF ITS AFFILIATES OR A THIRD PARTY MANUFACTURER; (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING BULK SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE BULK PROGRAMMING FOR A NEW BULK SUBSCRIBER ACCOUNT; AND

(X) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, IN NO EVENT SHALL RETAILER BE ELIGIBLE TO RECEIVE ANY MONTHLY INCENTIVES OR ADDITIONAL INCENTIVES HEREUNDER IN CONNECTION WITH THE MARKETING, PROMOTION, SALE, TRANSFER, HANDLING OR ANY OTHER ACTIVITY RELATING TO OR IN CONNECTION WITH PREPAID CARDS AND/OR THE INSTALLATION, SALE OR OTHER TRANSFER OF DISH DBS SYSTEMS, RELATED EQUIPMENT OR OTHER ACCESSORIES IN CONNECTION THEREWITH.

6.2.6 ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR ECHOSTAR SUBSCRIBER IS A NEW RESIDENTIAL SUBSCRIBER ACCOUNT, NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT, NEW COMMERCIAL SUBSCRIBER ACCOUNT OR NEW BULK SUBSCRIBER ACCOUNT THAT IS ELIGIBLE FOR THE PAYMENT OF ADDITIONAL INCENTIVES HEREUNDER. RETAILER ACKNOWLEDGES AND AGREES THAT IF IT CHOOSES TO PARTICIPATE IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW AND ADHERE TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE BUSINESS RULES RELATED THERETO. FURTHERMORE, RETAILER'S PARTICIPATION IN ANY PROMOTIONAL PROGRAM OR RECEIPT OF ADDITIONAL INCENTIVES THEREUNDER SHALL SERVE AS RETAILER'S ACKNOWLEDGEMENT OF THE TERMS AND CONDITIONS SET FORTH IN APPLICABLE BUSINESS RULES AND RETAILER'S AGREEMENT TO BE BOUND THERETO. ECHOSTAR'S CALCULATION AND PAYMENT OF ADDITIONAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.3 Chargeback of Incentives.

6.3.1 IN THE EVENT THAT RETAILER IS PAID AN INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK SUCH INCENTIVE PAID TO

RETAILER. IN ADDITION TO (AND WITHOUT LIMITATION OF) THE FOREGOING, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE MONTHLY INCENTIVES (AT ANYTIME) OR ADDITIONAL INCENTIVES (TO THE EXTENT THAT THE APPLICABLE CHARGEBACK PERIOD SET FORTH IN THIS AGREEMENT OR APPLICABLE BUSINESS RULES HAS NOT EXPIRED) PAID:

(I) WITH RESPECT TO A PARTICULAR QUALIFYING RESIDENTIAL SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE RESIDENTIAL PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (ECHOSTAR SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON);

(II) WITH RESPECT TO A PARTICULAR QUALIFYING RESIDENTIAL MDU SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE RESIDENTIAL MDU PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (ECHOSTAR SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON);

(III) WITH RESPECT TO A PARTICULAR QUALIFYING COMMERCIAL SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE COMMERCIAL PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (ECHOSTAR SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON); AND

(IV) WITH RESPECT TO A PARTICULAR QUALIFYING BULK SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE BULK PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (ECHOSTAR SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON).

IN ADDITION TO (AND WITHOUT LIMITATION OF ANY OF) THE FOREGOING, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE INCENTIVES PAID IN CONNECTION WITH RETAILER FRAUDULENTLY RECEIVING AN INCENTIVE OR OTHER PAYMENT BY (A) MISREPRESENTING ANY INFORMATION CONCERNING A PRIOR OR CURRENT ECHOSTAR SUBSCRIBER TO MAKE THAT PERSON APPEAR TO BE A NEW ECHOSTAR SUBSCRIBER, OR (B) CREATING A FICTITIOUS OR FRAUDULENT CUSTOMER ACCOUNT. FOR THE AVOIDANCE OF DOUBT, IN THE EVENT ECHOSTAR DETERMINES AT ANY TIME IN GOOD FAITH IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, THAT RETAILER COMMITTED FRAUD OR OTHER MISCONDUCT, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE INCENTIVES PAID TO RETAILER, AND OUT-OF-POCKET EXPENSES (INCLUDING WITHOUT LIMITATION PROGRAMMING COSTS PAID AND ANY EQUIPMENT SUBSIDIES PROVIDED) INCURRED BY ECHOSTAR AND/OR ANY OF ITS AFFILIATES, IN CONNECTION WITH SUCH FRAUD OR MISCONDUCT. ECHOSTAR'S CALCULATION AND ASSESSMENT OF ANY CHARGEBACK SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15. ECHOSTAR'S DETERMINATION THAT A CHARGEBACK IS PROPER SHALL BE CONTROLLING ABSENT FRAUD, MALICE OR WANTON AND WILLFUL MISCONDUCT ON THE PART OF ECHOSTAR. THE PROVISIONS OF THIS SECTION 6.3 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT (FOR ANY REASON OR NO REASON WHATSOEVER) INDEFINITELY.

6.4 **Payment.** Subject to the terms of this Section 6.4, all Incentives paid to Retailer hereunder shall be made by EFT.

6.4.1 **Electronic Funds Transfer.** Retailer shall provide EchoStar with the Retailer Account information and any changes thereto ("EFT Instructions"), in the manner prescribed by EchoStar. Until Retailer provides EchoStar with EFT Instructions, or in the event that Retailer elects to receive payments by check, EchoStar shall pay Incentives to Retailer by check and Retailer will be assessed EchoStar's standard processing fee, which may be changed by EchoStar at Any Time in its Sole Discretion.

6.4.2 **Reliance on Retailer Account Information.** With respect to Retailer's EFT Instructions, and any purported changes or modifications thereof by Retailer, EchoStar may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument and may assume that any person purporting to give any such writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so. The provisions of this Section 6.4.2 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.4.3 **EchoStar EFT Liability Limitation.** Retailer agrees that in no event shall EchoStar have any liability

under this Agreement for any Incentives not received by Retailer as a result of an error in any way attributable to: (i) any bank or financial institution; (ii) Retailer; or (iii) any other person, entity or circumstance outside of EchoStar's direct control. The provisions of this Section 6.4.3 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.4.4 Incentive Statements. EchoStar shall make available to Retailer, in an electronic format determined by EchoStar at Any Time in its Sole Discretion, periodic statements reflecting the Incentives (if any) payable to Retailer as well as any Chargebacks assessed against Retailer. For the avoidance of doubt, such statements will only be made available during periods when Incentives are payable to Retailer. Retailer acknowledges that EchoStar is not required to provide Retailer with any additional information, including but not limited to communications between EchoStar and any DISH Network Subscriber or any customer account information regarding any DISH Network Subscriber.

6.5 Exceptions. Notwithstanding anything to the contrary set forth herein:

6.5.1 Retailer shall not be entitled to Monthly Residential Incentives (at anytime) or Additional Residential Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Residential Subscriber Account for which: (i) Eligible Residential Programming has been cancelled by anyone; (ii) payment in full for Eligible Residential Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Residential Customer Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Residential Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from EchoStar or any of its Affiliates on the date of the order; (v) the Residential Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Residential Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.2 Retailer shall not be entitled to Monthly Residential MDU Incentives (at anytime) or Additional Residential MDU Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Residential MDU Subscriber Account for which: (i) Eligible Residential MDU Programming has been cancelled by anyone; (ii) payment in full for Eligible Residential MDU Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Residential Customer Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Residential MDU Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from EchoStar or any of its Affiliates on the date of the order; (v) the Residential MDU Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Residential MDU Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.3 Retailer shall not be entitled to Monthly Commercial Incentives (at anytime) or Additional Commercial Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Commercial Subscriber Account for which: (i) Eligible Commercial Programming has been cancelled by anyone; (ii) payment in full for Eligible Commercial Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Commercial Customer Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Commercial Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from EchoStar or any of its Affiliates on the date of the order; (v) the Commercial Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Commercial Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.4 Retailer shall not be entitled to Monthly Bulk Incentives (at anytime) or Additional Bulk Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Bulk Subscriber Account for which: (i) Eligible Bulk Programming has been cancelled by anyone; (ii) payment in full for Eligible Bulk Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Commercial Customer Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Bulk Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from EchoStar or any of its Affiliates on the date of the order; (v) the Bulk Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the

Qualifying Bulk Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.5 Retailer shall not be entitled to any Incentives with respect to the activation by EchoStar of a DISH DBS System unless: (i) all of the individual components comprising the applicable DISH DBS System (e.g., receivers, dishes and LNBFs) are confirmed by EchoStar as having been purchased by Retailer directly from either: (a) EchoStar or an Affiliate of EchoStar, or (b) a Third Party Manufacturer; or (ii) the DISH DBS System is delivered pursuant to a Promotional Certificate that is confirmed by EchoStar as having been purchased by Retailer directly from EchoStar or an Affiliate of EchoStar. Retailer acknowledges and agrees that EchoStar shall not be required to pay Incentives to Retailer in connection with a DISH DBS System purchased by Retailer directly from a Third Party Manufacturer unless and until the Third Party Manufacturer provides EchoStar with accurate information required by EchoStar to be able to pay such Incentives to Retailer including, at a minimum: (1) serial numbers for DISH DBS Systems sold by the Third Party Manufacturer to Retailer; and (2) the name and address, and other appropriate identifying information of Retailer.

6.5.6 Notwithstanding anything to the contrary set forth herein and unless expressly set forth to the contrary under the terms and conditions of a specific Promotional Program or applicable Business Rules, Retailer shall only be entitled to receive Monthly Residential Incentives and Additional Residential Incentives with respect to the first new Residential Subscriber Account activated per household. Notwithstanding anything to the contrary set forth herein and unless expressly set forth to the contrary under the terms and conditions of a specific Promotional Program or applicable Business Rules, Retailer shall only be entitled to receive Monthly Residential MDU Incentives and Additional Residential MDU Incentives with respect to the first new Residential MDU Subscriber Account activated per household. Notwithstanding anything to the contrary set forth herein and unless expressly set forth to the contrary under the terms and conditions of a specific Promotional Program or applicable Business Rules, Retailer shall only be entitled to receive Monthly Commercial Incentives and Additional Commercial Incentives with respect to the first new Commercial Subscriber Account activated per business operated at a Commercial Location.

6.6 Suspension and Termination of Incentives.

6.6.1 **Suspension.** In addition to (and without limitation of) any other rights and remedies available, EchoStar shall not be required to pay any Incentives to Retailer which would otherwise be due to Retailer during any period in which Retailer is in breach or default of this Agreement, the Trademark License Agreement or any Other Agreement, and EchoStar shall have no liability to Retailer as a result of such suspension of payment. Specifically, and without limitation of the foregoing, Retailer shall have no right at any time to recoup any Incentives not paid during a period of breach or default. The foregoing provisions of this Section 6.6.1 may be exercised without terminating this Agreement and are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise. The provisions of this Section 6.6.1 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.6.2 **Termination.** In the event this Agreement expires or is terminated for any reason or no reason whatsoever, EchoStar shall have the right, in addition to any other rights and remedies it may have, to terminate immediately all payments of Incentives then presently due and owing, or thereafter due, to Retailer under this Agreement.

6.7 **Non-Incentivized Activations by EchoStar.** In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Residential Subscriber and/or any DISH DBS System at a Residential Location or Institutional/Residential Location, EchoStar shall be entitled to activate Residential Programming for that Qualifying Residential Subscriber and/or DISH DBS System without payment of any Incentive or compensation to Retailer, even if Retailer solicited the Qualifying Residential Subscriber to order Residential Programming from EchoStar. In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Residential MDU Subscriber and/or any DISH DBS System at a non-bulk-billed MDU Property, EchoStar shall be entitled to activate Residential MDU Programming for that Qualifying Residential MDU Subscriber and/or DISH DBS System without payment of any Incentive to Retailer, even if Retailer solicited the Qualifying Residential MDU Subscriber to order Residential MDU Programming from EchoStar. In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Commercial Subscriber and/or any DISH DBS System at a Commercial Location, EchoStar shall be entitled to activate Commercial Programming for that Qualifying Commercial Subscriber and/or DISH DBS System without payment of any Incentive to Retailer, even if Retailer solicited the Qualifying Commercial Subscriber to order Commercial Programming from EchoStar. In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Bulk Subscriber and/or any DISH DBS System at a Guest Property or a bulk-billed MDU Property, EchoStar shall be entitled to activate Bulk Programming for that Qualifying Bulk Subscriber and/or DISH DBS System without payment of any Incentive to Retailer, even if Retailer solicited the Qualifying Bulk Subscriber to order Bulk Programming from EchoStar.

6.8 **Offsets.** In no event shall Retailer or any of its Affiliates offset any amounts due to EchoStar or any of its Affiliates from Retailer or any of its Affiliates against any Incentives or other amounts due to Retailer or any of its Affiliates from EchoStar or any of its Affiliates. In the event that the Incentives paid by EchoStar to Retailer exceed the amount to which Retailer was entitled, or if Retailer and/or any of its Affiliates are indebted to EchoStar and/or any of its Affiliates under Section 13 below or for any other reason (including without limitation for any Chargebacks permitted hereunder), Retailer and its Affiliates hereby acknowledge and agree that EchoStar and its Affiliates shall have the right, but not the obligation, to offset any such amounts against any Incentives or other amounts otherwise due to Retailer or any of its Affiliates from EchoStar or any of its Affiliates, as well as any and all amounts for which EchoStar

and/or any of its Affiliates may become liable to third parties by reason of Retailer's and/or any of its Affiliate's acts in performing, or failing to perform, Retailer's and/or any of its Affiliate's obligations under this Agreement or any Other Agreement. Further, EchoStar may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as EchoStar, at Any Time in its Sole Discretion, deems necessary to protect EchoStar and/or any of its Affiliates from any loss, damage, or expense relating to or arising out of Retailer's actions, inaction or performance hereunder, or in response to any claim or threatened claim of which EchoStar becomes aware concerning Retailer or the performance of Retailer's duties hereunder. EchoStar's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim or recoupment of Retailer whatsoever, including, but not limited to, any which might arise from a breach of this Agreement by EchoStar or any of its Affiliates. The provisions of this Section 6.8 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.9 **Recovery of Outstanding Amounts.** ECHOSTAR'S CALCULATION OF INCENTIVES AND OFFSET AMOUNTS SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15. Within thirty (30) days after expiration or termination of this Agreement for any reason or no reason whatsoever, Retailer shall pay to EchoStar all amounts owing from Retailer and/or any of its Affiliates to EchoStar and/or any of its Affiliates.

6.10 **Collection of Programming and Other Fees.**

6.10.1 Retailer acknowledges and agrees that: (i) with the sole exception of payments for installation and after-sales services performed by Retailer and as otherwise expressly permitted by EchoStar in writing, under no circumstances shall Retailer or any of its Affiliates collect any payment for Programming or any other payment due to EchoStar and/or any of its Affiliates from any DISH Network Subscriber or any other person or entity; (ii) all subscription, demand purchase and other Programming fees shall be billed directly to DISH Network Subscribers by EchoStar; (iii) in the event that, notwithstanding Retailer's best efforts to comply with clause (i) above, a DISH Network Subscriber or other person or entity forwards any such payment to Retailer or any of its Affiliates, Retailer shall immediately forward the payment, together with any applicable sales or similar taxes, to EchoStar without deduction or offset of any kind, and shall instruct the DISH Network Subscriber or other person or entity that all future payments must be made to EchoStar directly; and (iv) until such time as the payment is delivered to EchoStar, such payment shall be deemed to be the sole and exclusive property of EchoStar, and Retailer shall hold such payment in trust for the benefit of EchoStar.

6.10.2 Retailer further acknowledges and agrees that: (i) under no circumstance shall Retailer or any of its Affiliates directly or indirectly collect any payment or derive any economic benefit in any form from a programming service provider (a "Programmer") in connection with and/or arising out of or relating to the marketing, promotion and/or solicitation of orders for the programming service(s) of such Programmer by Retailer and/or any of its Affiliates; (ii) in the event that, notwithstanding Retailer's best efforts to comply with clause (i) above, Retailer or any of its Affiliates receives any such payment or derives any such economic benefit, Retailer shall immediately forward the payment or deliver the cash value of the economic benefit, as the case may be, to EchoStar without deduction or offset of any kind; and (iii) until such time as the payment or cash value of the economic benefit is delivered to EchoStar, such payment or economic benefit shall be deemed to be the sole and exclusive property of EchoStar and Retailer shall hold such payment or economic benefit in trust for the benefit of EchoStar.

6.10.3 The foregoing is agreed to without prejudice to EchoStar exercising any other rights and remedies it may have at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), including without limitation, the right to terminate this Agreement and/or seek damages or other legal or equitable relief. The provisions of this Section 6.10 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

6.11 **Sole Incentives.** Retailer hereby acknowledges and agrees that the Incentives payable pursuant to this Agreement and any applicable Business Rules constitute the sole amounts payable by EchoStar to Retailer in connection with this Agreement.

6.12 **No Admission.** No payment to Retailer under this Agreement, whether in full or in part, shall be deemed to operate as EchoStar's acceptance, waiver or admission that Retailer has complied with any provision of this Agreement or the requirements of any Promotional Program including, without limitation, any Business Rules related thereto. The parties acknowledge and agree that at all times (including without limitation in connection with any arbitration or court proceeding) it shall remain Retailer's burden to prove eligibility for receipt of any Incentive (including, without limitation, performance of any conditions precedent thereto) or that any Chargeback was incorrect.

6.13 **Acknowledgement.** Retailer hereby acknowledges and agrees that the Incentives paid to Retailer under this Agreement do not represent deferred compensation in any form whatsoever and are not being paid to Retailer with respect to the procurement of, or the activation of Programming for, DISH Network Subscribers, but rather are being paid to Retailer as an incentive to continue marketing, promoting and soliciting orders for Programming from prospective DISH Network Subscribers and to provide continuing service to DISH Network Subscribers after initial activation.

6.14 **Assignment of Right to Payment.** Retailer does not have the power or the right to assign any payments, or its right to receive any payments, that may be due to Retailer under this Agreement. Any such assignment (whether express or by operation of law) shall be void and unenforceable. Any such attempted assignment shall immediately discontinue Retailer's right to future payments under this Agreement.

6.15 **Claims.** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN NO EVENT SHALL ANY NOTICE OF CLAIM ARISING OUT OF OR RELATING TO ANY ALLEGED FAILURE TO PAY ANY AMOUNTS DUE AND OWING FROM ECHOSTAR AND/OR ANY OF ITS AFFILIATES, ON THE ONE HAND, TO RETAILER AND/OR ANY OF ITS AFFILIATES, ON THE OTHER HAND, OR ARISING OUT OF OR RELATING TO ANY CHARGEBACK BE PROVIDED LATER THAN THIRTY (30) DAYS AFTER THE DATE THAT THE RELEVANT PAYMENT SHOULD HAVE BEEN MADE OR THE DATE THAT THE RELEVANT CHARGEBACK OCCURRED, AS APPLICABLE, OR LATER THAN THIRTY (30) DAYS AFTER EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON WHATSOEVER, WHICHEVER IS EARLIER, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE).

7. **ORDERS.**

7.1 Retailer agrees to use its best efforts to promote and enhance EchoStar's business, reputation and goodwill. Retailer shall allow only its employees, and shall not use any independent contractors, subcontractors, Affiliates, agents, sub-agents or any other persons not employed by Retailer to fulfill any of its obligations hereunder without EchoStar's specific prior written consent, which consent may be withheld in EchoStar's Sole Discretion. In the event that EchoStar does grant consent to Retailer to use persons not employed by Retailer to perform any activities contemplated hereunder ("Permitted Subcontractors"), Retailer shall be responsible for the acts and omissions of such Permitted Subcontractors to the same extent it is responsible for the acts and omissions of its own employees.

7.2 Retailer shall not sell Programming under any circumstances. All sales of Programming are transactions solely between EchoStar and DISH Network Subscribers. Retailer shall promptly forward to EchoStar all orders for Programming in the manner prescribed by EchoStar from time to time. Retailer understands that EchoStar shall have the right, in its Sole Discretion, to accept or reject, in whole or in part, all orders for Programming. Retailer also agrees that it shall not condition, tie or otherwise bundle any purchase of Programming with the purchase of any other services or products other than as specifically consented to in writing by EchoStar in advance, which consent may be withheld in EchoStar's Sole Discretion.

7.3 Retailer shall comply with all Business Rules, including without limitation all Business Rules which govern or are otherwise applicable to any Promotional Program in which Retailer participates. Retailer shall disclose to each prospective DISH Network Subscriber the relevant terms and conditions of each Promotional Program in which such prospective DISH Network Subscriber is interested as well as any other terms and conditions as set forth in any applicable Business Rules. Furthermore, Retailer shall take all actions and refrain from taking any action, as requested by EchoStar in connection with the marketing, advertisement, promotion and/or solicitation of orders for Programming and/or the sale, lease or other transfer of DISH DBS Systems, Promotional Certificates and/or Prepaid Cards and Retailer shall cooperate by supplying EchoStar with any information arising from or relating to those actions as EchoStar reasonably requests. The failure of Retailer to adhere to any Business Rules may result in disciplinary action by EchoStar in its Sole Discretion up to and including termination of this Agreement and/or any Other Agreement, and/or the exercise by EchoStar of any other right or remedy available to it under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved).

7.4 Retailer hereby acknowledges and agrees that the relationship, contractual or otherwise, between EchoStar (and/or any of its Affiliates) and each DISH Network Subscriber is, as between EchoStar and Retailer, for the sole and exclusive benefit of EchoStar and that EchoStar may conduct such relationship in any manner that it sees fit at Any Time, in its Sole Discretion, without incurring any liability whatsoever to Retailer and/or any of its Affiliates. In furtherance (and without limitation) of the foregoing, Retailer acknowledges and agrees that Retailer is not a third-party beneficiary of any agreement that EchoStar or any of its Affiliates may have with any DISH Network Subscriber, and that, under no circumstances, shall Retailer and/or any of its Affiliates have any claim or cause of action against EchoStar or any Affiliate of EchoStar for any action taken (or not taken) by EchoStar and/or any of its Affiliates with regard to any DISH Network Subscriber. Retailer further acknowledges and agrees that all records created or maintained by, or on behalf of, EchoStar relating to any DISH Network Subscriber are the sole and exclusive property of EchoStar and EchoStar shall not have any obligation whatsoever to give or allow Retailer access to such information, even if authorized or requested by such DISH Network Subscriber. The provisions of this Section 7.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

8. **TRADEMARK LICENSE AGREEMENT.** Retailer shall sign the Trademark License Agreement, in the form attached as Exhibit A hereto (the "Trademark License Agreement"), which agreement is hereby incorporated into this Agreement by reference in its entirety.

9. **CONDUCT OF BUSINESS.**

9.1 **Compliance with Laws.** Retailer shall not engage in any activity or business transaction which could be considered unethical, as determined by EchoStar in accordance with prevailing business standards, or damaging to EchoStar's and/or any of its Affiliates' image or goodwill in any way. Retailer shall under no circumstances take any action which could be considered disparaging to EchoStar and/or any of its Affiliates. Retailer shall comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise) and all amendments thereto, now enacted or hereafter promulgated (hereinafter "Laws"), and Retailer is solely responsible for its compliance with all Laws that apply to its obligations under this Agreement.

9.2 **Signal Theft.** Retailer shall not directly or indirectly: (i) engage in any signal theft, piracy or similar activities; (ii) engage in any unauthorized reception, transmission, publication, use, display or similar activities with respect to Programming; (iii) use a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property); (iv) alter any DISH DBS Systems or smart cards or any other equipment compatible with programming delivered by EchoStar or any of its Affiliates to be capable of signal theft (or for any other reason without the express written consent of EchoStar); (v) manufacture, import, offer to the public, sell, provide or otherwise traffic in any technology, product, service or device which is primarily designed or produced for the purpose of, or is marketed for use in, or has a limited commercially significant purpose other than, assisting in or facilitating signal theft or other piracy; or (vi) aid any others in engaging in, or attempting to engage in, any of the above described activities. Retailer shall immediately notify EchoStar if it becomes aware of any such activity by any person or entity. The provisions of this Section 9.2 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.3 **Hardware and Programming Export and Sale Restrictions.**

9.3.1 In addition to (and without limitation of) the Territory restrictions contained in this Agreement, Retailer hereby acknowledges that the U.S. Department of State and/or the U.S. Department of Commerce may in the future assert jurisdiction over DISH DBS Systems, and that DISH DBS Systems, Promotional Certificates, Prepaid Cards and Programming may not currently be sold outside of the Territory. Retailer represents, warrants and agrees that it will not directly or indirectly arrange for or participate in the export or sale of DISH DBS Systems, Promotional Certificates, Prepaid Cards or Programming, in whole or in part, outside of the Territory, and agrees that it will take all reasonable and adequate steps to prevent the export or sale of DISH DBS Systems, Promotional Certificates, Prepaid Cards and Programming outside of the Territory by others who purchase from Retailer and who might reasonably be expected to export or sell them outside of the Territory.

9.3.2 Retailer acknowledges and understands that U.S. export laws relating to satellite receivers may change from time to time in the future. Retailer acknowledges and agrees that it is Retailer's sole responsibility to be and remain informed of all U.S. laws relating to the export of satellite receivers outside of the U.S. EchoStar and its Affiliates have absolutely no obligation to update Retailer regarding the status of U.S. export laws or any other U.S. laws relating to the export of satellite receivers or any other products outside of the U.S. Retailer represents, warrants and agrees that prior to exporting any satellite receivers outside of the U.S., Retailer will investigate all applicable U.S. laws relating to the export of satellite receivers outside of the U.S. Retailer is strictly prohibited from violating any U.S. law relating to the export of satellite receivers outside of the U.S. Should Retailer export satellite receivers outside of the U.S. in violation of this Agreement and/or U.S. law, this Agreement shall automatically terminate.

9.4 **Bounty Programs.** Retailer acknowledges that it is in the best interest of both EchoStar and Retailer for DISH Network Subscribers to be long-term customers of EchoStar and/or its Affiliates. Retailer acknowledges that churning of DISH Network Subscribers is detrimental to EchoStar and negatively affects EchoStar's ability to offer Monthly Incentives and/or Additional Incentives. Retailer acknowledges that for any Promotional Program to be viable, DISH Network Subscribers must be long-term subscribers to DISH Network. Therefore, Retailer agrees that during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever operate, offer to any other person or entity, participate in, or assist any other person or entity to participate in, any promotion or program offered by any person or entity (including without limitation Retailer and/or any of its Affiliates) other than EchoStar or an Affiliate of EchoStar which directly or indirectly provides for the delivery of an economic incentive or other benefit to Retailer, DISH Network Subscribers or any other person or entity in any form directly or indirectly in connection with the direct or indirect solicitation of customers of EchoStar or any other DBS provider or customers of any DTH satellite programming service provider, for any purpose whatsoever (including, without limitation, in connection with such person or entity directly or indirectly assisting in the process of attempting to cause a customer of EchoStar or any other DBS provider or a customer of any DTH programming service provider to become a subscriber to any other programming service provider). In addition to (and without limitation of) the foregoing, Retailer agrees that during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer and its Affiliates will not directly or indirectly produce, place, display or use any advertising or marketing material that explicitly references DISH Network, EchoStar, an Affiliate of EchoStar or

DISH Network Subscribers and attempts to persuade DISH Network Subscribers to cancel their EchoStar service and/or switch to a service offered by any other DBS provider, DTH programming service provider or multi-channel video programming distributor ("MPVD"). Further (and without limitation of the foregoing), during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer shall not convert, or directly or indirectly assist any other person or entity who Retailer actually knew or reasonably should have known intended to convert, any DISH Network Subscriber to the services of any other DBS provider, DTH programming service provider or MVPD. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) for five (5) years.

9.5 Subscriber Information. All consumers who directly or indirectly subscribe to, purchase, lease or otherwise receive and/or acquire: (i) Programming (whether in connection with a Prepaid Card or otherwise), (ii) any other services provided by EchoStar or any of its Affiliates, and/or (iii) receive any other services incidental, connected or related to any of the foregoing services, and/or who directly or indirectly purchase, lease or otherwise obtain the hardware necessary to receive any such Programming and/or any such other services ("DISH Network Subscribers") shall be deemed customers of EchoStar for all purposes relating to programming services, including without limitation video, audio, data and interactive programming services, the other services provided by EchoStar or any of its Affiliates and any other services incidental, connected or related to any of the foregoing services ("Services"), and the hardware necessary to receive any of such services ("Hardware"). Retailer acknowledges and agrees that the names, addresses and other identifying information of DISH Network Subscribers ("Subscriber Information") are, as between Retailer and EchoStar, with respect to the delivery of Services and the provision of Hardware, proprietary to EchoStar, and shall be treated with the highest degree of confidentiality by Retailer. Retailer shall not directly or indirectly: (a) make use of any list of past or current DISH Network Subscribers (whether developed by Retailer or obtained from EchoStar or another source), (b) use any Subscriber Information for the direct or indirect benefit of any individual or entity other than EchoStar, (c) use any Subscriber Information for the purpose of soliciting, or permit any others to solicit, any person or entity to subscribe to any Services offered by any person or entity other than EchoStar or an Affiliate of EchoStar, or promote the sale, lease or other acquisition of any Hardware used in connection with services offered by any person or entity other than EchoStar and its Affiliates, or (d) reveal any Subscriber Information to any third party for any reason without the express prior written consent of EchoStar, which consent may be withheld by EchoStar in its Sole Discretion; provided, however, that nothing shall prohibit Retailer from utilizing its own customer list (but not a discrete portion thereof identifying any DISH Network Subscribers) for its general business operations unrelated to the delivery of Services or the provision of Hardware. The provisions of this Section 9.5 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.6 Remedies. Retailer agrees that any breach of its obligations set forth in this Section 9 will cause substantial and irreparable harm and injury to EchoStar for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that EchoStar shall have the right, in addition to (and without limitation of) any other rights and remedies available to EchoStar at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Retailer, its Affiliates, employees, independent contractors, subcontractors, agents or sub-agents, as well as other equitable relief allowed by the federal and state courts. The provisions of this Section 9.6 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.7 Economic Benefits Derived Held in Trust. In the event that Retailer derives an economic benefit, in any form, from a violation of any of its obligations under this Section 9, it is hereby agreed that such economic benefit is the property of EchoStar and that Retailer shall deliver the cash value of the economic benefit to EchoStar immediately upon receipt of the economic benefit. It is further agreed that Retailer shall hold such economic benefit in trust for the benefit of EchoStar until such time as its cash value is delivered to EchoStar. The foregoing is agreed to without prejudice to EchoStar to exercise any other rights and remedies it may have at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section 9.7 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.8 Sales and Use Tax. Any transactions between Retailer and consumers for the purchase of DISH DBS Systems, Promotional Certificates, Prepaid Cards, related accessories and/or other equipment are transactions entered into solely and exclusively between Retailer and the consumer. Although EchoStar may from time to time incentivize Retailer to offer consumers free or discounted DISH DBS Systems, related accessories and/or other equipment, EchoStar does not acquire or retain title (except in connection with certain lease-based Promotional Programs) in such DISH DBS Systems, related accessories and/or other equipment. Retailer, and not EchoStar, is solely responsible for Retailer's investigation of and compliance with all Laws concerning sales and use taxes applicable to any equipment and/or other transactions between Retailer and any consumers.

9.9 Restricted EchoStar Employees. Retailer acknowledges that EchoStar and its Affiliates have invested substantial economic and other resources and goodwill in the training and professional development of Restricted EchoStar Employees (as defined below) and that Restricted EchoStar Employees have acquired certain trade secrets and/or other confidential and proprietary information of EchoStar and/or its Affiliates in which EchoStar and its Affiliates have a valuable interest in protecting and for which disclosure to Retailer and/or any of its Affiliates or any other DBS provider, DTH programming service provider or MVPD would be detrimental to EchoStar and its Affiliates (solely for the purposes of this Section 9.9, "Confidential Company Information"). Therefore, Retailer agrees that during the Term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement

for any reason or no reason, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever solicit, recruit, entice, induce or otherwise attempt to persuade any Restricted EchoStar Employee to terminate or otherwise discontinue his or her employment with EchoStar and/or any of its Affiliates for the purpose of becoming an employee, independent contractor, subcontractor, Affiliate, agent, or sub-agent of Retailer and/or any of its Affiliates or any other DBS provider, DTH programming service provider or MVPD providing and/or performing any services within the Territory. In addition to (and without limitation of) the foregoing and except as otherwise agreed to by EchoStar or an EchoStar Affiliate in a writing signed by an Executive Vice President of EchoStar or an EchoStar Affiliate (or his or her designee), Retailer agrees that during the Term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever, employ, hire or otherwise contract for the performance of any services of any Restricted EchoStar Employee within the Territory, or directly or indirectly in any manner whatsoever assist or attempt to assist any other DBS provider, DTH programming service provider or MVPD to directly or indirectly in any manner whatsoever employ, hire or otherwise contract for the performance of any services by any Restricted EchoStar Employee within the Territory. For the purposes of this Section 9.9, "Restricted EchoStar Employee" shall mean any person currently employed by EchoStar and/or any of its Affiliates or previously employed by EchoStar and/or any of its Affiliates at any time within the immediately prior twelve (12) months: (i) as a regional sales manager, national sales manager, senior manager, director, vice president, or senior vice president, (ii) in any other position (a) involving the management, supervision and/or control of other persons employed by EchoStar and/or any of its Affiliates and (b) through which such person enjoys and exercises a degree of unsupervised independence and control over the business area, unit, team, division, group, region, territory, subject matter, and/or other similar segment or distinction (collectively, "Business Segment") for which he or she is responsible that would logically be considered reasonably similar to or greater than the degree of unsupervised independence and control generally enjoyed and exercised by any persons who satisfy the description set forth in clause (i) above with respect to their applicable Business Segment, (iii) in any position involving the performance of any professional services (including without limitation legal, financial or accounting services) for any person who satisfies the description set forth in clause (i) or (ii) above, and/or (iv) who obtains or otherwise acquires any Confidential Company Information in any manner whatsoever and for any reason or no reason (regardless of whether such acquisition is within the scope of employment or authority of such employee). The provisions of this Section 9.9 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) for twelve (12) months.

10. **TERM AND TERMINATION.**

10.1 **Term.** This Agreement shall commence on the Effective Date and shall continue through December 31, 2008 (the "Term"), unless earlier terminated by either party hereto or otherwise in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable, and neither party hereto shall be under any obligation whatsoever to offer or to accept an agreement to renew or replace this Agreement upon its expiration. RETAILER RECOGNIZES THAT THIS AGREEMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE TERM AND THAT NO REPRESENTATIONS, WARRANTIES, COVENANTS OR GUARANTEES HAVE BEEN MADE TO RETAILER THAT RETAILER WILL REMAIN AN AUTHORIZED RETAILER DURING THE ENTIRE TERM OR THAT THE AGREEMENT WILL NOT BE TERMINATED PRIOR TO EXPIRATION OF THE TERM PURSUANT TO SECTION 10.2, 10.3, 10.4 OR 10.5 BELOW.

10.2 **Termination by Either Party for Convenience.** Either party hereto may, in its Sole Discretion, terminate this Agreement for its convenience (without cause) by giving the other party no less than sixty (60) days prior written notice.

10.3 **Termination By Either Party Upon Default.** This Agreement may be terminated by a party hereto (the "Affected Party"), if the other party (the "Other Party") has failed to cure (if curable) any Default (as defined below) within twenty (20) days of receipt of a written notice of such Default from the Affected Party. For the purposes of this Agreement a "Default" shall occur when: (i) the Other Party fails to pay any amount to the Affected Party or its Affiliates when due under this Agreement or any Other Agreement; or (ii) the Other Party fails to perform any obligation or breaches any representation, warranty or covenant in this Agreement, any Other Agreement, or the Trademark License Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right).

10.4 **Automatic Termination.** This Agreement shall terminate automatically should any of the following occur, unless EchoStar notifies Retailer to the contrary in writing at any time thereafter: (i) Retailer becomes insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings are instituted against Retailer; (ii) Retailer, for more than twenty (20) consecutive days, fails to maintain operations as a going business; (iii) Retailer, for more than twenty (20) consecutive days, ceases to continuously and actively market and promote DISH DBS Systems, Promotional Certificates, Prepaid Cards and/or Programming; (iv) Retailer, or any officer, director, substantial shareholder or principal of the Retailer is convicted in a court of competent jurisdiction of any criminal offenses greater than a Class C (or comparable) Misdemeanor; (v) Retailer fails to comply with any applicable Laws, or engages in any practice, substantially related to the business conducted by Retailer in connection with this Agreement, which is determined to be an unfair trade practice or other violation of any applicable Laws, including without limitation any telemarketing/do-not-call laws, spam laws, privacy laws, fair credit reporting laws or warranty laws; (vi) Retailer falsifies any records or reports required hereunder or under any Business Rule; (vii) Retailer fails to renew, or loses, due to suspension, cancellation or revocation, for a period of fifteen (15) days or more, any license, permit or similar document or authority required by any Laws or by any governmental authority having jurisdiction, that is necessary in carrying out the provisions of this Agreement or to maintain its corporate or other business status in effect as of the Effective Date; (viii) Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional

Certificate or Prepaid Card to a person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another individual or entity, (b) intended to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, (c) intended to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, (d) intended to use it, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory, or (e) intended to authorize, or to allow others to authorize, Programming for a DISH DBS System using a single DISH Network account or Prepaid Card that had or would have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property); (ix) Retailer makes, or attempts to make, any representation, promise or agreement for or on behalf of EchoStar; (x) the Trademark License Agreement or any Other Agreement expires or terminates for any reason or no reason; (xi) Retailer directly or indirectly uses a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property); (xii) any actual or alleged fraud, misrepresentation, or illegal action of any sort by Retailer in connection with this Agreement, the Trademark License Agreement, and/or any Other Agreement; (xiii) Retailer Pre-Activates any DISH DBS System or directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional Certificate or Prepaid Card to a person or entity who Retailer knew or reasonably should have known intended to Pre-Activate a DISH DBS System; (xiv) Retailer directly or indirectly makes any payment to EchoStar for Programming services or otherwise on behalf of any retail end-user of any DISH DBS System; (xv) the churn rate experienced by EchoStar for DISH Network Subscribers activated through Retailer is equal to or greater than 125% of the churn rate experienced by EchoStar with respect to DISH Network subscribers generally during any consecutive three-month period; (xvi) Retailer is in breach or default of any of its obligations under Section 2.6, 2.7, 2.8, 2.9, 2.12, 6.10, 6.14, 7, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9 or 14; (xvii) Retailer indefinitely ceases to actively market and promote DISH DBS Systems, Promotional Certificates, Prepaid Cards and/or Programming, as determined by EchoStar in its Sole Discretion; (xviii) Retailer fraudulently receives, or attempts to receive, an Incentive or any other payment of any type to which it is not entitled under the terms and conditions of this Agreement or any Other Agreement, including without limitation by misrepresenting any information concerning a prior DISH Network Subscriber to make that person or entity appear to be a new DISH Network Subscriber or creating a fictitious or fraudulent customer account; or (xix) Retailer fails to activate the applicable minimum number of new subscribers set forth in any applicable Business Rules.

10.5 **Expiration or Termination of Agreement.** The parties hereto agree that if this Agreement expires or terminates for any reason or no reason: (i) Retailer shall immediately discontinue the marketing, promotion and solicitation of orders for Programming, and immediately cease to represent and/or imply to any person or entity that Retailer is an Authorized Retailer of EchoStar; (ii) Retailer shall immediately discontinue all use of the trademarks associated or included in any way whatsoever with Programming, including, without limitation, DISH; (iii) Retailer shall deliver to EchoStar, or destroy, at EchoStar's option, all tangible things of every kind (excluding DISH DBS Systems) in Retailer's possession or control that bear any of the trademarks; (iv) Retailer shall upon request by EchoStar, certify in writing to EchoStar that such delivery or destruction has taken place; and (v) Retailer shall pay all sums due EchoStar under this Agreement and any Other Agreement within thirty (30) days of the date of such expiration or termination. EchoStar acknowledges and agrees that, following the expiration or termination of this Agreement for any reason or no reason, Retailer may choose to sell products, programming and other services that compete with EchoStar products, programming and other services and that EchoStar cannot require Retailer to continue as an Authorized Retailer. Retailer acknowledges and agrees that it cannot require EchoStar to allow Retailer to remain an Authorized Retailer regardless of whether or not any other retailer is allowed to remain an Authorized Retailer.

11. **INDEPENDENT CONTRACTOR.** The relationship of the parties hereto is that of independent contractors. Retailer shall conduct its business as an independent contractor, and all persons employed in the conduct of such business shall be Retailer's employees only, and not employees or agents of EchoStar or any of its Affiliates. Retailer shall prominently state its business name, address and phone number and that Retailer is an "authorized DISH Network retailer" in all communications with the public, including, without limitation, marketing materials, flyers, print ads, television or radio spots, web sites, e-mails, invoices, sales slips, and the like. Notwithstanding anything set forth in this Agreement to the contrary, Retailer (including without limitation its officers, directors, employees and Permitted Subcontractors) shall not, under any circumstances, hold itself out to the public or represent that it is EchoStar or an employee, subcontractor, Affiliate, agent, or sub-agent of EchoStar or any EchoStar Affiliate. In furtherance (and without limitation) of the foregoing, in no event shall Retailer use EchoStar's name or the name of any EchoStar Affiliate and/or any trade name used by EchoStar or any EchoStar Affiliate in any manner which would tend to imply that Retailer is an Affiliate of EchoStar or that Retailer is an employee, subcontractor, Affiliate, agent, or sub-agent of EchoStar or any of its Affiliates or that Retailer is acting or is authorized to act on behalf of EchoStar or any of its Affiliates. This Agreement does not constitute any joint venture or partnership. It is further understood and agreed that Retailer has no right or authority to make any representation, warranty, promise or agreement or take any action for or on behalf of EchoStar or any Affiliate of EchoStar.

12. **LIMITATION OF LIABILITY.** The provisions of this Section 12 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

12.1 UPON THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON WHATSOEVER, ECHOSTAR AND ITS AFFILIATES SHALL HAVE NO LIABILITY OR OBLIGATION TO RETAILER WHATSOEVER AND RETAILER SHALL HAVE NO RIGHT TO REQUIRE ECHOSTAR TO CONTINUE TO ALLOW RETAILER TO ACT AS AN AUTHORIZED RETAILER TO SOLICIT ORDERS FOR PROGRAMMING ON BEHALF OF ECHOSTAR. RETAILER AGREES THAT IN THE EVENT OF EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON, NO AMOUNTS SPENT IN FULFILLMENT OF THIS AGREEMENT WILL BE RECOVERABLE BY RETAILER FROM ECHOSTAR OR ANY OF ITS AFFILIATES.

12.2 IN NO EVENT SHALL ANY PROJECTIONS OR FORECASTS MADE BY OR ON BEHALF OF ECHOSTAR OR ANY OF ITS AFFILIATES BE BINDING AS COMMITMENTS OR PROMISES. IN NO EVENT SHALL ECHOSTAR OR ANY AFFILIATE OF ECHOSTAR BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO RETAILER (WHETHER FORESEEABLE OR NOT), INCLUDING WITHOUT LIMITATION ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, LOSS OF GOODWILL, REIMBURSEMENT FOR EXPENDITURES OR INVESTMENTS MADE OR COMMITMENTS ENTERED INTO, CREATION OF CLIENTELE, ADVERTISING COSTS, TERMINATION OF EMPLOYEES OR EMPLOYEES' SALARIES, OVERHEAD OR FACILITIES INCURRED OR ACQUIRED BASED UPON THE BUSINESS DERIVED OR ANTICIPATED UNDER THIS AGREEMENT, OR CLAIMS UNDER DEALER TERMINATION, PROTECTION, NON-RENEWAL OR SIMILAR LAWS, FOR ANY CAUSE WHATSOEVER WHETHER OR NOT CAUSED BY NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

13. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold EchoStar and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively the "EchoStar Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorney fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) Retailer's performance or failure of performance under this Agreement, the Trademark License Agreement and/or any Other Agreement, and any direct or indirect results thereof, including but not limited to Retailer's sale and/or installation of DISH DBS Systems, Promotional Certificates or Prepaid Cards; (ii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees whether or not such acts are within the scope of employment or authority of such employees) relating to the sale, leasing, transfer of possession, marketing, advertisement, promotion and/or solicitation of orders for Programming, Promotional Certificates, Prepaid Cards and/or DISH DBS Systems and/or any other products or services of EchoStar or any of its Affiliates; (iii) the failure of Retailer to comply with any provision of this Agreement or any Business Rule; (iv) the breach of any of Retailer's representations or warranties contained herein; (v) all purchases, contracts, debts and/or obligations made by Retailer; (vi) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable Laws; (vii) any claim brought by Retailer's employees, independent contractors, subcontractors, Affiliates, agents, sub-agents and/or any other person or entity for compensation and/or damages arising out of or relating to the expiration or termination of this Agreement; (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers or any other person or entity (except with respect to any marketing materials supplied to Retailer by EchoStar); (ix) any installation and/or after-sale services performed by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (x) Retailer's, or any of its employees', independent contractors', subcontractors', Affiliates', agents' or sub-agents' failure to comply with any performance standard; (xi) a DISH Network Subscriber's dissatisfaction with any aspect of the installation and/or after-sale services performed by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (xii) the termination, disturbance, interruption or other interference with the service provided by any public utility or damage to the equipment of any public utility caused directly or indirectly by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (xiii) Retailer directly or indirectly selling, leasing or otherwise transferring possession of a DISH DBS System, Promotional Certificate or Prepaid Card to any person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another individual or entity; (b) intended to use it, or to allow others to use it, to (1) view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, or (2) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property; (c) intended to use it, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory; or (d) intended to authorize, or to allow others to authorize, Programming for a DISH DBS System using a single DISH Network account or Prepaid Card that has or would have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property); and/or (xiv) Retailer directly or indirectly using a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property). In the event of any claim for indemnification by the EchoStar Group under this Section 13, the EchoStar Group shall be entitled to representation by counsel of its own choosing, at Retailer's sole cost and expense. The EchoStar Group shall have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such claims and Retailer shall, at its own cost and expense, render all assistance requested by EchoStar in

connection with any such negotiation, litigation, settlement or other proceeding. Each indemnity obligation set forth in this Section 13 shall be in addition to (and without limitation of) any other indemnity obligations set forth in this Agreement. The provisions of this Section 13 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

14. **CONFIDENTIALITY.** Retailer and its employees will maintain, in confidence, the terms, conditions and provisions of this Agreement, the terms, conditions and provisions of any and all Business Rules and Promotional Programs, as well as all data, summaries, reports, communications or information of all kinds, whether oral or written, acquired, devised or developed in any manner from EchoStar's personnel or files, or as a direct or indirect result of Retailer's actions or performance under this Agreement, including without limitation nonpublic personal information of DISH Network Subscribers ("Confidential Information") and Retailer represents, warrants and covenants to EchoStar and its Affiliates that it has not and will not reveal the same to any persons not employed by Retailer, except: (i) at the written direction of EchoStar; (ii) to the extent necessary to comply with any applicable Laws, the valid order of a court of competent jurisdiction or the valid order or requirement of a governmental agency or any successor agency thereto, in which event Retailer shall notify EchoStar in writing of the information prior to making any disclosure, and shall seek confidential treatment of such information; or (iii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, provided such parent company, auditors and attorneys agree to be bound by the provisions of this paragraph. Retailer shall not issue an independent press release with respect to this Agreement or the transactions contemplated hereby without the prior written consent of EchoStar, which consent may be withheld in EchoStar's Sole Discretion. Upon expiration or termination of this Agreement for any reason or no reason whatsoever, Retailer shall return all copies of all Confidential Information or at EchoStar's request in EchoStar's Sole Discretion destroy all such Confidential Information, and immediately certify in writing to EchoStar that such delivery or destruction has taken place. Retailer agrees that any breach or default of any of its obligations set forth in this Section 14 will cause substantial and irreparable harm and injury to EchoStar for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that EchoStar shall have the right, in addition to (and without limitation of) any other rights and remedies available to EchoStar at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Retailer, its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents, as well as any other equitable relief allowed by the federal or state courts. The provisions of this Section 14 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

15. **DISPUTE RESOLUTION.**

Retailer acknowledges that EchoStar deals with thousands of retailers and that hundreds of thousands of incentive payments are made annually. Retailer acknowledges that any delay in notifying EchoStar of any alleged shortage or non-payment, allegedly incorrect chargeback, or any other alleged claim that may result in EchoStar's liability to Retailer for damages or injunctive relief may impede EchoStar's ability to fully and timely investigate any such claim by Retailer. Retailer agrees that it is in each party's best interest to give EchoStar control over claims that have to be investigated and to allow EchoStar to investigate any such claim at the earliest possible moment as well as maintain an orderly method for handling Retailer claims. Accordingly, Retailer agrees to immediately inspect and review the statements described in Section 6.4.4 to determine any claims or disputes that Retailer believes exist and, in the event of any claim or dispute, to follow the procedures set forth below. Retailer also agrees to follow the below claims procedures for all claims that may result in EchoStar's liability to Retailer for damages or injunctive relief.

15.1 **Claims for Breach or Default.** IN THE EVENT OF AN OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR LIABLE TO RETAILER FOR ANY DAMAGES OR INJUNCTIVE RELIEF AS A RESULT OF ANY ALLEGED BREACH OR DEFAULT OF THIS AGREEMENT OR ANY OTHER AGREEMENT, RETAILER SHALL GIVE WRITTEN NOTICE OF SUCH OCCURRENCE AS SOON AS PRACTICABLE TO ECHOSTAR (A "NOTICE OF CLAIM"). IN NO EVENT SHALL ANY NOTICE OF CLAIM BE PROVIDED LATER THAN NINETY (90) DAYS AFTER THE DATE OF THE RELEVANT OCCURRENCE, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE). EACH NOTICE OF CLAIM SHALL STATE: (I) THE DATE, TIME AND NATURE OF THE OCCURRENCE; (II) THE TOTAL AMOUNT CLAIMED BY RETAILER, IF ANY, IN CONNECTION WITH SUCH OCCURRENCE AND THE BASIS FOR ANY AMOUNT CLAIMED, AND (III) IDENTIFICATION OF ALL DOCUMENTS AND OTHER INFORMATION IN RETAILER'S CONTROL OR POSSESSION ARISING FROM OR RELATING TO SUCH OCCURRENCE. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING INCENTIVE PAYMENTS THROUGH ECHOSTAR'S RETAILER WEBSITE (<http://retailer.echostar.com>) IN ACCORDANCE WITH APPLICABLE BUSINESS RULES. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING ALL OTHER CLAIMS VIA ELECTRONIC MAIL TO executivercsolution@echostar.com WITH THE SUBJECT LINE "NOTICE OF CLAIM." AFTER SUBMITTING A NOTICE OF CLAIM, RETAILER SHALL PROVIDE ECHOSTAR WITH ANY AND ALL ADDITIONAL INFORMATION REQUESTED BY ECHOSTAR WITHIN THIRTY (30) DAYS AFTER RECEIPT OF ECHOSTAR'S REQUEST. ECHOSTAR SHALL BE ENTITLED TO HAVE ACCESS TO RETAILER'S BOOKS AND RECORDS DURING ITS INVESTIGATION OF RETAILER'S CLAIM. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 15.1 WITH RESPECT TO A PARTICULAR OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES OR INJUNCTIVE RELIEF, SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING WITHOUT LIMITATION ANY DAMAGES RELATED THERETO.

15.2 Mediation. The parties agree to submit any and all disputes, controversies or claims not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4, which may arise between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all disputes, controversies, and claims arising out of or relating to this Agreement including, without limitation, any and all disputes, controversies or claims related to: (i) the execution and delivery of this Agreement (whether via signature or electronic acceptance); (ii) the interpretation of this Agreement; (iii) a party's performance or failure to perform hereunder; (iv) the termination of this Agreement; and (v) any rights Retailer may have under dealer termination or non-renewal laws (collectively "Disputes"), to mandatory non-binding mediation (a "Mediation") in front of a single mediator. Either party may initiate a Mediation by giving written notice to the other party pursuant to Section 17.10 describing the Dispute (a "Notice of Mediation"). The Notice of Mediation shall include: (a) a statement of the initiating party's position and a summary of arguments supporting that position and (b) the name and title of the executive who will represent that party and of any other persons who will accompany the executive. The Mediation shall take place in the City and County of Denver, Colorado at a mutually agreeable time and location before a mediator chosen by mutual agreement of the parties. In the event that either party fails to negotiate the selection of a mediator in good faith or unreasonably withholds its approval of a mediator, such party shall be deemed to have waived its right to select the mediator by mutual agreement of the parties and shall be required to participate in the Mediation with the mediator chosen by the other party. Each party shall participate through a representative with full settlement authority and shall bear its own costs and expenses and one-half of the costs and expenses of the mediator. Any such Mediation must be concluded within sixty (60) days of the Notice of Mediation. Nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration (as defined below) and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 11 or 14 or any provision of the Trademark License Agreement or any Other Agreement. In the event that a party (the "Non-Mediating Party") fails to: (1) pay one-half of the costs and expenses of the mediator to the mediator when due; or (2) otherwise refuses or fails to participate in or attend a Mediation that has been properly initiated pursuant to this Section 15, then the Non-Mediating Party agrees that: (A) the Non-Mediating Party shall be deemed to have waived its right to initiate an Arbitration (as defined below) pursuant to Section 15.3, as fully participating in a Mediation pursuant to this Section 15.2 is a condition precedent to a party's right to initiate an Arbitration; (B) the other party (the "Mediating Party") shall have the right (but not the obligation) to initiate an Arbitration pursuant to Section 15.3 without any further obligation under this Section 15.2; and (C) the Mediating Party shall have the option, exercisable upon written notice to the Non-Mediating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below. In the event that the Mediating Party elects to initiate an Arbitration pursuant to clause (B) above or to resolve the underlying dispute, controversy or claim in court pursuant to clause (C) above, the parties agree that the Non-Mediating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such Arbitration or court proceeding as fully participating in a Mediation pursuant to this Section 15.2 is a condition precedent to recovery.

15.3 Arbitration. Except as set forth to the contrary in this Section 15.3 or Section 15.4 below, any and all disputes, controversies or claims between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including without limitation any and all disputes, controversies or claims arising out of or in connection with this Agreement, including but not limited to the validity of this Section 15, the circumstances concerning the execution and delivery of this Agreement (whether via signature or electronic acceptance), and any allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any Laws, which are not settled through negotiation, the claim process set forth above in Section 15.1, or the mediation process set forth above in Section 15.2, shall be resolved solely and exclusively by binding arbitration (an "Arbitration") administered by the American Arbitration Association in accordance with both the substantive and procedural laws of Title 9 of the U.S. Code ("Federal Arbitration Act") and the Commercial Arbitration Rules of the American Arbitration Association (the "Commercial Arbitration Rules"). In the event of any conflict or inconsistency between or among the Federal Arbitration Act, the Commercial Arbitration Rules, and/or the terms and conditions of this Agreement, such conflict or inconsistency shall be resolved by giving precedence in the following order: (i) this Agreement; (ii) the Federal Arbitration Act; and (iii) the Commercial Arbitration Rules. In consideration of EchoStar entering into this Agreement with Retailer, Retailer agrees that it will not serve as a class representative in any class action lawsuit brought by any person or legal entity concerning this Agreement in any respect. NEITHER PARTY NOR ANY OF ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ANY OF ITS AFFILIATES IF IT AND/OR ANY OF ITS AFFILIATES HAS FAILED TO FULLY COMPLY WITH THE PROCEDURES SET FORTH IN SECTIONS 15.1 AND 15.2; provided, however, that nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 11 or 14 or any provision of the Trademark License Agreement or any Other Agreement.

15.3.1 Initiation of Arbitration; Selection of Arbitrators. The Arbitration must be initiated within ninety (90) days from the final day of the Mediation, or one hundred fifty (150) days from the Notice of Mediation in the event that the Mediation is not concluded within sixty (60) days of the Notice of Mediation, and shall be initiated by written notice from the initiating party to the other party pursuant to Section 17.10 stating the initiating party's intent to initiate arbitration ("Notice of Arbitration"). The Arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected as follows: (i) one arbitrator shall be selected by the claimant(s) within thirty (30) days of sending the Notice of Arbitration; (ii) one arbitrator shall be

selected by the respondent(s) within thirty (30) days of the claimant(s) notifying respondent of the identity of claimant's arbitrator; and (iii) the third arbitrator shall be selected by the arbitrators chosen by the claimant(s) and the respondent(s) within thirty (30) days of the appointment of the respondent(s)' arbitrator. The parties acknowledge and agree that each party shall have the option, exercisable upon written notice to the other party, to designate the arbitrator selected by such party as a non-neutral arbitrator in which event such arbitrator shall not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence. Notwithstanding the foregoing, in the event that either party fails to timely select an arbitrator pursuant to this Section 15.3: (a) such party shall be deemed to have waived its right to a three-member arbitration panel and shall be required to participate in the arbitral proceedings with the one arbitrator selected by the other party without any objection and (b) the one arbitrator selected by the other party shall thereafter be deemed a neutral arbitrator with whom neither party shall communicate *ex parte* concerning the Arbitration.

15.3.2 Authority of the Arbitrator(s); Awards. The parties hereby agree that the arbitrator(s) selected pursuant to Section 15.3.1 (the "Arbitrator(s)") are not authorized to: (i) conduct "class arbitration" in any form; and/or (ii) arbitrate any dispute on a representative basis in any form. The parties hereby agree that the Arbitrator(s) have the authority to entertain and rule upon dispositive motions, including but not limited to, default judgments as governed by Rule 55 of the Federal Rules of Civil Procedure, motions for summary judgment as governed by Rule 56 of the Federal Rules of Civil Procedure and motions to dismiss as governed by Rule 12 of the Federal Rules of Civil Procedure. The decision of the Arbitrator(s) shall be final and binding on the parties and any award of the Arbitrator(s) may be entered and enforced as a final judgment in any state or federal court of competent jurisdiction in the United States. The parties agree that, in no event, shall the Arbitrator(s)' decision include a recovery under any theory of liability, or award in any amount, not expressly allowed under this Agreement, any Promotional Program or applicable Business Rules. In furtherance (and without limitation) of the foregoing, any award made by the Arbitrator(s) shall be within the limitations set forth in Section 12. The parties further agree that the Arbitrator(s) may not award damages, injunctive relief or any other remedy to any person or legal entity who is not present at the Arbitration or who does not submit proof of any alleged damages at the Arbitration.

15.3.3 Arbitration Costs. The party(ies) determined by the Arbitrator(s) to be the prevailing party(ies) shall be entitled to recover from the non-prevailing party(ies) any and all costs and expenses arising from any Arbitration hereunder, including without limitation all costs of the record or transcripts thereof, if any, administrative fees, and all other fees involved (including but not limited to reasonable attorney fees of the prevailing party(ies)); provided, however, that such costs and expenses may otherwise be allocated in an equitable manner as determined by the Arbitrator(s).

15.3.4 Remedies for Non-Participation. The parties acknowledge and agree that: (i) in addition to (and without limitation of) the other provisions of this Section 15, each party is relying upon the provisions of this Section 15.3 to efficiently address and resolve any and all disputes, controversies and claims arising out of or relating to this Agreement and (ii) any failure or refusal by a party (the "Non-Participating Party") to: (a) pay any amount to the American Arbitration Association ("AAA") when due ("Arbitration Payment Default") or (b) otherwise participate in or attend an Arbitration that has been properly initiated pursuant to this Section 15 ("Other Arbitration Default") will cause substantial and irreparable harm and injury to the other party (the "Participating Party"), for which monetary damages alone would be an inadequate remedy, including without limitation the termination of arbitral proceedings by the AAA. Accordingly, each party agrees that, in the event of an Arbitration Payment Default or Other Arbitration Default (each a "Non-Participation Event"), the Participating Party shall have the right (but not the obligation), in addition to (and without limitation of) any other rights and remedies available to such party at law, in equity, under contract (including without limitation this Agreement) or otherwise (all of which are hereby expressly reserved), to obtain immediate relief from the Arbitrator(s) or a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below, in each case in the form of specific performance and/or a preliminary or permanent injunction, whether prohibitive or mandatory, against any violation or threatened violation of this Section 15.3, and without the necessity of posting or filing a bond or other security to restrain the threatened or actual violation of this Section 15.3 by the Non-Participating Party. In addition to (and without limitation of) the foregoing, in the event of a Non-Participation Event, the Participating Party shall have the option, exercisable upon written notice to the Non-Participating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below. In the event that the Participating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to this Section 15.3.4, the parties agree that the Non-Participating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such court proceeding as fully participating in an Arbitration pursuant to this Section 15.3 is a condition precedent to recovery.

15.4 Exceptions. Notwithstanding the foregoing, any request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to mediation or arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Colorado or in the appropriate state court of competent jurisdiction located in Arapahoe County, Colorado pursuant to Section 15.5 below; provided, however, that nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 11 or 14 or any provision of the Trademark License Agreement or any Other Agreement.

15.5 Choice of Law; Exclusive Jurisdiction. The relationship between the parties and their present and future Affiliates, including without limitation all disputes, controversies or claims, whether arising in contract, tort, under statute or otherwise, shall be

governed by and construed in accordance with the laws of the State of Colorado, applicable to contracts to be made and performed entirely within the State of Colorado by residents of the State of Colorado, without giving any effect to its conflict of law provisions. In the event that a lawsuit is brought for injunctive relief pursuant to Section 15.2, 15.3, or 15.4 above or as otherwise permitted in clause (C) of Section 15.2 or the penultimate sentence of Section 15.3.4, such lawsuit shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties and their present and future Affiliates consent to the *in personam* jurisdiction of the United States District Court for the District of Colorado and the appropriate State Court located in Arapahoe County, State of Colorado for the purposes set forth in this Section 15 and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Section 1404 or 1406 (or any successor statute). In the event that the United States District Court for the District of Colorado does not have subject matter jurisdiction over any such matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado.

15.6 **Survival.** The provisions of this Section 15 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

16. **INSURANCE.**

16.1 Retailer shall, at its sole cost and expense, procure and maintain throughout the Term of this Agreement the following insurance coverages:

16.1.1 Workers' Compensation or similar employee benefit act coverage with statutory limits as prescribed by the laws of all states in which Retailer conducts business operations in connection with this Agreement and Employers' Liability coverage with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.1.2 Commercial General Liability coverage including, without limitation, coverage for Premises/Operations, Product/Completed Operations, Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.1.3 Commercial Automobile Liability coverage which includes coverage for all owned, hired, and non-owned vehicles with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.2 All such policies and coverages shall: (i) be primary and non-contributory, and issued by insurers licensed to do business in all states in which Retailer conducts business operations in connection with this Agreement; (ii) be endorsed to provide EchoStar at least thirty (30) days prior notification of cancellation or material change in coverage; (iii) name EchoStar as an additional insured; and (iv) be endorsed to provide EchoStar with written notice of Retailer's failure to renew any coverage not later than the anniversary date for each coverage. All such insurance shall be evidenced by a certificate of insurance acceptable to EchoStar, which shall be provided to EchoStar upon request.

16.3 All insurance policies required by this Section 16 (except Workers' Compensation) shall designate EchoStar, DNSLLC, their Affiliates, and their respective directors, officers, and employees (all hereinafter referred to in this clause as "Company") as additional insureds. All such insurance policies shall be required to respond to any claim and pay any such claim prior to any other insurance or self-insurance which may be available. Any other coverage available to Company shall apply on an excess basis. Retailer understands and agrees that EchoStar, DNSLLC and their Affiliates and their respective directors, officers and employees are third party beneficiaries of Retailer's obligations under this Section 16. No deductible amount on any insurance policy required by this Section 16 shall exceed ten percent (10%) of the coverage amount of the policy.

17. **MISCELLANEOUS.**

17.1 **Waiver.** Except as otherwise expressly set forth to the contrary herein, the failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature. In addition to (and without limitation of) the foregoing, the failure of EchoStar or any of its Affiliates to insist upon strict performance of any provision of any agreement between EchoStar and/or any of its Affiliates on the one hand and another retailer on the other hand, shall not be construed as a waiver of EchoStar's right to insist upon strict performance of each and every representation, warranty, covenant, duty and obligation of Retailer hereunder. In addition to (and without limitation of) the foregoing, the election of certain remedies by EchoStar or any of its Affiliates with respect to the breach or default by another retailer of any agreement between EchoStar and/or any of its Affiliates on the one hand and such other retailer on the other hand shall not be deemed to prejudice any rights or remedies that EchoStar may have at law, in equity, under contract (including without limitation this Agreement) or otherwise with respect to a similar or different breach or default hereunder by Retailer (all of which are hereby expressly reserved).

17.2 **Successor Interests; No Assignment by Retailer; Third Party Beneficiaries.** This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of EchoStar and Retailer. In addition to (and without limitation of) the prohibition against assignment of payments set forth in Section 6.14 above, neither party shall assign this Agreement without the prior written consent of the other party, except that EchoStar may assign this Agreement to any of its Affiliates in whole or in part and Any Time in EchoStar's Sole Discretion without the consent of Retailer. Because this Agreement is made and entered into by EchoStar in reliance on the financial, business and personal reputation of Retailer and its ownership and management, any merger, reorganization (including without limitation any change of form of entity, for example changing from a corporation to an LLC) or consolidation of Retailer shall be deemed an assignment requiring EchoStar's consent hereunder and if any person not a substantial stockholder of Retailer (someone with less than a 25% interest) as of the Effective Date subsequently becomes a substantial stockholder of Retailer (equal to, or greater than a 25% interest), that shall be considered an assignment requiring EchoStar's consent hereunder. The provisions of this Agreement are for the exclusive benefit of the parties hereto, EchoStar's Affiliates and their heirs, legal representatives, successors and permitted assigns, and nothing in this Agreement, express or implied, is intended, or shall be deemed or construed, to confer upon any third party (other than as expressly set forth for Affiliates of EchoStar) any rights, benefits, duties, obligations, remedies or interests of any nature or kind whatsoever under or by reason of this Agreement.

17.3 **Construction and Interpretation.** Retailer and EchoStar hereby represent, warrant, acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or the Business Rules, including without limitation any amendments hereto or thereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.4 **Severability.** The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision hereof. If any one or more of the provisions contained herein, or the application thereof to any person, entity, or circumstance, for any reason are held to be invalid, illegal, or unenforceable in any respect, then such provision(s) shall be enforced to the maximum extent permissible, and the remaining provisions of this Agreement shall be unaffected thereby and will remain in full force and effect.

17.5 **Entire Agreement.** This Agreement and the Business Rules constitute the entire agreement between the parties with respect to the subject matter of this Agreement. Except as otherwise expressly provided herein, no party shall be bound by any communications between them on the subject matter of this Agreement, unless such communication is: (i) in writing; (ii) bears a date contemporaneous with or subsequent to the Effective Date; and (iii) is signed by both parties to this Agreement. On the Effective Date, all prior agreements (except as set forth to the contrary in Section 2.10 and with further exception of the Business Rules and Other Agreements (including without limitation any previous "Exclusive Bounty Hunter Agreements")) or understandings between the parties shall be null and void. The parties specifically acknowledge there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Agreement. In addition to (and without limitation of) any provisions of this Agreement that expressly survive termination or expiration, any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances.

17.6 **Compliance with Laws.** Retailer hereby agrees to comply with, and hereby agrees that this Agreement is subject to, all applicable Laws in force or effect at any time during the Term of this Agreement.

17.7 **Force Majeure.** Notwithstanding anything set forth to the contrary in this Agreement, neither party shall be liable to the other party for its failure to fulfill any of its obligations hereunder if such failure is caused by or arises out of an act of force majeure including without limitation acts of God, war, riot, natural disaster, technical failure (including without limitation the failure of all or part of any communications satellite or transponders on which the Programming is delivered to DISH Network Subscribers, or of related uplinking or other equipment) or any other reason beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

17.8 **Remedies Cumulative.** It is agreed that the rights and remedies herein provided to EchoStar in case of default or breach by Retailer of this Agreement are cumulative and without prejudice to any other rights and remedies that EchoStar may have by reason of such default or breach by Retailer at law, in equity, under contract or otherwise (all of which are hereby expressly reserved).

17.9 **Records and Audit Rights.** During the Term of this Agreement and for a period of three (3) years thereafter, Retailer shall keep and maintain at its principal place of business complete and accurate records and books of account, as well as all documentation of all material processes and procedures, in connection with: (i) its performance under this Agreement, the Trademark License Agreement and any Other Agreement; (ii) the payment of Incentives and any other payments to Retailer and/or any of its Affiliates by EchoStar and/or any of its Affiliates; and (iii) all payments made by Retailer and/or any of its Affiliates to EchoStar and/or any of its Affiliates. Such books, records and documentation shall be in sufficient detail to show all information necessary to support any Retailer claim, request or entitlement of any nature from EchoStar and/or any of its Affiliates. EchoStar shall have the right, upon two (2) days prior written notice, to review, audit and make copies of Retailer's books, records and documentation for the purposes of: (a) determining Retailer's compliance with its duties and obligations under this Agreement, the Trademark License Agreement or any Other

Agreement; (b) determining Retailer's compliance with applicable Laws, including without limitation any telemarketing/do-not-call laws, spam laws, privacy laws, fair credit reporting laws or warranty laws; (c) investigating any claims against EchoStar and/or any of its Affiliates made by Retailer and/or any of its Affiliates; (d) investigating any Claims for which Retailer is obligated to indemnify the EchoStar Group pursuant to Section 13 hereof; and/or (e) verifying that Incentive payments and any and all other payments of any type made to Retailer and/or any of its Affiliates by EchoStar and/or any of its Affiliates are being properly calculated (an "Audit"). EchoStar shall be entitled to conduct an Audit regardless of the existence of any claim, dispute, controversy, mediation, arbitration or litigation between the parties. In the event that Retailer refuses to allow EchoStar to conduct an Audit, Retailer acknowledges that EchoStar shall be entitled to obtain immediate relief in the form of specific performance from either the panel of arbitrators (if arbitration has been commenced pursuant to Section 15 above) or a court located within the State of Colorado, as delineated in Section 15.5 of this Agreement. Any audit conducted by EchoStar shall be conducted by EchoStar or its representative(s) at Retailer's offices during normal business hours. If, during the course of an Audit, EchoStar uncovers that: (1) Retailer has failed to comply with any of its obligations under this Agreement, and/or (2) Retailer and/or any of its Affiliates has made a frivolous claim against EchoStar and/or any of its Affiliates, Retailer shall pay to EchoStar the costs and expenses incurred by EchoStar in connection with such Audit. If an Audit reveals that (A) Retailer and/or any of its Affiliates have underpaid EchoStar and/or any of its Affiliates, or (B) Retailer has miscalculated any item bearing upon the Incentives paid to Retailer resulting in an overpayment of Incentives by EchoStar and/or any of its Affiliates, Retailer agrees to repay to EchoStar the amount of any such underpayment or overpayment, as applicable, made together with interest thereon at the highest rate allowed by law, computed from the date of such underpayment or overpayment, as applicable; and pay all reasonable costs and expenses, including without limitation reasonable attorney fees and accountant fees incurred by EchoStar and/or any of its Affiliates in connection with an Audit and with enforcing the collection of such amounts. The provisions of this Section 17.9 are without prejudice to any other rights and remedies that EchoStar and/or any of its Affiliates may have under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

17.10 **Notices.**

17.10.1 **Notice to EchoStar.** Except as otherwise provided in Sections 15 and 17.19, all notices to be given to EchoStar pursuant to this Agreement shall be in writing, signed by Retailer, and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid, to the following address(es) or such other address(es) as EchoStar may designate to Retailer at any time and from time to time in accordance with Section 17.10.2:

If by first class certified mail:

To EchoStar:	EchoStar Satellite L.L.C. Attn: Director of Retail Services P.O. Box 6627 Englewood, CO 80155
With a copy to:	David K. Moskowitz Executive Vice President, General Counsel and Secretary EchoStar Satellite L.L.C. P.O. Box 6655 Englewood, CO 80155

If by overnight courier service:

To EchoStar:	EchoStar Satellite L.L.C. Attn: Director of Retail Services 9601 South Meridian Blvd. Englewood, CO 80112
With a copy to:	David K. Moskowitz Executive Vice President, General Counsel and Secretary EchoStar Satellite L.L.C. (same address)

The receipt of such notice shall constitute the giving thereof.

17.10.2 **Notice to Retailer.** All notices to be given to Retailer pursuant to this Agreement shall be in writing and sent by: (i) first class certified mail, postage prepaid; (ii) overnight courier service, charges prepaid; (iii) facsimile transmission, to Retailer at the address listed on the first page of this Agreement or the fax number listed on the signature page of this Agreement, or such other address or other fax number as Retailer may designate in writing delivered to EchoStar in accordance with Section 17.10.1; or (iv) with the exception of notices given pursuant to Sections 10, 13 or 15, any method of mass communication reasonably directed to

EchoStar's retailer base, including, without limitation, facts blast, e-mail posting on EchoStar's retailer web site or broadcast on a "Retailer Chat". The sending of such notice with confirmation of successful receipt of the entire transmission (in the case of facsimile transmission), receipt of such notice (in the case of first class certified mail or overnight courier service), sending of such notice (in the case of e-mail), posting (in the case of EchoStar's retailer web site) or broadcast (in the case of Retailer Chats) shall constitute the giving thereof. It shall be Retailer's sole responsibility to keep itself informed of all notices, changes and other information set forth in any facts blast, e-mail, "Retailer Chat" or posting on EchoStar's retailer web site.

17.10.3 The provisions of this Section 17.10 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

17.11 **Attorney Fees.** In the event of any suit, action or arbitration between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all suits, actions or arbitrations to enforce this Agreement, any Business Rules, any Promotional Program or any provisions hereof or thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney fees, at arbitration, at trial and on appeal, in addition to (and without limitation of) all other sums allowed by law. The provisions of this Section 17.11 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

17.12 **Modifications.** Retailer acknowledges that EchoStar competes in the multi-channel video distribution market, which is highly competitive, fluid and volatile and that EchoStar must make changes to its marketing, promotion and sales of products and services from time to time to stay competitive. Therefore, Retailer agrees that EchoStar may, at Any Time in its Sole Discretion, change, alter, delete, add or otherwise modify Incentives, Incentive schedules, Incentive structures, Promotional Programs and/or Business Rules, payment terms, or the Chargeback rules associated therewith, upon notice to Retailer, without the need for any further consent, written or otherwise, from Retailer. IF ANY SUCH CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION IS MATERIAL AND UNACCEPTABLE TO RETAILER, RETAILER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. RETAILER'S CONTINUED PERFORMANCE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF NOTICE OF A CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION.

17.13 **Interstate Commerce.** The parties acknowledge that the transactions contemplated by this Agreement involve interstate commerce.

17.14 **General Provisions.** The exhibit(s) hereto are hereby incorporated into this Agreement by reference in their entirety.

17.15 **Power and Authority.** Retailer represents and warrants to EchoStar that it has full power and authority to enter into this Agreement and perform its obligations hereunder and that its execution and delivery of this Agreement (whether via signature or electronic acceptance) and performance of its obligations hereunder does not and will not violate any Laws or result in a breach of, or default under, the terms and conditions of any contract or agreement by which it is bound.

17.16 **Consent to Receive Faxes.** Retailer hereby acknowledges that this Agreement serves as Retailer's express written consent to receive facsimile transmittals from EchoStar and its Affiliates, including without limitation facsimile transmittals which contain unsolicited advertisements. For the avoidance of doubt, such permitted facsimile transmittals from EchoStar or any of its Affiliates shall include, but not be limited to, information about the commercial availability or quality of products, goods or services; notices of conferences and seminars; and new product, programming or promotion announcements. This written consent shall include (without limitation) all facsimile transmittals regulated by future Federal Communications Commission action.

17.17 **Waiver of Evidence.** No course of dealing, course of performance, or usage of trade shall be considered in the interpretation or enforcement of this Agreement. Both parties waive any right they may have to introduce evidence of any such course of dealing, course of performance, or usage of trade.

17.18 **Correction of Spelling, Typographical or Clerical Errors.** Retailer hereby grants to EchoStar a limited power of attorney to correct and/or execute or initial all spelling, typographical and clerical errors discovered in this Agreement, the Trademark License Agreement, any Other Agreement, and any amendments to any of the foregoing, including without limitation, errors or inconsistencies in the spelling of Retailer's name, address, phone number or fax number or the spelling of the name or title of the duly authorized representative signing or electronically accepting each such agreement on Retailer's behalf.

17.19 **Alteration of Terms and Conditions.** Retailer acknowledges and agrees that, because among other things EchoStar has thousands of authorized retailers, it is in each party's best interest to establish an orderly process for Retailer to propose additions, deletions, changes, alterations and/or other modifications to the terms and conditions set forth in this Agreement and for EchoStar to receive such proposals prior to the parties entering into an agreement. Therefore, Retailer further acknowledges and agrees that any additions, deletions, changes, alterations and/or other modifications to the terms and conditions of this Agreement proposed by Retailer must be sent to EchoStar solely and exclusively via an e-mail message addressed to proposedchanges@echostar.com with the subject line

"Proposed Changes to EchoStar Retailer Agreement" (a "Proposal") and that such Proposals must be received by EchoStar prior to Retailer executing this Agreement (whether via signature or electronic acceptance). RETAILER ACKNOWLEDGES AND AGREES THAT: (I) ANY AND ALL PROPOSALS RECEIVED BY ECHOSTAR AFTER RETAILER HAS EXECUTED THIS AGREEMENT SHALL BE OF NO FORCE OR EFFECT; AND (II) IN THE EVENT THAT RETAILER EXECUTES THIS AGREEMENT AFTER ECHOSTAR HAS RECEIVED ONE OR MORE PROPOSALS, ALL SUCH PROPOSALS SHALL BE DEEMED TO HAVE BEEN WITHDRAWN BY SUCH EXECUTION AND SHALL BE OF NO FURTHER FORCE OR EFFECT. Consequently, in the event that the following events occur in the following order: (a) EchoStar receives a Proposal from Retailer; (b) Retailer executes this Agreement (whether via signature or electronic acceptance); and (c) EchoStar executes this Agreement, then Retailer acknowledges and agrees that the execution of this Agreement by Retailer withdrew the Proposal and Retailer and EchoStar will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Further, in the event that the following events occur in the following order: (1) Retailer executes this Agreement (whether via signature or electronic acceptance); (2) EchoStar receives a Proposal from Retailer; and (3) EchoStar executes this Agreement, then Retailer acknowledges and agrees that the Proposal shall be of no force or effect because it was submitted after Retailer executed this Agreement and Retailer and EchoStar will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Further, in the event that the following events occur in the following order: (A) EchoStar receives a Proposal from Retailer; (B) Retailer executes this Agreement (whether via signature or electronic acceptance); (C) EchoStar receives a second Proposal from Retailer; and (D) EchoStar executes this Agreement, then Retailer acknowledges and agrees that the execution of this Agreement by Retailer withdrew the first Proposal and the second Proposal shall be of no force or effect because it was submitted after Retailer executed this Agreement, and Retailer and EchoStar will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Retailer further acknowledges and agrees that a Proposal may only be accepted by EchoStar in a writing signed by an Executive Vice President of EchoStar (or his or her designee), which specifically acknowledges receipt of the applicable Proposal, includes the portion(s) of the Proposal that EchoStar is willing to accept, and expressly states that EchoStar has agreed to accept such portion(s) of the Proposal. Notwithstanding anything to the contrary set forth herein, EchoStar is under no obligation to receive, consider or accept any Proposals, and in the event that a Proposal received by EchoStar is not accepted in the manner provided in the immediately preceding sentence, then such Proposal shall automatically be deemed to have been rejected by EchoStar. For the avoidance of doubt, EchoStar has the right to not receive, consider or accept any Proposal and to reject any Proposal in its Sole Discretion.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and/or accepted electronically by their duly authorized representatives as of the date first written above.

ECHOSTAR SATELLITE L.L.C.

By: _____
Name:
Title:

RETAILER

Retailer Number: **821970**

Retailer Company Name: "
(please print)

Street Address: **9831 IRVINE CENTER DR**
(please print)

City, State, Zip Code: **IRVINE, CA 92618**
(please print)

Fax Number: **(949) 643-7173**
(for notice to Retailer pursuant to Section 17.10.2)

(please print)

By: _____
(signature)

Name (please print): **ALEX TEHRANCHI**

Title (please print): **PRESIDENT**

[SIGNATURE PAGE OF ECHOSTAR RETAILER AGREEMENT]

EXHIBIT A

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the "Agreement") is made and effective as of the Effective Date, by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("ESLLC"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112; and " ", having a place of business at **9831 IRVINE CENTER DR IRVINE, CA 92618** ("Licensee").

INTRODUCTION

WHEREAS, ESLLC conducts business in worldwide locations as, among other things, a provider of direct broadcast satellite-delivered, multi-channel, digital video, audio, data, interactive and other programming services;

WHEREAS, Licensee conducts business as, among other things, a retailer of satellite television products and services; and

WHEREAS, Licensee desires to be permitted to use the Trademarks (as defined below) in accordance with and subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. ESLLC and its Affiliates hereby grant to Licensee a non-exclusive, non-transferable, revocable license (the "License") to use the Trademarks during the term of this Agreement, and no other term or license whatsoever, solely to market, promote and solicit orders for Programming and the hardware necessary to receive such Programming ("Hardware") in its advertising and promotional materials and at its business locations.

(a) Licensee expressly recognizes and agrees that Licensee shall not, in whole or in part, modify, alter, supplement, delete or otherwise change any of the Trademarks (whether in typewritten, stylized or any other form) as provided to Licensee by ESLLC and/or any of its Affiliates, including without limitation through dissecting in any manner the form of stylized "I" in "DISH". Licensee shall have no right to use any logos, service marks or trademarks (whether in typewritten, stylized or any other form) of any programming providers (collectively, "Programmer Trademarks"), other than the Programmer Trademarks that are contained in the advertising and promotional material provided to Licensee by ESLLC and/or its Affiliates. No such materials shall indicate that any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distributorship exists between Licensee on the one hand, and ESLLC and/or its Affiliates on the other hand, unless ESLLC and/or its Affiliates on the one hand, and Licensee on the other hand, enter into a separate written agreement permitting Licensee to do so.

(b) Notwithstanding the above, Licensee shall provide to ESLLC, at least thirty (30) days prior to first use: (i) an example of any advertising or promotional materials in which Licensee intends to use any Trademarks or Programmer Trademarks (in each case whether in typewritten, stylized or any other form) which use has not, within the past twelve (12) months, been approved by ESLLC in exactly the manner intended for use and (ii) an example of any Trademark Paid Search Terms which have not been approved by ESLLC in exactly the manner intended for use by Licensee within the past twelve (12) months. ESLLC may reject and prohibit Licensee from using such materials or Trademark Paid Search Terms in its Sole Discretion. If Licensee is required to, but fails to provide ESLLC with proposed advertising or promotional materials or Trademark Paid Search Terms at least thirty (30) days prior to first use in compliance with the foregoing, ESLLC shall have just cause to immediately terminate this Agreement upon written notice to Licensee.

(c) For the purposes of this Agreement: (i) "Trademarks" shall mean (a) the trademarks, service marks and trade names of ESLLC and/or its Affiliates set forth in Exhibit 1 hereto and incorporated herein by reference in its entirety, as such exhibit may be modified at Any Time in EchoStar's Sole Discretion upon notice to Licensee and (b) such other trademarks, service marks and trade names of ESLLC and/or its Affiliates as may be set forth by ESLLC at Any Time in its Sole Discretion in applicable Business Rules which expressly permit their use by Licensee and (ii) "Trademark Paid Search Terms" shall mean any Internet search terms that (a) include any of the Trademarks and (b) for which Licensee has directly or indirectly made any payment or provided any other economic benefit of any type whatsoever to any person or entity other than ESLLC or any of its Affiliates in connection with the placement of any advertising or promotional materials or links thereto on an Internet website. Licensee acknowledges and agrees that ESLLC may, at Any Time in its Sole Discretion, change, alter, delete, add or otherwise modify Exhibit 1 hereto and/or any Business Rules otherwise applicable to any of the Trademarks, upon notice to Licensee, without the need for any consent, written or otherwise, from Licensee.

2. This Agreement is not intended, nor shall it be construed, as creating any agreement of agency, partnership, joint venture, franchise or of exclusive or non-exclusive distributor, or as creating any obligation on the part of ESLLC to enter into any such agreement with Licensee. Further, this Agreement is not intended, nor shall it be construed, as providing any rights to Licensee to purchase or sell products or programming manufactured and/or distributed by ESLLC. Licensee expressly recognizes and agrees that any goodwill now existing or hereafter created through any sales or solicitation of orders by Licensee of Programming, Hardware and/or any other products, programming and/or other services manufactured and/or distributed by ESLLC in association with the Trademarks shall inure to ESLLC's sole and exclusive benefit. This License shall be effective until terminated by either party in accordance with the terms and conditions of this Agreement, or until expiration or termination of the EchoStar Retailer Agreement to which this Agreement is attached (the "EchoStar Retailer Agreement") for any reason or no reason whatsoever.

3. Licensee agrees that all products and services promoted and/or rendered by Licensee in connection with any of the Trademarks, and all promotional and other uses of any of the Trademarks by Licensee in association with any Programming, Hardware and/or any other products and services offered by Licensee in connection with this Agreement and/or the EchoStar Retailer Agreement, shall be of a nature and quality that conforms to such standards as may be required by ESLLC from time to time in its Sole Discretion. Licensee acknowledges and agrees that ESLLC shall have the right (but not the obligation) to take any and all actions as may be determined by ESLLC at Any Time in its Sole Discretion to be necessary to ensure that the nature and quality of the services and/or products offered by Licensee in connection with any of the Trademarks, this Agreement and/or the EchoStar Retailer Agreement conform to, and are otherwise maintained at a level which reflects, the high standards of ESLLC and its Affiliates, including without limitation by directly or indirectly through its authorized representatives inspecting Licensee's use of the Trademarks in accordance with the audit provisions of the EchoStar Retailer Agreement.

4. The License granted by ESLLC and its Affiliates is granted to Licensee only. Licensee has no authority to transfer or grant any sublicense to any other entity or individual for any reason, and if Licensee does so, this Agreement shall automatically terminate, unless ESLLC notifies Licensee to the contrary in writing at any time thereafter. Licensee shall immediately cease using Trademarks in typewritten, stylized or any other form upon expiration or termination of this Agreement for any reason or no reason whatsoever. Upon expiration or termination of this Agreement for any reason or no reason whatsoever, at ESLLC's option Licensee shall immediately destroy or deliver to ESLLC any and all advertising and promotional materials in Licensee's possession with Trademarks (whether in typewritten, stylized or any other form) on them and immediately cease using any Trademark Paid Search Terms. If ESLLC requests destruction of advertising and promotional materials and/or that Licensee cease using any Trademark Paid Search Terms, Licensee shall promptly execute an affidavit representing at a minimum that such materials were destroyed and/or that the use of such Trademark Paid Search Terms has ceased, as applicable, and the date and means of such destruction or last use.

5. Licensee expressly recognizes and acknowledges that this License, as well as any past use by Licensee of the Trademarks in any manner whatsoever (including but not limited to use on signs, on business cards, in advertisements or in Trademark Paid Search Terms) or in any form whatsoever (including but not limited to typewritten or stylized form), shall not confer upon Licensee any proprietary or other rights, title or interest in, to or under any of the Trademarks including, but not limited to, any existing or future goodwill in any of the Trademarks. Further, Licensee waives any and all past, present, or future claims it has or might have in the future in, to, or under any of the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between ESLLC and its Affiliates on the one hand, and Licensee and its Affiliates on the other hand, ESLLC and its Affiliates have the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that ESLLC and its Affiliates retain full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein.

6. Licensee represents and warrants that Licensee has not previously reserved, filed or registered, and hereby agrees that Licensee shall not in the future, reserve, file, or register, any formative mark that contains or incorporates in whole or in part any of the Trademarks (whether in typewritten, stylized or any other form). In addition to (and without limitation of the foregoing), Licensee represents and warrants that Licensee has not previously registered, and hereby agrees that Licensee shall not in the future register, any domain name (i) which includes all or any portion of the Trademarks, (ii) which may otherwise be confusingly similar to all or any portion of the Trademarks, or (iii) for which such registration would not be in accordance with the Usage Standards (as defined below). In the event that Licensee (a) has previously reserved, filed or registered, or in the future reserves, files or registers, any such trademark or (b) has previously registered, or in the future registers, any domain name in each case in contravention of any of the foregoing, Licensee agrees to notify ESLLC immediately, and shall immediately upon the request of ESLLC, assign to ESLLC or its designated Affiliate any and all rights, title, and interests that are obtained through the reservation, filing, or registration of any such trademarks (whether in the U.S. or any foreign jurisdiction) or the registration of any such domain name, as applicable, and hereby acknowledges and agrees that any such reservation, filing, or registration, whenever occurring, shall be on behalf of and for the sole and exclusive benefit of ESLLC, and Licensee waives any and all claims or rights to any compensation whatsoever therefor. Licensee's obligations in this Section 6 shall survive the expiration or termination (for any reason or no reason whatsoever) of this Agreement indefinitely.

7. Licensee agrees not to hold itself out as DISH Network, ESLLC, any ESLLC Affiliate or any other related or affiliated entity. To avoid any confusion in this respect, Licensee agrees not to use either: (i) the formative "DISH" in combination with the formative "NET", or (ii) the formative "ECHO", as part of its business name. In addition to (and without limitation of any of) the foregoing, Licensee shall conform any and all use of the word mark "DISH" to such usage standards as may be set forth by ESLLC at Any Time in its Sole Discretion in applicable Business Rules ("Usage Standards"), including without limitation in connection with

Licensee's business name, any domain name registered by Licensee and/or any toll free or other phone number used by Licensee for any purpose whatsoever. Furthermore (and without limitation of any of the foregoing), Licensee agrees not to register any domain name which (a) contains either (1) the formative "DISH", in combination with the formative "NET", (2) the formative "ECHO", or (3) a misspelling of DISH Network (e.g., www.dishnetwork.com) or any other ESLLC mark, or (b) may otherwise be confusingly similar to any of the foregoing and/or any other domain name registered by ESLLC. Licensee further agrees to immediately transfer to ESLLC or its designated Affiliate, upon ESLLC's request, any domain names which it has registered in contravention of any of the provisions of this Agreement, any applicable Business Rules and/or the Usage Standards. In no event shall Licensee use any toll free or other phone number confusingly similar to DISH Network, any other Trademark, ESLLC, any ESLLC Affiliate or any other related or affiliated entity, and Licensee further agrees to immediately transfer to ESLLC or its designated Affiliate, upon ESLLC's request any and all of its rights, title and interest in, to and under any such phone number and any phone number otherwise used by Licensee in contravention of any of the provisions of this Agreement, applicable Business Rules and/or the Usage Standards. Licensee's failure to comply with the provisions of this Section 7 shall constitute a material breach of this Agreement. Upon request, Licensee shall provide ESLLC with a list of all domain names Licensee uses to market, promote or solicit orders for Programming, Hardware and/or any other services or products offered by ESLLC and/or its Affiliates.

8. Nothing in this Agreement shall be construed to bar ESLLC and its Affiliates from protecting their right to the exclusive use of the Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including without limitation Licensee, either during the term of this Agreement or following any expiration or termination of Licensee's right to use the Trademarks pursuant to this Agreement for any reason or no reason whatsoever. Licensee will promptly and fully advise ESLLC of any use of any mark that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with ESLLC and its Affiliates in the defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESLLC's and/or its Affiliates' expense. Similarly, nothing in this Agreement shall be construed to require that ESLLC and/or its Affiliates take any action to protect any of the Trademarks in any instance, and ESLLC and its Affiliates shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

9. (a) This Agreement shall continue for a period of time equal to the term of the EchoStar Retailer Agreement, unless terminated earlier for any reason provided herein. The provisions of this Agreement that expressly survive and such other rights and obligations hereunder as would logically be expected to survive expiration or termination of this Agreement shall continue in full force and effect for the period specified or for a reasonable period under the circumstances if no period is specified.

(b) This Agreement may be terminated by a party (the "Affected Party") in the event that the other party (the "Other Party") defaults on any obligation or breaches any representation, warranty or covenant in this Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right), and such default or breach, if curable, is not cured within twenty (20) days of receipt of written notice from the Affected Party. The parties agree that all obligations, representations, warranties and covenants contained in this Agreement, whether or not specifically designated as such, are material to the agreement of the parties to enter into and continue this Agreement.

(c) This Agreement shall terminate automatically upon the expiration or termination of the EchoStar Retailer Agreement for any reason or no reason whatsoever and upon termination of any Other Agreement for any reason or no reason whatsoever, unless ESLLC notifies Licensee to the contrary in writing.

10. The relationship between the parties including without limitation all disputes, controversies and claims, whether arising under contract, in tort, under statute or otherwise, shall be governed by and construed in accordance with the laws of the State of Colorado without giving any effect to its conflict of law provisions. Licensee and ESLLC acknowledge and agree that they and their counsel have reviewed, or have been given a reasonable opportunity to review, this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

11. Any and all disputes, controversies or claims arising out of, or in connection with, the interpretation, performance or nonperformance of this Agreement and any and all disputes, controversies or claims arising out of, or in connection with, transactions in any way related to this Agreement and/or the relationship for any reason whatsoever between the parties (including but not limited to the termination of this Agreement or the relationship and Licensee's rights thereunder or disputes under rights granted pursuant to statutes or common law, including without limitation those in the state in which Licensee is located) shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties consent to the *in personam* jurisdiction of said court for the purposes of any such litigation, and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C.S. 1404 or 1406 (or any successor statute). In the event the United States District Court for the District of Colorado does not have subject matter jurisdiction of said matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado.

12. Licensee agrees that any breach of its obligations under this Agreement will cause substantial and irreparable harm and injury to ESLLC for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Licensee agrees that ESLLC shall have the right, in addition to (and without limitation of) any other rights and

remedies available to ESLLC at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Licensee, its Affiliates, employees, independent contractors, subcontractors, agents or sub-agents, as well as other equitable relief allowed by the federal and state courts. The provisions of this Section 12 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

13. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the EchoStar Retailer Agreement.

IN WITNESS WHEREOF, the parties hereto have signed and/or electronically accepted, this Agreement by their duly authorized representatives as of the date first written above.

ECHOSTAR SATELLITE L.L.C.

By: _____
Name:
Title:

LICENSEE

Retailer Number: **821970**

Retailer Company Name: "
(please print)

Street Address: **9831 IRVINE CENTER DR**
(please print)

City, State, Zip Code: **IRVINE, CA 92618**
(please print)

By: _____
(signature)

Name (please print): **ALEX TEHRANCHI**

Title (please print): **PRESIDENT**

[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]

EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT





Sat System. Network

Disclosures

Now on the day of installation you will need to be present for the entire installation. You will also receive a 90 day installation warranty with that install from the date of installation.

There is a \$5.00 programming access fee that can be waived by having your receivers connected to a land-based phone line which the installers will take care of for you.

If you were to cancel before the 18 month contract is up you would be charged and early cancellation fee of \$13.33 per month you have left on your contract. You will also need to return the equipment within 30 days of canceling or an equipment charge will be assessed.

With this promotion you will be given the DHPP warranty for free which includes a free movers program, 24 hour tech support and replacement of remotes and receivers should they become needed.

There is a \$5.00 fee for processing late payments and a \$5.00 fee charged for anytime you drop or remove programming.

You must maintain a minimum programming package of Dish Family to continue with this promotion.

All payments for programming are non-refundable.

When you receive your first bill it will be for 2 months of service totaling _____. Then subtract the \$49.99 for the deposit that will be refunded and your total due on that bill will be _____.

Verify all of the customer's information i.e., Address, phone numbers, installation date!!!

Dish Network's customer service and tech support number is 1800 333-DISH(3474). If you have any questions or concerns you can contact a customer service rep 24 hours a day. Also my number and ext. here is 1800 338-3409 ext. _____. Thank you for your time and welcome to Dish Network.

Krakauer--00019202

Confidential-

JA004613
DISH-Paper-008106

SLC_ DNC_Investigation_0015462
TX 102-003875

Disclosures (cont.)

***For auto-pay only**

If you decide to keep the Auto-pay feature on your account, all future bills will automatically be presented to your card for payment on your billing due date. In order for Dish Network to consider billing questions or honor automatic payment cancellation requests, you must contact Dish Network at 1-800-333-3474 at least 7 days prior to your billing due date to allow time for completion of your request. Additionally, as a participant of our Auto-pay program you will be changed to paperless billing plan. The plan conveniently provides you with up to 12 months of your statements viewable on-line at www.dishnetwork.com or on DishHOME Channel 100.

Krakauer--00019203

Confidential-

JA004614
DISH-Paper-008107

SLC_ DNC_Investigation_0015463
TX 102-003876

Satellite System 3 Network

Dish Network Pitch

Hello! This is _____. I'm an account specialist, calling from Promotional Satellite Network in regards to your Directv service. Our records indicate that you've been with Directv for well over a year. You've completed your contract successfully and as a result, you are now entitled to a lower monthly payment and also a free DVR system upgrade. Are you familiar with what the DVR is? (Answer if NO; use real-life examples—pause, record, rewind, fast-forward live television) What I'm going to do now is see exactly how much we can save you on your monthly bill. First off, how many televisions are you running in the house at the moment? How much is your monthly bill as well? Do you have any movie packages at that rate? (Find the BEST programming package for the customer—ask which channels they watch, *if necessary*) Okay, I can definitely save you _____ a month on your bill, but first off let me explain a little bit more about the promotion and exactly what I do. We do promotions for both Directv and Dish Network and mainly what I do is call customers that are out of contract with Directv and tell them exactly what the competition is offering. Directv and Dish Network are fighting to secure new customers right now and by doing so, they are giving the world to their new customers and not doing too much for their existing customers other than slowly raising their bill, which I'm sure you're well aware of by now. So, this promotion is an offer from Dish Network which is going to lower your bill to \$_____ every month, also give you _____ more visual channels than what you are getting right now. You're also going to get a DVR system for two of your televisions, HBO and Cinemax free for the first 3 months and a free lifetime warranty on all of your equipment. So you can get a better idea of what these companies do for their new customers as oppose to their existing customers. Do you ever subscribe to a package called the NFL Sunday Ticket or MLB extra innings? The reason I ask is Directv recently spent 2 billion dollars securing the NFL Sunday Ticket and 750 million dollars securing the MLB Extra Innings package. Well only 15% of Directv's customers actually sign up for those 2 packages. Well guess what happens to the other 85%. They get price increases like the rest to help cover the cost of those 2 packages. So your basically paying for something you don't even subscribe to. Have you ever had Dish Network Services in the past? (if customer has had dish network in the past then the formers promotion would apply) The way it works is we'd have a professional installer come to your house and all he's going to do is swap out the old equipment and put in the new equipment. It's a very quick and painless process because all of the wiring is already run. He's going to make sure he gets a signal and after that the only one thing you have to do is call DIRECTV and tell them you want to cancel. You pay your satellite bill a month in advance so they will pro-rate the month for you and send you a refund check for any money they may owe you. So, what I can do now is set you up with an installation date and in most cases we can get out to you in the next couple days. It really depends on how your schedule is. *(Rebuttals for any possible objections. Take information i.e. address, phone number etc.)*

Krakauer--00019204

Confidential-

JA004615
DISH-Paper-008108

SLC_ DNC_Investigation_0015464

TX 102-003877

Now, there's a \$49.99 deposit, which locks in your equipment for the date of installation. You get that deposit refunded back to you on your first month's bill. So on your first month's bill you'll see a credit for \$49.99, which will go, towards your first month of service. We would take that deposit today and it's your choice of VISA, M/C, AMEX, or DISCOVER/novus. *(Answer objections)*

Now for qualification purposes I just need the last 4 of your social security number. (Hold for the number then continue) Your social security will be used to obtain a soft credit check, which is necessary to qualify you for this promotion, and will not be released to third parties.

(Continue completing the order and give the customer Account # and Payment Authorization # as well as redemption form instructions)

Now on the day of installation you will need to be present for the entire installation. You will also receive a 90 day installation warranty with that install from the date of installation.

There is a \$5.00 programming access fee that can be waived by having your receivers connected to a land-based phone line which the installers will take care of for you.

If you were to cancel before the 18 month contract is up you would be charged and early cancellation fee of \$13.33 per month you have left on your contract. You will also need to return the equipment within 30 days of canceling or an equipment charge will be assessed.

With this promotion you will be given the DHPP warranty for free which includes a free movers program, 24 hour tech support and replacement of remotes and receivers should they become needed.

There is a \$5.00 fee for processing late payments and a \$5.00 fee charged for anytime you drop or remove programming.

You must maintain a minimum programming package of Dish Family to continue with this promotion.

All payments for programming are non-refundable.

When you receive your first bill it will be for 2 months of service totaling _____. Then subtract the \$49.99 for the deposit that will be refunded and your total due on that bill will be _____.

Dish Network's customer service and tech support number is 1800 333-DISH(3474). If you have any questions or concerns you can contact a customer service rep 24 hours a day. Also my number and ext. here is 1800 338-3409 ext. _____. Thank you for your time and welcome to Dish Network.

Krakauer--00019205

Confidential-

JA004616
DISH-Paper-008109

SLC_ DNC_Investigation_0015465
TX 102-003878

EXHIBIT 65

EXHIBIT 65

JA004617

DISH NETWORK L.L.C.

DO-NOT-CALL POLICY

**IN COMPLIANCE WITH THE
THE TELEMARKETING SALES RULE OF 2003**

AND

**TELEPHONE CONSUMER PROTECTION ACT OF 1991
("T.C.P.A.")**

AND

**THE TELEMARKETING AND CONSUMER FRAUD
AND ABUSE PREVENTION ACT OF 1994**

AND

ACCOMPANYING REGULATIONS

(Revised March 12, 2009)

1

I. **INTRODUCTION**

DISH Network L.L.C. ("DISH") has implemented this Do-Not-Call Policy in order to protect the privacy rights of consumers and to promote compliance with applicable laws and regulations. DISH intends to honor the request of any person who opts not to receive telephone solicitations.

II. **DO NOT CALL POLICY**

DISH maintains a list of phone numbers of persons who have indicated that they do not wish to receive solicitation calls from DISH. The phone number of any person who informs DISH that he or she does not wish to receive solicitation calls is placed on DISH's internal Do-Not-Call list. A request may be communicated by means of: 1) advising a DISH Customer Service Representative by phone; 2) advising DISH in writing; or 3) submitting a request via DISH's website. Oral requests should be made by calling DISH's Customer Service Center at 1-800-333-DISH or by stating the wish to be placed on DISH's internal Do-Not-Call list while on a phone call initiated by DISH. Written requests should be sent to: DISH Network L.L.C., Attention: Do Not Call, P.O. Box 9008, Littleton, Colorado 80120. Submit a request via DISH's website at the following URL: http://www.dishnetwork.com/legal/do_not_call/Default.aspx. All DISH employees who conduct outbound solicitation calls will be instructed on company policy and provided with guidance on how to add numbers to DISH's Do-Not-Call list.

A. **GOVERNMENT CONTROLLED DO-NOT-CALL LISTS**

It is DISH's policy to obtain state and federal Do-Not-Call list(s), and fully comply with legislation regarding the calling of phone numbers on these lists. DISH's Do-Not-Call list will be updated within 30 days of receipt of the state Do-Not-Call list, or such shorter time if required by state law.

B. **COMMUNICATION**

WHAT TO SAY WHEN A PERSON REQUESTS TO BE ADDED TO DISH'S DO-NOT-CALL LIST:

"Mr./Ms. _____, I will have your phone number removed from our

calling list immediately.”

WHAT TO SAY IF A PERSON REQUESTS A COPY OF OUR DO-NOT-CALL POLICY:

“Mr./Ms. _____, we will be happy to send a copy of our Do-Not-Call policy to you. Please let me confirm your address and we will mail you a copy. Thank you for your interest.”

C. UPDATING THE DO-NOT-CALL LIST

If a non-customer or existing DISH Network® subscriber calls in to request exclusion from solicitations, the inbound Customer Service Representative will submit the request to DISH’ Do-Not-Call database via an internal web page or mark the DISH Network® account as Do-Not-Call. If an outbound Customer Service Representative receives a Do-Not-Call request from a non-customer or existing DISH Network® subscriber, the Customer Service Representative will mark the phone number as Do-Not-Call in the computerized dialing system or mark the DISH Network® account as Do-Not-Call. All Do-Not-Call requests are downloaded, updating DISH’s Do-Not-Call database each morning, and the phone numbers of those who have submitted a Do-Not-Call request are excluded from any future telemarketing solicitations by DISH.

III. OTHER CALLING REQUIREMENTS

In addition to any specific training, instruction or other requirements, all DISH employees placing outbound solicitation calls must comply with the following:

- 1) Calls may only be placed between the hours of 8:00 a.m. and 9:00 p.m., local time of the called party or as specific state law regulates.
- 2) Use of an artificial or prerecorded voice to deliver a solicitation to any residential phone line is prohibited. Thus said, we do deliver automated messages to only our existing subscribers for the purpose of customer service reminders such as when a credit card expires.
- 3) When making a telemarketing call, provide the potential customer with your name and that you are calling on behalf of DISH Network.
- 4) Advertisements may not be transmitted by any device to a telephone facsimile machine unless the person receiving the facsimile has given prior express invitation or permission to receive it.

EXHIBIT 66

EXHIBIT 66

JA004621

From: Musso, Reji <reji.musso@echostar communications corp.com>
Sent: Thursday, August 13, 2009 1:18 PM
To: #Strategic Account Manager <#StrategicAccountManager@echostar.com>
Cc: Calbert, Robert <Robert.Calbert@dishnetwork.com>; Mills, Mike <Mike.Mills@dishnetwork.com>; Neylon, Brian <Brian.Neylon@dishnetwork.com>; Kitei, Brett <Brett.Kitei@dishnetwork.com>
Bcc: Brilli, Richard; Rukas, Terrence; Taber, Chris; Slater, Joshua; Colmenares, Juan; Walker, Will; Suter, Clay; Jones, Nathan; Godin, Benjamin; Polak, Tony
Subject: Communication of Assured Voluntary Compliance
Attach: Compliance with AVC Business Rules 073109[2].pdf; 2009 7 14 DISH MultiState AVC.PDF

Krakauer
v.
Dish Network
1:14-CV-00333-CCE-JEP
DX-86

As you may know, on July 16, 2009, DISH Network L.L.C ("DISH Network") entered into an agreement with 46 state attorneys general resolving a dispute about advertising, telemarketing, and customer issues relating to DISH Network and its independent retailers and telemarketers (hereafter, the "Assurance"). In order to continue acting as an authorized DISH Network telemarketer, you must comply with **ALL** applicable terms and conditions of the Assurance. A copy of the Assurance and accompanying Business Rules are attached. Please immediately review the Assurance and modify your practices and procedures (as necessary) to ensure compliance. Note that the telemarketing provisions begin on page 22. Please insure that each of your retailers has a copy, awareness of and complies with the terms set forth in the attached.

Reji J. Musso

Compliance Manager - Retail Services
DISH Network LLC
9601 S. Meridian Blvd.
Englewood, CO 80112
303.723.3262 (o) | 720.514.8288 (f)
303.946.3660 (m)
reji.musso@dishnetwork.com

EXHIBIT 67

EXHIBIT 67

JA004623

TX 102-003885

From: Vendor Inquiries <VendorInquiries@echostar.com>
Sent: Tuesday, May 4, 2010 10:53 AM
To: Shaffer, Sean <Sean.Shaffer@dishnetwork.com>; Vendor Inquiries <VendorInquiries@echostar.com>; TCPA <TCPA@echostar.com>
Cc: Musso, Reji <Reji.Musso@dishnetwork.com>
Subject: RE: TCPA - Campbell , Richard - Log ID: 26720

Based upon the information provided, we are able to identify the retailer.

OE# 821970
Contact Name: ALEX TEHRANCHI; SOPHIE TEHRANCH
Company: SATELLITE SYSTEMS NETWORK
Address: 9831 IRVINE CENTER DR
IRVINE, CA 92618
Phone: 800-615-0241
E-mail: alex@yourdish.tv; sophie@Yourdish.tv

Thank you,
Serena Snyder
Retail Services Compliance
Dish Network
9801 S. Meridian Blvd
Englewood, CO 80112
720-514-5742 (tel)
720-514-8288 (fax)
serena.snyder@dishnetwork.com

From: Shaffer, Sean
Sent: Friday, April 30, 2010 3:43 PM
To: Vendor Inquiries; TCPA
Subject: TCPA - Campbell , Richard - Log ID: 26720

Tracked by: TCPA agent: SEAN.SHAPPER
Record number: Log ID: 26720

Customer Information:
Name - Campbell , Richard
Phone Number where call was received - (570) 265-1112
Did customer request to be placed on DNC List - No

The information obtained from the caller:
Company - Unknown
Phone Number - (800) 375-8211

DNC List Consumer is on:
National
State
Internal

Nature of the complaint:
-Frequent/Persistent calls - No
-Rude behavior - Yes
-Lewd/Obscene conduct - No
-Harassment, a malicious call pattern - No
-This was a pre-recorded sales call - No
-Caller hung up when asked for identity or to be added to DNC - No

Krakaue- 00042980

Confidential



KRAKAUER v. DISH
1:14-cv-00333-CCE-JEP
Plaintiff's Exhibit
PX8

DISH11-021481

JA004624

Comments:

8003758211 - Satellite Systems Network made the call need this verified and the information on how to contact them.

As stated in the Attorney General's complaint - Issue was rude behavior by an agent. the agent appears to be a sales partner agent as he told the customer he worked for Direct TV than proceeded to try and get the customer to switch from Direct TV to Dish network.

The complaint came from a call back the agent made after the customer declined the switch. that call ended than the agent called back and when the customer answered the agent yelled, "I LOVE IT" and hung. The customer filed the complaint with AG over this one harrassing phone call.

Confidential -

DISH11-021482
JA004625

SLC_ DNC_Investigation_0015467
TX 102-003887

EXHIBIT 68

EXHIBIT 68

JA004626

KRAKAUER v. DISH

Plaintiff's Exhibit PX0029

Retailer Number 821970

DISH NETWORK RETAILER AGREEMENT

This DISH Network Retailer Agreement (the "Agreement") is made and effective as of December 31, 2010 (the "Effective Date"), by and between DISH Network L.L.C., formerly known as EchoStar Satellite L.L.C. ("DISH"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and SATELLITE SYSTEMS NETWORK, having a place of business at 9831 IRVINE CENTER DR IRVINE, CA 92618 and fax number: (949) 241-8090 ("Retailer").

INTRODUCTION

A. DISH is engaged, among other things, in the business of providing digital direct broadcast satellite ("DBS") services and other video, audio, data and interactive programming services under the name DISH Network®.

B. Retailer, acting as an independent contractor, desires to become authorized on a non-exclusive basis to market, promote and solicit orders for Programming (as defined below) (an "Authorized Retailer"), in accordance with and subject to the terms and conditions of this Agreement.

C. DISH desires to appoint Retailer as an Authorized Retailer in accordance with and subject to the terms and conditions of this Agreement.

AGREEMENT

1. **DEFINITIONS.** In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.1 "Additional Incentives" means Additional Residential Incentives, Additional Residential MDU Incentives, Additional Commercial Incentives and Additional Bulk Incentives, as such terms are defined in Sections 6.2.1, 6.2.2, 6.2.3 and 6.2.4, respectively.

1.2 "Affiliate" means any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity; provided that DISH's Affiliates shall not include EchoStar Corporation or any of its subsidiaries.

1.3 "Any Time" means any time and from time to time.

1.4 "Bulk Incentives" means Monthly Bulk Incentives and Additional Bulk Incentives, as such terms are defined in Sections 6.1.4 and 6.2.4, respectively.

1.5 "Bulk Programming" means the Programming that DISH makes generally available for viewing in Guest Properties and bulk-billed MDU Properties, in each case assuming one hundred percent (100%) penetration, subject to any restrictions (geographic, blackout, or otherwise) as DISH may impose on some or all of such programming services at Any Time in its Sole Discretion. DISH reserves the right to change the Bulk Programming offered and/or any restrictions applicable to such Bulk Programming at Any Time in its Sole Discretion.

1.6 "Bulk Subscriber Account" means the customer account set up and maintained by DISH for a Qualifying Bulk Subscriber who purchased a DISH System directly from Retailer and for whom Eligible Bulk Programming has been activated by DISH and which customer account remains active and in good standing.

1.7 "Business Rule(s)" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule by DISH which is communicated to Retailer by DISH or an Affiliate of DISH either directly (including without limitation via e-mail) or through any method of mass communication reasonably directed to DISH's retailer base, including, without limitation, a "Retailer Chat", e-mail, facts blast, or posting on DISH's retailer web site. Retailer agrees that DISH has the right to modify, replace or withdraw all or any portion of any Business Rule at Any Time in its Sole Discretion, upon notice to Retailer.

1.8 "Chargeback" means DISH's right to reclaim Incentives pursuant to the terms and conditions of this Agreement, any Promotional Program or applicable Business Rules.

1.9 "Commercial Incentives" means Monthly Commercial Incentives and Additional Commercial Incentives, as such terms are defined in Sections 6.1.3 and 6.2.3, respectively.

1.10 “Commercial Location” means a Public Commercial Location and/or a Private Commercial Location, as those terms are defined below in Sections 1.33 and 1.29, respectively.

1.11 “Commercial Programming” means the Programming that DISH makes generally available for viewing in Commercial Locations subject to any restrictions (geographic, blackout, or otherwise) as DISH may impose on some or all of such programming services at Any Time in its Sole Discretion. DISH reserves the right to change the Commercial Programming offered and/or any restrictions applicable to such Commercial Programming at Any Time in its Sole Discretion.

1.12 “Commercial Subscriber Account” means the customer account set up and maintained by DISH for a Qualifying Commercial Subscriber who purchased a DISH System directly from Retailer and for whom Eligible Commercial Programming has been activated by DISH and which customer account remains active and in good standing.

1.13 “DISH System” means a receiver, which for purposes of this Agreement shall mean a single standalone consumer electronics device, and related components packaged therewith (if any), intended to be utilized solely for the reception of Programming delivered through any means by which DISH elects at Any Time in its Sole Discretion to deliver Programming (including without limitation delivery by: (a) satellite transponders owned, leased and/or otherwise operated or utilized by DISH and/or any of its Affiliates; and/or (b) via the Internet), which is: (i) sold directly to Retailer by DISH or a DISH Affiliate under the “DISH Network” brand name or the brand name of a DISH Affiliate; or (ii) sold directly to Retailer by a Third Party Manufacturer pursuant to authorization granted by DISH under the brand name of such Third Party Manufacturer.

1.14 “DISH Network Subscriber” shall have the meaning set forth in Section 9.5.

1.15 “EFT” means the electronic transfer of funds from one financial institution to another.

1.16 “Eligible Bulk Programming” means the Bulk Programming packages designated by DISH as qualifying for the payment of Bulk Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in DISH’s Sole Discretion, upon notice to Retailer.

1.17 “Eligible Commercial Programming” means the Commercial Programming packages designated by DISH as qualifying for the payment of Commercial Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in DISH’s Sole Discretion, upon notice to Retailer.

1.18 “Eligible Residential MDU Programming” means the Residential MDU Programming packages designated by DISH as qualifying for the payment of Residential MDU Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in DISH’s Sole Discretion, upon notice to Retailer.

1.19 “Eligible Residential Programming” means the Residential Programming packages designated by DISH as qualifying for the payment of Residential Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in DISH’s Sole Discretion, upon notice to Retailer.

1.20 “Guest Property” means a hotel, motel, timeshare, hospital, other healthcare facility or any other similar type of facility located in the Territory that regularly permits overnight or otherwise short-term stays by individuals. Notwithstanding the foregoing, DISH reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Guest Property or is more appropriately considered another type of location.

1.21 “Incentives” mean Monthly Incentives together with any Additional Incentives, as such terms are defined in Sections 1.25 and 1.1, respectively.

1.22 “Institutional/Residential Location” means a property located in the Territory that displays Programming in a non-public, common viewing area within a property that is owned or operated by a government or commercial entity, in which employees are being provided residential living accommodations to facilitate the requirements of their job responsibilities. For example (and without limitation of the foregoing), non-public, common viewing areas within fire stations, oil rigs and coast guard stations are typically Institutional/Residential Locations. Notwithstanding the foregoing, DISH reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes an Institutional/Residential Location or is more appropriately considered another type of location.

1.23 “Laws” shall have the meaning set forth in Section 9.1.

1.24 “MDU Property” means a dormitory, apartment building, condominium complex, retirement community or other type of multifamily living establishment located in the Territory that affords residents living quarters. Notwithstanding the foregoing, DISH reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes an MDU Property (and, if so,

what type of MDU Property, i.e., bulk-billed, non-bulk-billed or other) or is more appropriately considered another type of location.

1.25 “Monthly Incentives” means Monthly Residential Incentives, Monthly Residential MDU Incentives, Monthly Commercial Incentives and Monthly Bulk Incentives, as such terms are defined in Sections 6.1.1, 6.1.2, 6.1.3 and 6.1.4, respectively.

1.26 “Other Agreement(s)” means any agreement(s) between Retailer and/or any of its Affiliates, on the one hand, and DISH and/or any of its Affiliates, on the other hand.

1.27 “Permitted Subcontractors” shall have the meaning set forth in Section 7.1.

1.28 “Prepaid Card” means a card, serialized certificate, approval code sequence and/or other identifier issued in connection with a Promotional Program offered by DISH which is sold directly to Retailer by DISH or an Affiliate of DISH for resale by Retailer directly to a consumer and which, among other things, provides such consumer with certain rights to receive Programming for a fixed duration or in a certain amount.

1.29 “Private Commercial Location” means a place of business located in the Territory that: (i) may be accessible to the public; and (ii) does not typically serve food and/or liquor for immediate consumption. For example (and without limitation of the foregoing), office reception areas or waiting rooms and the private offices of attorneys, doctors/dentists, and other business professionals are typically Private Commercial Locations. Notwithstanding the foregoing, DISH reserves the right to determine at Any Time in its Sole Discretion whether a location constitutes a Private Commercial Location or is more appropriately considered another type of location.

1.30 “Programming” means DISH Network video, audio, data and interactive programming services. DISH reserves the right to change the Programming offered and/or any restrictions applicable to such Programming at Any Time in its Sole Discretion.

1.31 “Promotional Certificate” means a serialized certificate issued in connection with a Promotional Program offered by DISH which is sold directly to Retailer by DISH or an Affiliate of DISH for resale by Retailer directly to a consumer which, among other things, entitles such consumer to a DISH System (or the use of such system, if the applicable Promotional Program involves leasing equipment to consumers) and may include installation of such DISH System.

1.32 “Promotional Program” means: (i) a promotional offer, as determined by DISH in its Sole Discretion, which Retailer may present to consumers in connection with Retailer’s marketing, promotion and solicitation of orders for Programming; (ii) the Incentives, if applicable and as determined by DISH at Any Time in its Sole Discretion, which Retailer may receive in connection with such promotional offer; and (iii) the Business Rules, as determined by DISH, setting forth the terms and conditions governing each such promotional offer and any corresponding Incentives. DISH reserves the right to discontinue any Promotional Program or change the Business Rules associated therewith at Any Time in its Sole Discretion upon notice to Retailer.

1.33 “Public Commercial Location” means a place of business located in the Territory that: (i) is generally accessible to the public; (ii) is typically classified within the hospitality industry; (iii) typically serves food and/or liquor for immediate consumption; and (iv) is typically registered with a fire occupancy certificate. No Unit in an MDU Property or a Guest Property that is installed with or otherwise connected to a satellite master antenna television, private cable or similar programming reception system as may be specified by DISH at Any Time in its Sole Discretion shall be considered a Public Commercial Location; provided, however, that a place of business located within such an MDU Property or Guest Property that otherwise meets the definition of a Public Commercial Location (e.g., a restaurant within a hotel or hospital) may be considered a Public Commercial Location. For example (and without limitation of the foregoing), bars, restaurants, clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. Notwithstanding the foregoing, DISH reserves the right to determine at Any Time in its Sole Discretion whether a location constitutes a Public Commercial Location or is more appropriately considered another type of location.

1.34 “Qualifying Bulk Subscriber” means a commercial enterprise providing Bulk Programming on a bulk basis, assuming one hundred percent (100%) penetration, to a Guest Property and/or a bulk-billed MDU Property that orders Eligible Bulk Programming, that timely pays for all Bulk Programming ordered in full, that has not violated any of the terms and conditions set forth in a DISH Commercial Customer Agreement, and that has not previously received any audio, video, data, interactive or any other programming services from DISH or any Affiliate of DISH: (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period); or (ii) at any time (in all other cases). A Qualifying Bulk Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment DISH, in its Sole Discretion, declines to activate.

1.35 “Qualifying Commercial Subscriber” means a commercial enterprise operating a business at a Commercial Location that orders Eligible Commercial Programming, that timely pays for all Commercial Programming ordered in full, that has not violated any of the terms and conditions set forth in a DISH Commercial Customer Agreement, and that has not previously received any audio, video, data, interactive or any other programming services from DISH or any Affiliate of DISH: (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period); or (ii) at any time

(in all other cases). A Qualifying Commercial Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment DISH, in its Sole Discretion, declines to activate.

1.36 "Qualifying Residential MDU Subscriber" means an individual at a non-bulk-billed MDU Property who orders Eligible Residential MDU Programming, who timely pays for all Residential MDU Programming ordered in full, who has not violated any of the terms and conditions set forth in a DISH Residential Customer Agreement, and who has not previously received any audio, video, data, interactive or any other programming services from DISH or any Affiliate of DISH: (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period); or (ii) at any time (in all other cases). A Qualifying Residential MDU Subscriber shall not include any individual who would otherwise qualify, but whose equipment DISH, in its Sole Discretion, declines to activate.

1.37 "Qualifying Residential Subscriber" means an individual at a Residential Location or an Institutional/Residential Location who orders Eligible Residential Programming, who timely pays for all Residential Programming ordered in full, who has not violated any of the terms and conditions set forth in a DISH Residential Customer Agreement, and who has not previously received any audio, video, data, interactive or any other programming services from DISH or any Affiliate of DISH: (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period); or (ii) at any time (in all other cases). A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment DISH, in its Sole Discretion, declines to activate.

1.38 "Residential Incentives" means Monthly Residential Incentives and Additional Residential Incentives, as such terms are defined in Sections 6.1.1 and 6.2.1, respectively.

1.39 "Residential Location" means a single-family, residential dwelling (i.e., single-family houses, apartments, condominiums or other dwellings used primarily for residential purposes) located in the Territory; provided, however, that in no case shall any location (including without limitation a Commercial Location, an MDU Property or a Guest Property) that is installed with or otherwise connected to a satellite master antenna television, private cable or similar programming reception system as may be specified by DISH at Any Time in its Sole Discretion be considered a Residential Location. Notwithstanding the foregoing, DISH reserves the right to determine at Any Time in its Sole Discretion whether a location constitutes a Residential Location or is more appropriately considered another type of location.

1.40 "Residential MDU Incentives" means Monthly Residential MDU Incentives and Additional Residential MDU Incentives, as such terms are defined in Sections 6.1.2 and 6.2.2, respectively.

1.41 "Residential MDU Programming" means the Programming that DISH makes generally available for viewing in non-bulk-billed MDU Properties subject to any restrictions (geographic, blackout, or otherwise) as DISH may impose on some or all of such programming services at Any Time in its Sole Discretion. DISH reserves the right to change the Residential MDU Programming offered and/or any restrictions applicable to such Residential MDU Programming at Any Time in its Sole Discretion.

1.42 "Residential MDU Subscriber Account" means the customer account set up and maintained by DISH for a Qualifying Residential MDU Subscriber who purchased a DISH System directly from Retailer and for whom Eligible Residential MDU Programming has been activated by DISH and which customer account remains active and in good standing.

1.43 "Residential Programming" means the Programming that DISH makes generally available for viewing in Residential Locations and Institutional/Residential Locations subject to any restrictions (geographic, blackout, or otherwise) as DISH may impose on some or all of such programming services at Any Time in its Sole Discretion. DISH reserves the right to change the Residential Programming offered and/or any restrictions applicable to such Residential Programming at Any Time in its Sole Discretion.

1.44 "Residential Subscriber Account" means the customer account set up and maintained by DISH for a Qualifying Residential Subscriber who purchased a DISH System, Promotional Certificate or Prepaid Card directly from Retailer and for whom Eligible Residential Programming has been activated by DISH and which customer account remains active and in good standing.

1.45 "Retailer Account" means the bank account, including without limitation account and ABA routing numbers, designated by Retailer in the manner prescribed by DISH at Any Time in its Sole Discretion, which Retailer may change from time to time by providing at least sixty (60) days' prior written notice to DISH.

1.46 "Sole Discretion" means a person's or entity's sole and absolute discretion for any reason or no reason.

1.47 "Subscriber Accounts" means Residential Subscriber Accounts, Residential MDU Subscriber Accounts, Commercial Subscriber Accounts and Bulk Subscriber Accounts, as such terms are defined in Sections 1.44, 1.42, 1.12 and 1.6, respectively.

1.48 "Term" shall have the meaning set forth in Section 10.1 below.

1.49 "Territory" shall have the meaning set forth in Section 2.2 below.

1.50 "Third Party Manufacturer" means a third party manufacturer authorized by DISH or any Affiliate of DISH to market, distribute and sell DISH Systems under its own brand name.

1.51 "Unit" means: (i) solely in the case of hospitals and other healthcare facilities, each television or outlet through which video programming may be delivered (by way of example and without limitation, each coaxial cable outlet) on the premises, as determined by DISH in its Sole Discretion; (ii) solely in the case of all Guest Properties other than hospitals and other healthcare facilities, each room in the Guest Property; and (iii) solely in the case of bulk-billed or non-bulk-billed MDU Properties, each separate living quarters in the bulk-billed or non-bulk-billed MDU Property. For clarity, no Commercial Location shall constitute a Unit.

2. **APPOINTMENT; TERRITORY.**

2.1 **Appointment.** DISH hereby appoints Retailer as a non-exclusive Authorized Retailer to market, promote and solicit orders for Programming, subject to all of the terms and conditions of this Agreement and all Business Rules (which are hereby incorporated into this Agreement by reference in their entirety). Upon notification from DISH, the appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same programming services which may be operated by DISH and/or any of its Affiliates under a different name in the future. Retailer's authorization hereunder is limited to: (i) the solicitation of orders for Residential Programming from, and the marketing, advertising and promotion of Residential Programming to, consumers at Residential Locations; (ii) the solicitation of orders for Residential Programming from, and the marketing, advertising and promotion of Residential Programming to, commercial enterprises providing Residential Programming to Institutional/Residential Locations; (iii) the solicitation of orders for Residential MDU Programming from, and the marketing, advertising and promotion of Residential MDU Programming to, consumers at non-bulk-billed MDU Properties; (iv) the solicitation of orders for Commercial Programming from, and the marketing, advertising and promotion of Commercial Programming to, commercial enterprises operating businesses at Commercial Locations; and (v) the solicitation of orders for Bulk Programming from, and the marketing, advertising and promotion of Bulk Programming to, commercial enterprises providing Bulk Programming on a bulk-basis, assuming one hundred percent (100%) penetration, to Guest Properties and bulk-billed MDU Properties.

2.2 **Territory.** Retailer's authorization hereunder, and any actions it undertakes in connection with, or in furtherance of, this Agreement, shall be limited solely to the area within the geographic boundaries of the United States and its territories and possessions (the "Territory").

2.3 **Acceptance.** Retailer hereby accepts its appointment as an Authorized Retailer and agrees to use its best efforts to continuously and actively advertise, promote and market Programming and to solicit orders therefor, subject to and in accordance with all of the terms and conditions of this Agreement. Retailer understands that it may hold itself out to the public as an Authorized Retailer of DISH only after fulfilling, and for so long as it continues to fulfill, all of the duties, obligations, requirements and other terms and conditions contained in this Agreement and all Business Rules, and only during the Term of this Agreement.

2.4 **Non-Exclusivity.** Retailer acknowledges that: (i) nothing in this Agreement is intended to confer, nor shall it be construed as conferring, any exclusive territory or any other exclusive rights upon Retailer; (ii) DISH and its Affiliates make absolutely no statements, promises, representations, warranties, covenants or guarantees as to the amount of business or revenue that Retailer may expect to derive from participation in this Agreement or any Promotional Program; (iii) Retailer may not realize any business, revenue or other economic benefit whatsoever as a result of its participation in this Agreement or any Promotional Program; (iv) nothing contained herein shall be construed as a guarantee of any minimum amount of Incentives or any minimum amount of other payments, income, revenue or other economic benefit in any form whatsoever; (v) DISH currently offers, and at Any Time, in the future may offer in its Sole Discretion, others the opportunity to act as an Authorized Retailer or to solicit orders for Programming in the same geographic area in which Retailer is located and elsewhere; (vi) DISH and its Affiliates shall be entitled, among other things, to: (a) market, promote and solicit orders for programming, (b) distribute, sell, lease and otherwise transfer possession of receivers, related accessories and other equipment, promotional certificates and prepaid cards, and (c) perform installation and maintenance services (directly and indirectly through subcontractors or otherwise) for receivers, related accessories and/or other equipment, in each case throughout the Territory and in direct or indirect competition with Retailer, without any obligation or liability to Retailer whatsoever, and without providing Retailer with any notice thereof; and (vii) DISH shall be free to cease or suspend provision of the Programming offered in whole or in part at Any Time in its Sole Discretion, and shall incur no liability to Retailer by virtue of any such cessation or suspension.

2.5 **Certain Purchases by Retailer.** In the event that Retailer orders any DISH Systems, related accessories, other equipment, Promotional Certificates and/or Prepaid Cards from Echosphere L.L.C. or any of its Affiliates (collectively, "Echosphere" for purposes of this Section 2.5), Retailer shall order such products by phone order, via Echosphere online ordering or by written purchase order (each, a "Purchase Order") issued during the Term of this Agreement. A Purchase Order shall be a binding commitment by Retailer. Any failure to confirm a Purchase Order shall not be deemed acceptance by Echosphere. Purchase Orders of Retailer shall state only the: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. Any additional terms and conditions stated in a Purchase Order shall not be binding upon, and may be ignored by, Echosphere unless expressly agreed to in writing by Echosphere. In no event shall Echosphere be liable for any delay, or failure to fulfill, any Purchase Order (or any portion

thereof), regardless of the cause of such delay or failure. In the event of any conflict between the terms and conditions of a Purchase Order and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. In the event of any ambiguity between or among the terms and conditions of this Agreement and the terms and conditions of any Purchase Order, DISH shall have the sole and exclusive authority to interpret and/or make a final determination in its Sole Discretion concerning any issue arising from such ambiguity. Echosphere shall be considered a third party beneficiary of Retailer's obligations under this Agreement. Retailer hereby acknowledges and agrees that neither Echosphere nor any Affiliate of Echosphere has any obligation to re-purchase any receivers, related accessories, other equipment, promotional certificates (including without limitation Promotional Certificates), or prepaid cards (including without limitation Prepaid Cards) sold or otherwise transferred to Retailer by Echosphere or any other DISH Affiliate or third party (including without limitation, a Third Party Manufacturer) at any time and for any reason or no reason.

2.6 Certain Prohibited Transactions. Retailer agrees that as a condition precedent to its eligibility to receive Incentives from DISH, it will not directly or indirectly sell, lease or otherwise transfer possession of a DISH System, Promotional Certificate or Prepaid Card to any person or entity whom Retailer knows or reasonably should know: (i) is not an end-user and/or intends to resell, lease or otherwise transfer it for use by another individual or entity; (ii) intends to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location; (iii) intends to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property; (iv) intends to use it, or to allow others to use it, to view Commercial Programming at a location other than a Commercial Location; (v) intends to use it, or to allow others to use it, to view Bulk Programming at a location other than a Guest Property or bulk-billed MDU Property; (vi) intends to use it or to allow others to use it in Canada, Mexico or at any other location outside of the Territory; or (vii) intends to have, or to allow others to have, Programming authorized for a DISH System under a single DISH Network account or Prepaid Card that has or will have Programming authorized for multiple receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and except in the case of a Guest Property or bulk-billed MDU Property, connected to the same land-based phone line and/or broadband home network, in each case consistent with the method and manner of connectivity authorized in respect of the relevant receiver as set forth in applicable Business Rules. It shall be Retailer's sole and exclusive responsibility to investigate and determine whether any direct or indirect sale, lease or other transfer by Retailer would be in violation of this Section 2.6. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH System, Promotional Certificate or Prepaid Card to a person or entity who uses it or allows others to use it to: (a) view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, or (b) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, then Retailer agrees to pay to DISH upon demand: (1) the difference between the amount actually received by DISH for the Prepaid Card or the Programming authorized for the corresponding DISH System, as applicable, and the full applicable commercial rate for such Programming (regardless of whether DISH has or had applicable commercial distribution rights for such Programming); and (2) the total amount of any admission charges or similar fees imposed and/or collected for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH System, Promotional Certificate or Prepaid Card to a person or entity who has, or allows others to have, Programming authorized for a DISH System under a single DISH Network account or Prepaid Card that at any time has Programming activated for multiple receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and except in the case of a Guest Property or bulk-billed MDU Property, connected to the same land-based phone line and/or broadband home network, in each case consistent with the method and manner of connectivity authorized in respect of the relevant receiver as set forth in the applicable Business Rules, and Retailer knew or reasonably should have known that the person or entity intended to have, or allow others to have, Programming authorized for the DISH System under such an account or Prepaid Card, then Retailer agrees to pay to DISH upon demand, the difference between the amount actually received by DISH for the Prepaid Card or the Programming authorized under the single account, as applicable, and the full retail price for such Programming or the full amount that DISH would have received for multiple Prepaid Cards in each case had each DISH System authorized under the single account or Prepaid Card been authorized under a separate account or Prepaid Card, as applicable. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 2.6, DISH SHALL BE ENTITLED TO CHARGE BACK AT ANY TIME (EVEN AFTER THE TERMINATION OR EXPIRATION OF THIS AGREEMENT) THE INCENTIVES, IF ANY, PAID TO RETAILER BY DISH WITH RESPECT TO ANY SUBSCRIBER ACCOUNT AFFECTED BY SUCH BREACH OR DEFAULT. IN THE EVENT THAT RETAILER WISHES TO DISPUTE ANY SUCH CHARGEBACK, RETAILER SHALL FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 15 BELOW. DISH'S CALCULATION OF AMOUNTS OWING TO DISH FROM RETAILER UNDER THIS SECTION 2.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF DISH. The foregoing provisions of this Section 2.6 are without prejudice to any other rights and remedies that DISH and/or any of its Affiliates may have under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

2.7 Pre-Activations. Retailer shall not, prior to installation, directly or indirectly activate ("Pre-Activate") any DISH System, nor shall Retailer directly or indirectly sell, lease or otherwise transfer possession of a DISH System, Promotional Certificate or Prepaid Card to any person or entity who Retailer knows or reasonably should have known intends to Pre-Activate a DISH System.

2.8 **Financing; Making Payments on Behalf of End-Users.** Retailer shall not directly or indirectly provide financing for the purchase of any Programming or make any payment to DISH for Programming or otherwise on behalf of any end-user of a DISH System, nor shall Retailer directly or indirectly sell, lease or otherwise transfer possession of a DISH System, Promotional Certificate or Prepaid Card to any person or entity who Retailer knows or reasonably should have known intends to provide financing for the purchase of any Programming or make any payment to DISH for Programming or otherwise on behalf of any end-user of a DISH System.

2.9 **Installation Services.** Retailer represents, warrants, covenants and agrees that all installation and after-sales services performed by Retailer and its employees and Permitted Subcontractors in connection with the sale, lease or other transfer of DISH Systems, Promotional Certificates and Prepaid Cards will be performed by Retailer and its employees and Permitted Subcontractors in full compliance with all applicable Business Rules and all applicable Laws, and subject to all of the terms, conditions, standards and guidelines established by DISH or any of its Affiliates (including, without limitation, those set forth in the DISH Network Installation Manual (or any successor publication thereto located on DISH's retailer web site or otherwise provided to Retailer by DISH or any of its Affiliates pursuant to this Agreement)), as such terms, conditions, standards and guidelines may be changed at Any Time by DISH and/or any of its Affiliates (including, without limitation, Dish Network Service L.L.C. and Dish Network California Service Corporation (collectively, "DNSLLC")) in their Sole Discretion, upon notice to Retailer. In addition to (and without limitation of) the foregoing, Retailer represents, warrants, covenants and agrees that any and all related accessories and/or other equipment installed for, or otherwise provided to, a consumer in fulfillment of, or otherwise in connection with, such installation and after-sales services shall strictly comply with any and all specifications and other terms and conditions, including without limitation any approved part number and/or vendor lists, as set forth by DISH and/or any of its Affiliates (including without limitation DNSLLC) in applicable Business Rules at Any Time in their Sole Discretion.

2.10 **Prior Retailer Agreements.**

2.10.1 IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY DISH NETWORK RETAILER AGREEMENT, ECHOSTAR RETAILER AGREEMENT, INCENTIVIZED RETAILER AGREEMENT, COMMISSIONED RETAILER AGREEMENT, COMMISSIONED DEALER AGREEMENT OR ANY OTHER AGREEMENT WITH DISH, ANY OF ITS PREDECESSORS OR ANY AFFILIATE OF ANY OF THE FOREGOING RELATING TO THE MARKETING, PROMOTION, ADVERTISING AND/OR SOLICITATION OF ORDERS FOR DISH NETWORK PROGRAMMING BY RETAILER AND THE PAYMENT OF CERTAIN AMOUNTS BY DISH, ITS PREDECESSORS AND/OR ANY AFFILIATE OF ANY OF THE FOREGOING THEREFOR (EACH A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE HEREOF, THEN UPON THE EFFECTIVE DATE HEREOF: (I) ALL PRIOR RETAILER AGREEMENTS SHALL HEREBY BE AUTOMATICALLY TERMINATED, EXCEPT THAT THE PROVISIONS (EXCLUDING ANY PROVISIONS RELATED TO THE PAYMENT OF COMMISSIONS OR INCENTIVES) IN SUCH PRIOR RETAILER AGREEMENTS THAT EXPRESSLY SURVIVE AND SUCH OTHER RIGHTS AND OBLIGATIONS THEREUNDER AS WOULD LOGICALLY BE EXPECTED TO SURVIVE TERMINATION OR EXPIRATION SHALL CONTINUE IN FULL FORCE AND EFFECT FOR THE PERIOD SPECIFIED OR FOR A REASONABLE PERIOD OF TIME UNDER THE CIRCUMSTANCES IF NO PERIOD IS SPECIFIED; (II) ALL INCENTIVES, COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE DUE TO RETAILER UNDER SUCH PRIOR RETAILER AGREEMENTS SHALL BE PAYABLE BY DISH TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) EXCEPT AS SET FORTH IN SECTION 2.10.1(I), ALL RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND ALL PRIOR RETAILER AGREEMENTS SHALL BE OF NO FURTHER FORCE OR EFFECT.

2.10.2 RETAILER AND ITS AFFILIATES HEREBY ACKNOWLEDGE AND AGREE THAT THEY DO NOT, AS OF THE EFFECTIVE DATE, HAVE ANY CLAIMS OR CAUSES OF ACTION AGAINST DISH, ANY OF ITS PREDECESSORS OR ANY AFFILIATE OF ANY OF THE FOREGOING FOR ANY ACTS OR OMISSIONS THAT MAY HAVE OCCURRED PRIOR TO THE EFFECTIVE DATE AND, IN CONSIDERATION OF RETAILER BEING APPOINTED AS AN AUTHORIZED RETAILER HEREUNDER BY DISH, RETAILER AND ITS AFFILIATES HEREBY WAIVE ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION, WITH THE SOLE EXCEPTION OF ANY CLAIMS OR CAUSES OF ACTION FOR WHICH RETAILER PROVIDES WRITTEN NOTICE TO DISH IN THE SAME FORM REQUIRED FOR A NOTICE OF CLAIM UNDER SECTION 15 BELOW WITHIN NINETY (90) DAYS (OR THE SHORTEST PERIOD OF TIME ALLOWED BY APPLICABLE LAW IF SUCH PERIOD IS MORE THAN 90 DAYS) AFTER THE DATE THAT RETAILER EXECUTES THIS AGREEMENT (WHETHER VIA SIGNATURE OR ELECTRONIC ACCEPTANCE). DISH SHALL HAVE THE SAME RIGHTS WITH RESPECT TO REQUESTS FOR ADDITIONAL INFORMATION AND ACCESS TO RETAILER'S BOOKS AND RECORDS IN CONNECTION WITH ANY SUCH CLAIMS AND CAUSES OF ACTION AS DISH HAS UNDER SECTION 17.9 BELOW. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 2.10.2 WITH RESPECT TO A PARTICULAR CLAIM AND/OR CAUSE OF ACTION SHALL CONSTITUTE A WAIVER BY RETAILER AND ITS AFFILIATES WITH RESPECT TO THE RELEVANT CLAIM AND/OR CAUSE OF ACTION. HOWEVER, NOTWITHSTANDING ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NOTHING CONTAINED IN THIS AGREEMENT WILL WAIVE ANY RIGHT RETAILER MAY HAVE IN THE CLAIMS BROUGHT IN THE FOLLOWING CLASS ACTION LAWSUITS IN THE EVENT THE FOLLOWING LAWSUITS ARE CERTIFIED: CASE NO. 00-CV-1989, STYLED *JOHN DEJONG, D/B/A "NEXWAVE," AND JOE KELLY, D/B/A "KEL-TRONICS," AND JAGUAR TECHNOLOGIES, INC. V. ECHOSTAR SATELLITE*

CORPORATION, UNITED STATES DISTRICT COURT, DISTRICT OF COLORADO; AND/OR CASE NO. 00-CV-3130, STYLED *AIR COMMUNICATION & SATELLITE, INC. ET AL. V. ECHOSTAR SATELLITE CORPORATION*, DISTRICT COURT, ARAPAHOE COUNTY, COLORADO. IN THE EVENT THAT NO PRIOR RETAILER AGREEMENT IS IN EFFECT AS OF THE EFFECTIVE DATE, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE INCENTIVES FOR NEW SUBSCRIBER ACCOUNTS ACTIVATED FROM AND AFTER THE EFFECTIVE DATE, NOTWITHSTANDING PAYMENT BY DISH OR ANY OF ITS PREDECESSORS OR ANY AFFILIATE OF ANY OF THE FOREGOING OF ANY INCENTIVES, COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE TO RETAILER PRIOR TO THE EFFECTIVE DATE. THIS AGREEMENT SHALL NOT AMEND, MODIFY, ALTER OR CHANGE ANY TERMS OR CONDITIONS OF ANY LEASE PLAN DEALER AGREEMENT, OR ANY SIMILAR AGREEMENT RELATING TO LEASING, WHICH IS NOW EXISTING OR LATER MADE WITH DISH OR ANY OF ITS AFFILIATES.

2.11 **Promotional Programs.** Retailer shall be eligible to participate in such Promotional Programs as DISH and/or any of its Affiliates may make available to Retailer at Any Time in their Sole Discretion. Retailer agrees to be bound by, and to use its best efforts to support, all of the terms and conditions of the Promotional Programs in which Retailer elects to participate (and all of such terms and conditions are hereby incorporated into this Agreement by reference in their entirety). Retailer acknowledges and agrees that: (i) under no circumstances shall DISH or any of its Affiliates have at any time any obligation to offer any Promotional Programs to Retailer, or if Promotional Programs are offered to others, to permit Retailer to be eligible to participate in them; (ii) DISH and its Affiliates may, at Any Time in their Sole Discretion, add, discontinue, substitute, modify, amend or otherwise alter any or all of the terms and conditions of any Promotional Programs; and (iii) if DISH and/or any of its Affiliates offer any Promotional Programs to Retailer, then Retailer shall only be eligible to participate in each such Promotional Program if and to the extent that it meets all of the qualification criteria and other terms and conditions as DISH and/or its Affiliates may establish at Any Time in their Sole Discretion. In the event of any conflict or inconsistency between the terms and conditions of a Promotional Program and/or applicable Business Rules and the terms or conditions of this Agreement, the terms and conditions of this Agreement shall control. In the event of any ambiguity between or among the terms and conditions of a Promotional Program, Business Rule and/or this Agreement, DISH shall have the sole and exclusive authority to interpret and/or make a final determination in its Sole Discretion concerning any issue arising from such ambiguity.

2.12 **MDU Property / Guest Properties.** Retailer shall ensure that all Guest Properties and bulk-billed MDU Properties purchase Bulk Programming for one hundred percent (100%) of such property's units, regardless of occupancy status. Retailer shall ensure that no Guest Property or bulk-billed MDU Property directly or indirectly engages in: (i) the reselling of Bulk Programming; (ii) the retransmission or rebroadcast of any Programming, except with the express written consent of DISH, which consent DISH may withhold in its Sole Discretion; or (iii) modifying, adding to, or deleting any of the Bulk Programming offered. In addition to (and without limitation of) the foregoing, Retailer shall not directly or indirectly engage, and shall ensure that no Guest Property or bulk-billed MDU Property directly or indirectly engages, in any act or omission through which DISH and/or any of its Affiliates could be deemed a "cable operator" or any other similar term, including without limitation any act or omission arising from or relating to the crossing of a public right of way by a provider of video programming services, in each case as defined under any applicable Laws ("Cable Operator"). Retailer shall promptly notify DISH if it is aware of or suspects: (a) a change in the number of Units at any Guest Property or bulk-billed MDU Property to which Bulk Programming is provided, or (b) any act or omission through which DISH and/or any of its Affiliates could be deemed a Cable Operator. Retailer further understands and agrees that bulk-billed MDU Properties, non-bulk-billed MDU Properties and Guest Properties may require, as determined by DISH at Any Time in its Sole Discretion, the purchase of commercially-invoiced DISH Systems, as further described in applicable Business Rules, if any.

3. **REPRESENTATIONS AND WARRANTIES.** The parties hereto make the following representations and warranties with the specific intent to induce the other party into entering into this Agreement and recognize that the other party would not enter into this Agreement but for the following representations and warranties:

3.1 Each party hereto represents and warrants that the execution (whether via signature or electronic acceptance), delivery and performance of this Agreement have been duly authorized and that it has the full right, power and authority to execute, deliver and perform this Agreement.

3.2 Each party hereto represents and warrants that the signature of its duly authorized representative below or its electronic acceptance of this Agreement, as applicable, is genuine and that the person signing or electronically accepting this Agreement on behalf of such party is authorized by such party to sign and/or electronically accept this Agreement on its behalf.

3.3 Retailer represents and warrants that: (i) it is a valid and existing entity in compliance with all Laws related to the maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not currently violating and has never violated any Laws; (iv) neither it nor any of its Affiliates has ever engaged in any of the acts prohibited under Section 2.6, 2.7, 2.8, 2.9, 2.12, 6.10, 6.14, 7, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7 or 14 below; (v) neither it nor any of its Affiliates has ever engaged in any acts that would have resulted in automatic termination or be considered a default or breach under any current or former DISH Network Retailer Agreement, EchoStar Retailer Agreement, Distributor Retailer Agreement, Incentivized Retailer Agreement, Commissioned Retailer Agreement, Commissioned Dealer Agreement, Non-Incentivized Retailer Agreement, Non-Commissioned Retailer Agreement, or Non-Commissioned Dealer Agreement with DISH and/or any of its Affiliates or under any current or former Other Agreement; (vi) it is not dependent upon DISH and/or any Affiliates of DISH for a major part of Retailer's business; and (vii) it either sells or could sell other

products or services in addition to DISH products or services that compete with DISH products or services.

3.4 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT IT UNDERSTANDS FULLY EACH AND EVERY ONE OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

3.5 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE ITS INDEPENDENT COUNSEL REVIEW THIS AGREEMENT PRIOR TO EXECUTION (WHETHER VIA SIGNATURE OR ELECTRONIC ACCEPTANCE). EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT EITHER THIS AGREEMENT HAS BEEN ACTUALLY REVIEWED BY ITS INDEPENDENT COUNSEL OR THAT SUCH PARTY HAS DECLINED TO HAVE ITS INDEPENDENT COUNSEL DO SO.

3.6 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT IS NOT RELYING UPON, AND IT HAS NOT BEEN INDUCED INTO ENTERING INTO THIS AGREEMENT BY, ANY STATEMENTS, PROMISES, REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS, GUARANTEES, ACTS OR OMISSIONS NOT EXPRESSLY SET FORTH HEREIN.

3.7 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS NOT BEEN COERCED INTO ENTERING INTO THIS AGREEMENT AND THAT IT HAS ENTERED INTO THIS AGREEMENT OF ITS OWN FREE WILL AND FREE OF INFLUENCE OR DURESS.

3.8 RETAILER REPRESENTS, WARRANTS AND COVENANTS THAT BEFORE IT PARTICIPATES IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW THE TERMS AND CONDITIONS OF SUCH PROMOTIONAL PROGRAM AND ASSOCIATED BUSINESS RULES OR HAVE THEM REVIEWED BY ITS INDEPENDENT COUNSEL.

3.9 EACH PARTY HERETO REPRESENTS, WARRANTS, ACKNOWLEDGES AND AGREES THAT: (I) THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND EACH AND EVERY PARAGRAPH AND EVERY PART HEREOF, HAVE BEEN COMPLETELY AND CAREFULLY READ BY, AND EXPLAINED TO, SUCH PARTY; AND (II) THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE FULLY AND COMPLETELY UNDERSTOOD BY SUCH PARTY AND SUCH PARTY IS COGNIZANT OF ALL OF SUCH TERMS AND CONDITIONS AND THE EFFECT OF EACH AND ALL OF SUCH TERMS AND CONDITIONS.

4. **PROGRAMMING.**

4.1 **Programming.** DISH shall determine at Any Time, in its Sole Discretion, the Programming for which Retailer may solicit orders. DISH may expand, reduce or otherwise modify the content of any Programming packages or add or delete any Programming (either in a package or a la carte) at Any Time in its Sole Discretion. All such changes shall be effective immediately upon notification by DISH, unless DISH notifies Retailer of a different effective date.

4.2 **Changes.** If at Any Time or for any reason or no reason DISH changes the content of any Programming package, Retailer's authorization to market, promote and solicit orders for the prior Programming package shall immediately cease.

5. **PRICES.** DISH shall determine the retail prices for Programming at Any Time in its Sole Discretion. Retailer will only solicit orders for Programming at the retail prices set by DISH from time to time. DISH may increase, decrease or otherwise modify those prices at Any Time in its Sole Discretion. Any price changes shall be effective immediately upon notification by DISH, unless DISH notifies Retailer of a different effective date. Retailer shall not represent that Programming may be purchased or otherwise obtained on any other terms and conditions except as authorized in writing by DISH.

6. **INCENTIVES.** In consideration of Retailer's continuing efforts to market, promote and solicit orders for Programming and Retailer's continuing efforts to service DISH Network Subscribers after initial activation, Retailer may be eligible to receive the Incentives set forth below.

6.1 **Monthly Incentives.**

6.1.1 **Monthly Residential Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the exhibits attached hereto) and any applicable Business Rules, for each DISH System or Promotional Certificate that during the Term of this Agreement: (i) is sold to Retailer directly by DISH or any of its Affiliates (in the case of DISH Systems and Promotional Certificates), or a Third Party Manufacturer (solely with respect to DISH Systems); (ii) is re-sold by Retailer directly to a Qualifying Residential Subscriber; and (iii) results in the activation of Eligible Residential Programming for a new Residential Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential Incentive"), in accordance with applicable Business Rules. Solely for the purposes of this Section 6.1.1 and solely with respect to DISH Systems activated under a Promotional Program involving the leasing of equipment by DISH to end users, a DISH System: (a) for which title is automatically transferred from

Retailer to DISH pursuant to the Business Rules applicable to such Promotional Program, and (b) which is leased by DISH directly to a Qualifying Residential Subscriber pursuant to such Business Rules, in each case during the Term of this Agreement, shall be deemed to be re-sold by Retailer directly to such Qualifying Residential Subscriber for purposes of clause (ii) above. The amount of such Monthly Residential Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. DISH SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES HEREUNDER. DISH'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.2 Monthly Residential MDU Incentives. Subject to the terms and conditions of this Agreement (including without limitation the exhibits attached hereto) and any applicable Business Rules, for each DISH System that during the Term of this Agreement: (i) is sold to Retailer directly by DISH or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Residential MDU Subscriber; and (iii) results in the activation of Eligible Residential MDU Programming for a new Residential MDU Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential MDU Incentive"), in accordance with applicable Business Rules. Solely for the purposes of this Section 6.1.2 and solely with respect to DISH Systems activated under a Promotional Program involving the leasing of equipment by DISH to end users, a DISH System: (a) for which title is automatically transferred from Retailer to DISH pursuant to the Business Rules applicable to such Promotional Program, and (b) which is leased by DISH directly to a Qualifying Residential MDU Subscriber pursuant to such Business Rules, in each case during the Term of this Agreement, shall be deemed to be re-sold by Retailer directly to such Qualifying Residential MDU Subscriber for purposes of clause (ii) above. The amount of such Monthly Residential MDU Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. DISH SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES HEREUNDER. DISH'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.3 Monthly Commercial Incentives. Subject to the terms and conditions of this Agreement (including without limitation the exhibits attached hereto) and any applicable Business Rules, for each DISH System that during the Term of this Agreement: (i) is sold to Retailer directly by DISH or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Commercial Subscriber; and (iii) results in the activation of Eligible Commercial Programming for a new Commercial Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Commercial Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Commercial Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. DISH SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW COMMERCIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY COMMERCIAL INCENTIVES HEREUNDER. DISH'S CALCULATION AND PAYMENT OF MONTHLY COMMERCIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.4 Monthly Bulk Incentives. Subject to the terms and conditions of this Agreement (including without limitation the exhibits attached hereto) and any applicable Business Rules, for each DISH System that during the Term of this Agreement: (i) is sold to Retailer directly by DISH or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Bulk Subscriber; and (iii) results in the activation of Eligible Bulk Programming for a new Bulk Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Bulk Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Bulk Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. DISH SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW BULK SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY BULK INCENTIVES HEREUNDER. DISH'S CALCULATION AND

PAYMENT OF MONTHLY BULK INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.2 **Additional Incentives.**

6.2.1 **Additional Residential Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential Incentives with respect to new Residential Subscriber Accounts, such as co-op accrual, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential Incentives") under such Promotional Programs as DISH may make available to Retailer at Any Time in DISH's Sole Discretion. The terms and conditions, including without limitation eligibility requirements, governing each Additional Residential Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.2 **Additional Residential MDU Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential MDU Incentives with respect to new Residential MDU Subscriber Accounts, such as activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential MDU Incentives") under such Promotional Programs as DISH may make available to Retailer at Any Time in DISH's Sole Discretion. The terms and conditions, including without limitation eligibility requirements, governing each Additional Residential MDU Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.3 **Additional Commercial Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Commercial Incentives with respect to new Commercial Subscriber Accounts, such as activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Commercial Incentives") under such Promotional Programs as DISH may make available to Retailer at Any Time in DISH's Sole Discretion. The terms and conditions, including without limitation eligibility requirements, governing each Additional Commercial Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.4 **Additional Bulk Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Bulk Incentives with respect to new Bulk Subscriber Accounts, such as activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Bulk Incentives") under such Promotional Programs as DISH may make available to Retailer at Any Time in DISH's Sole Discretion. The terms and conditions, including without limitation eligibility requirements, governing each Additional Bulk Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by DISH from time to time in accordance with Section 1.7 above. DISH EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.5 RETAILER ACKNOWLEDGES AND AGREES THAT:

(I) UNDER NO CIRCUMSTANCES SHALL DISH HAVE AT ANY TIME ANY OBLIGATION TO OFFER ANY ADDITIONAL INCENTIVES TO RETAILER, OR IF ADDITIONAL INCENTIVES ARE OFFERED TO OTHERS, TO ALTER OR AMEND APPLICABLE BUSINESS RULES TO PERMIT RETAILER TO BE ELIGIBLE TO RECEIVE THEM;

(II) DISH MAY AT ANY TIME AND FROM TIME TO TIME, IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, ADD, DISCONTINUE, SUBSTITUTE, MODIFY OR OTHERWISE ALTER ANY OR ALL OF THE TERMS AND CONDITIONS OF ANY PROMOTIONAL PROGRAM INVOLVING THE PAYMENT OF ADDITIONAL INCENTIVES;

(III) IF DISH OFFERS ANY ADDITIONAL INCENTIVES TO RETAILER THROUGH ANY PROMOTIONAL PROGRAM, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE THE ADDITIONAL INCENTIVES IF AND TO THE EXTENT THAT RETAILER MEETS ALL OF THE QUALIFICATION CRITERIA AND OTHER TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BUSINESS RULES (IF ANY) AND THIS AGREEMENT;

(IV) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (V) BELOW, ADDITIONAL RESIDENTIAL

INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH SYSTEMS OR PROMOTIONAL CERTIFICATES THAT: (A) ARE SOLD TO RETAILER BY DISH OR AN AFFILIATE OF DISH (IN THE CASE OF DISH SYSTEMS AND PROMOTIONAL CERTIFICATES) OR A THIRD PARTY MANUFACTURER (AS DEFINED IN SECTION 1.50) (SOLELY WITH RESPECT TO DISH SYSTEMS); (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL PROGRAMMING FOR A NEW RESIDENTIAL SUBSCRIBER ACCOUNT;

(V) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, SOLELY WITH RESPECT TO PROMOTIONAL PROGRAMS INVOLVING THE LEASING OF EQUIPMENT BY DISH, ADDITIONAL RESIDENTIAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH SYSTEMS (A) THAT ARE SOLD TO RETAILER BY DISH, AN AFFILIATE OF DISH, OR A THIRD PARTY MANUFACTURER (AS DEFINED IN SECTION 1.50); (B) FOR WHICH TITLE IS AUTOMATICALLY TRANSFERRED DIRECTLY FROM RETAILER TO DISH PURSUANT TO THE BUSINESS RULES APPLICABLE TO SUCH PROMOTIONAL PROGRAM; (C) THAT ARE LEASED BY DISH DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER; AND (D) THAT RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL PROGRAMMING FOR A NEW RESIDENTIAL SUBSCRIBER ACCOUNT;

(VI) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES AND EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (VII) BELOW, ADDITIONAL RESIDENTIAL MDU INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH SYSTEMS THAT: (A) ARE SOLD TO RETAILER BY DISH OR ANY OF ITS AFFILIATES OR A THIRD PARTY MANUFACTURER (AS DEFINED IN SECTION 1.50); (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING RESIDENTIAL MDU SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL MDU PROGRAMMING FOR A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT;

(VII) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, SOLELY WITH RESPECT TO PROMOTIONAL PROGRAMS INVOLVING THE LEASING OF EQUIPMENT BY DISH, ADDITIONAL RESIDENTIAL MDU INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH SYSTEMS (A) THAT ARE SOLD TO RETAILER BY DISH, AN AFFILIATE OF DISH, OR A THIRD PARTY MANUFACTURER (AS DEFINED IN SECTION 1.50); (B) FOR WHICH TITLE IS AUTOMATICALLY TRANSFERRED DIRECTLY FROM RETAILER TO DISH PURSUANT TO THE BUSINESS RULES APPLICABLE TO SUCH PROMOTIONAL PROGRAM; (C) THAT ARE LEASED BY DISH DIRECTLY TO A QUALIFYING RESIDENTIAL MDU SUBSCRIBER; AND (D) THAT RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL MDU PROGRAMMING FOR A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT;

(VIII) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, ADDITIONAL COMMERCIAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH SYSTEMS THAT: (A) ARE SOLD TO RETAILER BY DISH OR ANY OF ITS AFFILIATES OR A THIRD PARTY MANUFACTURER (AS DEFINED IN SECTION 1.50); (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING COMMERCIAL SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE COMMERCIAL PROGRAMMING FOR A NEW COMMERCIAL SUBSCRIBER ACCOUNT;

(IX) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, ADDITIONAL BULK INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH SYSTEMS THAT: (A) ARE SOLD TO RETAILER BY DISH OR ANY OF ITS AFFILIATES OR A THIRD PARTY MANUFACTURER (AS DEFINED IN SECTION 1.50); (B) ARE RE-SOLD BY RETAILER DIRECTLY TO A QUALIFYING BULK SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE BULK PROGRAMMING FOR A NEW BULK SUBSCRIBER ACCOUNT; AND

(X) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, IN NO EVENT SHALL RETAILER BE ELIGIBLE TO RECEIVE ANY MONTHLY INCENTIVES OR ADDITIONAL INCENTIVES HEREUNDER IN CONNECTION WITH THE MARKETING, PROMOTION, SALE, TRANSFER, HANDLING OR ANY OTHER ACTIVITY RELATING TO OR IN CONNECTION WITH PREPAID CARDS AND/OR THE INSTALLATION, SALE OR OTHER TRANSFER OF DISH SYSTEMS, RELATED EQUIPMENT OR OTHER ACCESSORIES IN CONNECTION THEREWITH.

6.2.6 DISH SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH SUBSCRIBER IS A NEW RESIDENTIAL SUBSCRIBER ACCOUNT, NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT, NEW COMMERCIAL SUBSCRIBER ACCOUNT OR NEW BULK SUBSCRIBER ACCOUNT THAT IS ELIGIBLE FOR THE PAYMENT OF ADDITIONAL INCENTIVES HEREUNDER. RETAILER ACKNOWLEDGES AND AGREES THAT IF IT CHOOSES TO PARTICIPATE IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW AND ADHERE TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE BUSINESS RULES RELATED THERETO. FURTHERMORE, RETAILER'S PARTICIPATION IN ANY

PROMOTIONAL PROGRAM OR RECEIPT OF ADDITIONAL INCENTIVES THEREUNDER SHALL SERVE AS RETAILER'S ACKNOWLEDGEMENT OF THE TERMS AND CONDITIONS SET FORTH IN APPLICABLE BUSINESS RULES AND RETAILER'S AGREEMENT TO BE BOUND THERETO. DISH'S CALCULATION AND PAYMENT OF ADDITIONAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.3 Chargeback of Incentives.

6.3.1 IN THE EVENT THAT RETAILER IS PAID AN INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, DISH SHALL HAVE THE RIGHT TO CHARGE BACK SUCH INCENTIVE PAID TO RETAILER. IN ADDITION TO (AND WITHOUT LIMITATION OF) THE FOREGOING, DISH SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE MONTHLY INCENTIVES (AT ANYTIME) OR ADDITIONAL INCENTIVES (TO THE EXTENT THAT THE APPLICABLE CHARGEBACK PERIOD SET FORTH IN THIS AGREEMENT OR APPLICABLE BUSINESS RULES HAS NOT EXPIRED) PAID:

(I) WITH RESPECT TO A PARTICULAR QUALIFYING RESIDENTIAL SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE RESIDENTIAL PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (DISH SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON);

(II) WITH RESPECT TO A PARTICULAR QUALIFYING RESIDENTIAL MDU SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE RESIDENTIAL MDU PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (DISH SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON);

(III) WITH RESPECT TO A PARTICULAR QUALIFYING COMMERCIAL SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE COMMERCIAL PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (DISH SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON); AND

(IV) WITH RESPECT TO A PARTICULAR QUALIFYING BULK SUBSCRIBER WHO SUBSEQUENTLY FAILS TO PAY IN FULL FOR THE UNDERLYING ELIGIBLE BULK PROGRAMMING, OR WITH RESPECT TO WHOM A REFUND OR CREDIT IS ISSUED FOR ANY REASON (DISH SHALL HAVE THE OPTION TO ISSUE SUCH CREDITS OR REFUNDS AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON).

IN ADDITION TO (AND WITHOUT LIMITATION OF ANY OF) THE FOREGOING, DISH SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE INCENTIVES PAID IN CONNECTION WITH RETAILER FRAUDULENTLY OR WRONGFULLY RECEIVING AN INCENTIVE OR OTHER PAYMENT BY DIRECTLY OR INDIRECTLY: (A) MISREPRESENTING ANY INFORMATION CONCERNING A PRIOR OR CURRENT DISH SUBSCRIBER TO MAKE THAT PERSON APPEAR TO BE A NEW DISH SUBSCRIBER, OR (B) CREATING A FICTITIOUS OR FRAUDULENT CUSTOMER ACCOUNT. FOR THE AVOIDANCE OF DOUBT, IN THE EVENT DISH DETERMINES AT ANY TIME IN GOOD FAITH IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, THAT RETAILER DIRECTLY OR INDIRECTLY COMMITTED FRAUD OR OTHER MISCONDUCT, DISH SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE INCENTIVES PAID TO RETAILER, AND OUT-OF-POCKET EXPENSES (INCLUDING WITHOUT LIMITATION PROGRAMMING COSTS PAID AND ANY EQUIPMENT SUBSIDIES PROVIDED) INCURRED BY DISH AND/OR ANY OF ITS AFFILIATES, IN CONNECTION WITH SUCH FRAUD OR MISCONDUCT. DISH'S CALCULATION AND ASSESSMENT OF ANY CHARGEBACK SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15. DISH'S DETERMINATION THAT A CHARGEBACK IS PROPER SHALL CONTROL ABSENT FRAUD, MALICE OR WANTON AND WILLFUL MISCONDUCT ON THE PART OF DISH. THE PROVISIONS OF THIS SECTION 6.3 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT (FOR ANY REASON OR NO REASON WHATSOEVER) INDEFINITELY.

6.4 Payment. Subject to the terms of this Section 6.4, all Incentives paid to Retailer hereunder shall be made by EFT.

6.4.1 **Electronic Funds Transfer.** Retailer shall provide DISH with the Retailer Account information and any changes thereto ("EFT Instructions"), in the manner prescribed by DISH. Until Retailer provides DISH with EFT Instructions, or in the event that Retailer elects to receive payments by check, DISH shall pay Incentives to Retailer by check and Retailer will be assessed

DISH's standard processing fee, which may be changed by DISH at Any Time in its Sole Discretion.

6.4.2 Reliance on Retailer Account Information. With respect to Retailer's EFT Instructions, and any purported changes or modifications thereof by Retailer, DISH may act in reliance upon any writing or instrument or signature (whether electronic or otherwise) which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument and may assume that any person purporting to give any such writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so. The provisions of this Section 6.4.2 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.4.3 DISH EFT Liability Limitation. Retailer agrees that in no event shall DISH have any liability under this Agreement for any Incentives not received by Retailer as a result of an error in any way attributable to: (i) any bank or financial institution; (ii) Retailer; or (iii) any other person, entity or circumstance outside of DISH's direct control. The provisions of this Section 6.4.3 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.4.4 Incentive Statements. DISH shall make available to Retailer, in an electronic format determined by DISH at Any Time in its Sole Discretion, periodic statements reflecting the Incentives (if any) payable to Retailer as well as any Chargebacks assessed against Retailer. For the avoidance of doubt, such statements will only be made available during periods when Incentives are payable to Retailer and DISH shall have no obligation whatsoever to make any such statement(s) available to Retailer following expiration or termination of this Agreement for any reason or no reason. Retailer acknowledges that DISH is not required to provide Retailer with any additional information, including without limitation communications between DISH and any DISH Network Subscriber or any customer account information regarding any DISH Network Subscriber.

6.5 Exceptions. Notwithstanding anything to the contrary set forth herein:

6.5.1 Retailer shall not be entitled to Monthly Residential Incentives (at anytime) or Additional Residential Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Residential Subscriber Account for which: (i) Eligible Residential Programming has been cancelled by anyone; (ii) payment in full for Eligible Residential Programming has not been timely received by DISH in accordance with the terms and conditions of the then current DISH Residential Customer Agreement; (iii) a credit or refund has been issued by DISH for any reason (DISH shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Residential Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from DISH or any of its Affiliates on the date of the order; (v) the Residential Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Residential Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.2 Retailer shall not be entitled to Monthly Residential MDU Incentives (at anytime) or Additional Residential MDU Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Residential MDU Subscriber Account for which: (i) Eligible Residential MDU Programming has been cancelled by anyone; (ii) payment in full for Eligible Residential MDU Programming has not been timely received by DISH in accordance with the terms and conditions of the then current DISH Residential Customer Agreement; (iii) a credit or refund has been issued by DISH for any reason (DISH shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Residential MDU Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from DISH or any of its Affiliates on the date of the order; (v) the Residential MDU Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Residential MDU Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.3 Retailer shall not be entitled to Monthly Commercial Incentives (at anytime) or Additional Commercial Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Commercial Subscriber Account for which: (i) Eligible Commercial Programming has been cancelled by anyone; (ii) payment in full for Eligible Commercial Programming has not been timely received by DISH in accordance with the terms and conditions of the then current DISH Commercial Customer Agreement; (iii) a credit or refund has been issued by DISH for any reason (DISH shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Commercial Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from DISH or any of its Affiliates on the date of the order; (v) the Commercial Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Commercial Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.4 Retailer shall not be entitled to Monthly Bulk Incentives (at anytime) or Additional Bulk Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Bulk Subscriber Account for which: (i) Eligible Bulk Programming has been cancelled by anyone; (ii) payment in full for Eligible Bulk Programming has not been timely received by DISH in accordance with the terms and conditions of the then current DISH Commercial Customer Agreement; (iii) a credit or refund has been issued by DISH for any reason (DISH shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Bulk Subscriber, but is already receiving— or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from DISH or any of its Affiliates on the date of the order; (v) the Bulk Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Bulk Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

6.5.5 Retailer shall not be entitled to any Incentives with respect to the activation by DISH of a DISH System unless: (i) all of the individual components comprising the applicable DISH System (e.g., receivers, dishes and LNBFs) are confirmed by DISH as having been purchased by Retailer directly from either: (a) DISH or an Affiliate of DISH, or (b) a Third Party Manufacturer; or (ii) the DISH System is delivered pursuant to a Promotional Certificate that is confirmed by DISH as having been purchased by Retailer directly from DISH or an Affiliate of DISH. Retailer acknowledges and agrees that DISH shall not be required to pay Incentives to Retailer in connection with a DISH System purchased by Retailer directly from a Third Party Manufacturer unless and until the Third Party Manufacturer provides DISH with accurate information required by DISH to be able to pay such Incentives to Retailer including, at a minimum: (1) serial numbers for DISH Systems sold by the Third Party Manufacturer to Retailer; and (2) the name and address, and other appropriate identifying information of Retailer.

6.5.6 Notwithstanding anything to the contrary set forth herein and unless expressly set forth to the contrary under the terms and conditions of a specific Promotional Program or applicable Business Rules, Retailer shall only be entitled to receive Monthly Residential Incentives and Additional Residential Incentives with respect to the first new Residential Subscriber Account activated per household. Notwithstanding anything to the contrary set forth herein and unless expressly set forth to the contrary under the terms and conditions of a specific Promotional Program or applicable Business Rules, Retailer shall only be entitled to receive Monthly Residential MDU Incentives and Additional Residential MDU Incentives with respect to the first new Residential MDU Subscriber Account activated per household. Notwithstanding anything to the contrary set forth herein and unless expressly set forth to the contrary under the terms and conditions of a specific Promotional Program or applicable Business Rules, Retailer shall only be entitled to receive Monthly Commercial Incentives and Additional Commercial Incentives with respect to the first new Commercial Subscriber Account activated per business operated at a Commercial Location.

6.6 **Suspension and Termination of Incentives.**

6.6.1 **Suspension.** In addition to (and without limitation of) any other rights and remedies available, DISH shall not be required to pay any Incentives to Retailer which would otherwise be due to Retailer during any period in which Retailer is in breach or default of this Agreement, the Trademark License Agreement or any Other Agreement, and DISH shall have no liability to Retailer as a result of such suspension of payment. Specifically, and without limitation of the foregoing, Retailer shall have no right at any time to recoup any Incentives not paid during a period of breach or default. The foregoing provisions of this Section 6.6.1 may be exercised without terminating this Agreement and are without prejudice to any other rights and remedies that DISH and/or its Affiliates may have under this Agreement, at law, in equity or otherwise. The provisions of this Section 6.6.1 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.6.2 **Termination.** In the event this Agreement expires or is terminated for any reason or no reason whatsoever, DISH shall have the right, in addition to any other rights and remedies it may have, to terminate immediately all payments of Incentives then presently due and owing, or thereafter due, to Retailer under this Agreement.

6.7 **Non-Incentivized Activations by DISH.** In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Residential Subscriber and/or any DISH System at a Residential Location or Institutional/Residential Location, DISH shall be entitled to activate Residential Programming for that Qualifying Residential Subscriber and/or DISH System without payment of any Incentive or compensation to Retailer, even if Retailer solicited the Qualifying Residential Subscriber to order Residential Programming from DISH. In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Residential MDU Subscriber and/or any DISH System at a non-bulk-billed MDU Property, DISH shall be entitled to activate Residential MDU Programming for that Qualifying Residential MDU Subscriber and/or DISH System without payment of any Incentive to Retailer, even if Retailer solicited the Qualifying Residential MDU Subscriber to order Residential MDU Programming from DISH. In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Commercial Subscriber and/or any DISH System at a Commercial Location, DISH shall be entitled to activate Commercial Programming for that Qualifying Commercial Subscriber and/or DISH System without payment of any Incentive to Retailer, even if Retailer solicited the Qualifying Commercial Subscriber to order Commercial Programming from DISH. In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Bulk Subscriber and/or any DISH System at a Guest Property or a bulk-billed MDU Property, DISH shall be entitled to activate Bulk Programming for that Qualifying Bulk Subscriber and/or DISH System without payment of any

Incentive to Retailer, even if Retailer solicited the Qualifying Bulk Subscriber to order Bulk Programming from DISH.

6.8 **Offsets.** In no event shall Retailer or any of its Affiliates have the right to offset, set-off, or otherwise deduct any Incentives or other amounts due or owing to Retailer or any of its Affiliates from DISH or any of its Affiliates from or against any amounts due or owing from Retailer or any of its Affiliates to DISH or any of its Affiliates. In the event that the Incentives paid by DISH to Retailer exceed the amount to which Retailer was entitled, or if Retailer and/or any of its Affiliates are indebted to DISH and/or any of its Affiliates under Section 13 below or for any other reason (including without limitation for any Chargebacks permitted hereunder), Retailer and its Affiliates hereby acknowledge and agree that DISH and its Affiliates shall have the right, but not the obligation, to offset any such amounts against any Incentives or other amounts otherwise due to Retailer or any of its Affiliates from DISH or any of its Affiliates, as well as any and all amounts for which DISH and/or any of its Affiliates may become liable to third parties by reason of Retailer's and/or any of its Affiliate's acts in performing, or failing to perform, Retailer's and/or any of its Affiliate's obligations under this Agreement or any Other Agreement. Further, DISH may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as DISH, at Any Time in its Sole Discretion, deems necessary to protect DISH and/or any of its Affiliates from any loss, damage, or expense relating to or arising out of Retailer's actions, inaction or performance hereunder, or in response to any claim or threatened claim of which DISH becomes aware concerning Retailer or the performance of Retailer's duties hereunder. DISH's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim or recoupment of Retailer whatsoever, including without limitation any which might arise from a breach of this Agreement by DISH or any of its Affiliates. The provisions of this Section 6.8 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.9 **Recovery of Outstanding Amounts.** DISH'S CALCULATION OF INCENTIVES AND OFFSET AMOUNTS SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15. Without limitation of DISH's and its Affiliates' available rights and remedies arising at law, in equity, under contract (including without limitation DISH's right to charge back in accordance with the terms and conditions hereof) or otherwise, Retailer shall pay to DISH all amounts owing from Retailer and/or any of its Affiliates to DISH and/or any of its Affiliates within thirty (30) days after expiration or termination of this Agreement for any reason or no reason whatsoever.

6.10 **Collection of Programming and Other Fees.**

6.10.1 Retailer acknowledges and agrees that: (i) with the sole exception of payments for after sales installation services (for clarity, excluding installation and other services provided to customers by Retailer at no additional charge pursuant to applicable Business Rules) and other after sales services performed by Retailer, and as otherwise expressly permitted by DISH in writing, under no circumstances shall Retailer or any of its Affiliates collect any payment for Programming or any other payment due or owing to DISH and/or any of its Affiliates from any DISH Network Subscriber or any other person or entity; (ii) all subscription, demand purchase and other Programming fees shall be billed directly to DISH Network Subscribers by DISH; (iii) in the event that, notwithstanding Retailer's best efforts to comply with clause (i) above, a DISH Network Subscriber or other person or entity forwards any such payment to Retailer or any of its Affiliates, Retailer shall immediately forward the payment, together with any applicable sales or similar taxes, to DISH without deduction or offset of any kind, and shall instruct the DISH Network Subscriber or other person or entity that all future payments must be made to DISH directly; and (iv) until such time as the payment is delivered to DISH, such payment shall be deemed to be the sole and exclusive property of DISH, and Retailer shall hold such payment in trust for the benefit of DISH.

6.10.2 Retailer further acknowledges and agrees that: (i) under no circumstance shall Retailer or any of its Affiliates directly or indirectly collect any payment or derive any economic benefit in any form from a programming service provider (a "Programmer") in connection with and/or arising out of or relating to the marketing, promotion and/or solicitation of orders for the programming service(s) of such Programmer by Retailer and/or any of its Affiliates; (ii) in the event that, notwithstanding Retailer's best efforts to comply with clause (i) above, Retailer or any of its Affiliates receives any such payment or derives any such economic benefit, Retailer shall immediately forward the payment or deliver the cash value of the economic benefit, as the case may be, to DISH without deduction or offset of any kind; and (iii) until such time as the payment or cash value of the economic benefit is delivered to DISH, such payment or economic benefit shall be deemed to be the sole and exclusive property of DISH, and Retailer shall hold such payment or economic benefit in trust for the benefit of DISH.

6.10.3 The foregoing is agreed to without prejudice to DISH exercising any other rights and remedies it may have at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), including without limitation the right to terminate this Agreement and/or seek damages or other legal or equitable relief. The provisions of this Section 6.10 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

6.11 **Sole Incentives.** Retailer hereby acknowledges and agrees that the Incentives (if any) payable pursuant to this Agreement and any applicable Business Rules constitute the sole amounts payable by DISH to Retailer in connection with this Agreement.

6.12 **No Admission.** Neither any payment to Retailer under this Agreement, whether in full or in part, nor the provision of

any statement to Retailer pursuant to Section 6.4.4, shall be deemed to operate as DISH's acceptance, waiver or admission that Retailer has complied with any provision of this Agreement or the requirements of any Promotional Program including, without limitation, any Business Rules related thereto. The parties acknowledge and agree that at all times (including without limitation in connection with any arbitration or court proceeding) it shall remain Retailer's burden to prove eligibility for receipt of any Incentive (including, without limitation, performance of any conditions precedent thereto) or that any Chargeback was incorrect.

6.13 **Acknowledgement.** Retailer hereby acknowledges and agrees that the Incentives (if any) paid to Retailer under this Agreement do not represent deferred compensation in any form whatsoever and are not being paid to Retailer with respect to the procurement of, or the activation of Programming for, DISH Network Subscribers, but rather are being paid to Retailer as an incentive to continue marketing, promoting and soliciting orders for Programming from prospective DISH Network Subscribers and to provide continuing service to DISH Network Subscribers after initial activation.

6.14 **Assignment of Right to Payment.** Retailer does not have the power or the right to assign any payments, or its right to receive any payments, that may be due to Retailer under this Agreement. Any such assignment (whether express or by operation of law) shall be void and unenforceable. Any such attempted assignment shall immediately discontinue Retailer's right to future payments under this Agreement.

6.15 **Claims.** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN NO EVENT SHALL ANY NOTICE OF CLAIM ARISING OUT OF OR RELATING TO ANY ALLEGED FAILURE TO PAY ANY AMOUNTS DUE AND OWING FROM DISH AND/OR ANY OF ITS AFFILIATES, ON THE ONE HAND, TO RETAILER AND/OR ANY OF ITS AFFILIATES, ON THE OTHER HAND, OR ARISING OUT OF OR RELATING TO ANY CHARGEBACK BE PROVIDED LATER THAN THIRTY (30) DAYS AFTER THE DATE THAT THE RELEVANT PAYMENT SHOULD HAVE BEEN MADE OR THE DATE THAT THE RELEVANT CHARGEBACK OCCURRED, AS APPLICABLE, OR LATER THAN THIRTY (30) DAYS AFTER EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON WHATSOEVER, WHICHEVER IS EARLIER, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE).

7. ORDERS.

7.1 Retailer agrees to use its best efforts to promote and enhance DISH's business, reputation and goodwill. Retailer shall allow only its employees, and shall not allow any independent contractors, subcontractors, Affiliates, agents, sub-agents or any other persons not employed by Retailer to fulfill any of its obligations hereunder without DISH's specific prior written consent, which consent may be withheld in DISH's Sole Discretion. In the event that DISH does grant consent to Retailer to use persons not employed by Retailer to perform any activities contemplated hereunder ("Permitted Subcontractors"), Retailer shall be responsible for the acts and omissions of such Permitted Subcontractors to the same extent it is responsible for the acts and omissions of its own employees.

7.2 Retailer shall not sell Programming under any circumstances. All sales of Programming are transactions solely between DISH and DISH Network Subscribers. Retailer shall promptly forward to DISH all orders for Programming in the manner(s) prescribed by DISH at Any Time in its Sole Discretion. Retailer understands that DISH shall have the right, in its Sole Discretion, to accept or reject, in whole or in part, all orders for Programming. Retailer also agrees that it shall not condition, tie or otherwise bundle any purchase of Programming with the purchase of any other services or products other than as specifically consented to in writing by DISH in advance, which consent may be withheld in DISH's Sole Discretion.

7.3 Retailer shall comply with all Business Rules, including without limitation all Business Rules which govern or are otherwise applicable to any Promotional Program in which Retailer participates. Retailer shall disclose to each prospective DISH Network Subscriber the relevant terms and conditions of each Promotional Program in which such prospective DISH Network Subscriber is interested, as well as any other terms and conditions as set forth in any applicable Business Rules. Furthermore, Retailer shall take all actions and refrain from taking any action, as requested by DISH in connection with the marketing, advertisement, promotion and/or solicitation of orders for Programming and/or the sale, lease or other transfer of DISH Systems, Promotional Certificates and Prepaid Cards, and Retailer shall cooperate by supplying DISH with any information arising from or relating to those actions within two (2) days following a reasonable DISH request. The failure of Retailer to adhere to any Business Rules may result in disciplinary action by DISH in its Sole Discretion up to and including termination of this Agreement and/or any Other Agreement, and/or the exercise by DISH of any other right or remedy available to it under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved).

7.4 Retailer hereby acknowledges and agrees that the relationship, contractual or otherwise, between DISH (and/or any of its Affiliates) and each DISH Network Subscriber is, as between DISH and Retailer, for the sole and exclusive benefit of DISH and that DISH may conduct such relationship in any manner that it sees fit at Any Time, in its Sole Discretion, without incurring any liability whatsoever to Retailer and/or any of its Affiliates. In furtherance (and without limitation) of the foregoing, Retailer acknowledges and agrees that Retailer is not a third-party beneficiary of any agreement that DISH or any of its Affiliates may have with any DISH Network Subscriber, and that under no circumstances shall Retailer and/or any of its Affiliates have any claim or cause of action against DISH or any Affiliate of DISH for any action taken or not taken by DISH and/or any of its Affiliates with regard to any DISH Network

Subscriber. Retailer further acknowledges and agrees that all records created or maintained by, or on behalf of, DISH relating to any DISH Network Subscriber are the sole and exclusive property of DISH and DISH shall not have any obligation whatsoever to give or allow Retailer access to such information, even if authorized or requested by such DISH Network Subscriber. The provisions of this Section 7.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

8. **TRADEMARK LICENSE AGREEMENT.** Retailer shall sign or electronically accept (in the manner specified by DISH) the Trademark License Agreement in the form attached as Exhibit A hereto (the "Trademark License Agreement"), which agreement is hereby incorporated into this Agreement by reference in its entirety.

9. **CONDUCT OF BUSINESS.**

9.1 **Compliance with Laws.** Retailer shall not engage in any activity or business transaction which could be considered unethical, as determined by DISH in accordance with prevailing business standards, or damaging to DISH's and/or any of its Affiliates' image or goodwill in any way. Retailer shall under no circumstances take any action which could be considered disparaging to DISH and/or any of its Affiliates. Retailer shall comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise) and all amendments thereto, now enacted or hereafter promulgated (hereinafter "Laws"), and Retailer is solely responsible for its compliance with all Laws that apply to its obligations under this Agreement.

9.2 **Signal Theft.** Retailer shall not directly or indirectly: (i) engage in any signal theft, piracy or similar activities; (ii) engage in any unauthorized reception, transmission, publication, use, display or similar activities with respect to Programming; (iii) use a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple DISH Systems that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and except in the case of a Guest Property or bulk-billed MDU Property, connected to the same land-based phone line and/or broadband home network, in each case consistent with the method and manner of connectivity authorized in respect of the relevant receiver as set forth in applicable Business Rules; (iv) alter any DISH Systems or smart cards or any other equipment compatible with programming delivered by DISH or any of its Affiliates to be capable of signal theft (or for any other reason without the express written consent of DISH); (v) manufacture, import, offer to the public, sell, provide or otherwise traffic in any technology, product, service or device which is primarily designed or produced for the purpose of, or is marketed for use in, or has a limited commercially significant purpose other than, assisting in or facilitating signal theft or other piracy; or (vi) aid any others in engaging in, or attempting to engage in, any of the above described activities. Retailer shall immediately notify DISH if it becomes aware of any such activity by any person or entity. The provisions of this Section 9.2 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.3 **Hardware and Programming Export and Sale Restrictions.**

9.3.1 In addition to (and without limitation of) the Territory restrictions contained in this Agreement, Retailer hereby acknowledges that the U.S. Department of State and/or the U.S. Department of Commerce may in the future assert jurisdiction over DISH Systems, and that DISH Systems, Promotional Certificates, Prepaid Cards and Programming may not currently be sold outside of the Territory. Retailer represents, warrants and agrees that it will not directly or indirectly arrange for or participate in the export or sale of DISH Systems, Promotional Certificates, Prepaid Cards or Programming, in whole or in part, outside of the Territory, and agrees that it will take all reasonable and adequate steps to prevent the export or sale of DISH Systems, Promotional Certificates, Prepaid Cards and Programming outside of the Territory by others who purchase from Retailer and who might reasonably be expected to export or sell them outside of the Territory.

9.3.2 Retailer acknowledges and understands that U.S. export laws relating to receivers may change at Any Time in the future. Retailer acknowledges and agrees that it is Retailer's sole responsibility to be and remain informed of all U.S. laws relating to the export of receivers outside of the United States. DISH and its Affiliates have absolutely no obligation to update Retailer regarding the status of U.S. export laws or any other U.S. laws relating to the export of receivers or any other products outside of the United States. Retailer represents, warrants and agrees that prior to exporting any receivers or any other products outside of the United States, Retailer will investigate all applicable U.S. laws relating to the export of receivers or any other products outside of the United States. Retailer is strictly prohibited from violating any U.S. law relating to the export of receivers outside of the United States. Should Retailer export receivers outside of the United States in violation of this Agreement and/or U.S. law, this Agreement shall automatically terminate.

9.4 **Bounty Programs.** Retailer acknowledges that it is in the best interest of both DISH and Retailer for DISH Network Subscribers to be long-term customers of DISH and/or its Affiliates. Retailer acknowledges that churning of DISH Network Subscribers is detrimental to DISH and negatively affects DISH's ability to offer Monthly Incentives and/or Additional Incentives. Retailer acknowledges that for any Promotional Program to be viable, DISH Network Subscribers must be long-term subscribers to DISH Network. Therefore, Retailer agrees that during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever operate, offer to any other person or entity, participate in, or assist any other person or entity to participate in, any promotion

or program offered by any person or entity (including without limitation Retailer and/or any of its Affiliates) other than DISH or an Affiliate of DISH which directly or indirectly provides for the delivery of an economic incentive or other benefit to Retailer, DISH Network Subscribers or any other person or entity in any form directly or indirectly in connection with the direct or indirect solicitation of customers of DISH or any other DBS provider or customers of any direct-to-home ("DTH") programming service provider, for any purpose whatsoever (including, without limitation, in connection with such person or entity directly or indirectly assisting in the process of attempting to cause a customer of DISH or any other DBS provider or a customer of any DTH programming service provider to become a subscriber to any other programming service provider). In addition to (and without limitation of) the foregoing, Retailer agrees that during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer and its Affiliates will not directly or indirectly produce, place, display or use any advertising or marketing material that explicitly references DISH Network, DISH, an Affiliate of DISH or DISH Network Subscribers and attempts to persuade DISH Network Subscribers to cancel their DISH service and/or switch to a service offered by any other DBS provider, DTH programming service provider or multi-channel video programming distributor ("MVPD"). Further (and without limitation of the foregoing), during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer shall not convert, or directly or indirectly assist any other person or entity who Retailer actually knew or reasonably should have known intended to convert, any DISH Network Subscriber to the services of any other DBS provider, DTH programming service provider or MVPD. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) for five (5) years.

9.5 **Subscriber Information.** All consumers who directly or indirectly subscribe to, purchase, lease or otherwise receive and/or acquire: (i) Programming (whether in connection with a Prepaid Card or otherwise); (ii) any other services provided by DISH or any of its Affiliates; (iii) any other services incidental, connected or related to any of the foregoing services; and/or (iv) the hardware necessary to receive any such Programming and/or any such other services (each a "DISH Network Subscriber," or collectively "DISH Network Subscribers") shall be deemed customers of DISH for all purposes relating to programming services, including without limitation video, audio, data and interactive programming services, the other services provided by DISH or any of its Affiliates and any other services incidental, connected or related to any of the foregoing services ("Services") and the hardware necessary to receive any of such services ("Hardware"). Retailer acknowledges and agrees that the names, addresses and other identifying information of DISH Network Subscribers ("Subscriber Information") constitute DISH trade secrets. As such, Retailer further acknowledges and agrees that such Subscriber Information is, as between Retailer and DISH, with respect to the delivery of Services and the provision of Hardware, proprietary to DISH, and shall be treated with the highest degree of confidentiality by Retailer. Retailer shall not directly or indirectly: (a) make use of any list of past or current DISH Network Subscribers (whether developed by Retailer or obtained from DISH or another source), (b) use any Subscriber Information for the direct or indirect benefit of any individual or entity other than DISH, (c) use any Subscriber Information for the purpose of soliciting, or permit any others to solicit, any person or entity to subscribe to any Services offered by any person or entity other than DISH or an Affiliate of DISH, or promote the sale, lease or other acquisition of any Hardware used in connection with services offered by any person or entity other than DISH and its Affiliates, or (d) reveal any Subscriber Information to any third party for any reason without the express prior written consent of DISH, which consent may be withheld by DISH in its Sole Discretion; provided, however, that nothing shall prohibit Retailer from utilizing its own customer list (but not a discrete portion thereof identifying any DISH Network Subscribers) for its general business operations unrelated to the delivery of Services or the provision of Hardware. The provisions of this Section 9.5 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.6 **Sales and Use Tax.** Any transactions between Retailer and consumers for the purchase of DISH Systems, Promotional Certificates, Prepaid Cards, related accessories and/or other equipment are transactions entered into solely and exclusively between Retailer and the consumer. Although DISH may from time to time incentivize Retailer to offer consumers free or discounted DISH Systems, related accessories and/or other equipment, DISH does not acquire or retain title (except in connection with certain lease-based Promotional Programs) in such DISH Systems, related accessories and/or other equipment. Retailer, and not DISH, is solely responsible for Retailer's investigation of and compliance with all Laws concerning sales and use taxes applicable to any equipment and/or other transactions between Retailer and any consumers.

9.7 **Restricted DISH Employees.** Retailer acknowledges that DISH and its Affiliates have invested substantial economic and other resources and goodwill in the training and professional development of Restricted DISH Employees (as defined below) and that Restricted DISH Employees have acquired certain trade secrets and/or other confidential and proprietary information of DISH and/or its Affiliates in which DISH and its Affiliates have a valuable interest in protecting and for which disclosure to Retailer and/or any of its Affiliates or any other DBS provider, DTH programming service provider or MVPD would be detrimental to DISH and its Affiliates (solely for the purposes of this Section 9.7, "Confidential Company Information"). Therefore, Retailer agrees that during the Term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement for any reason or no reason, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever: (i) solicit, recruit, cause, entice, induce or otherwise attempt to persuade (or assist any other person or entity to solicit, recruit, cause, entice, induce or otherwise attempt to persuade) any Restricted DISH Employee to: (a) terminate or otherwise discontinue his or her employment with DISH and/or any of its Affiliates, or (b) be employed by, or provide services to, any individual or entity on behalf of himself or herself, or as a partner, shareholder, director, trustee, principal, agent, employee or consultant of, or similar relationship with, any individual or entity whatsoever; or (ii) employ, hire, contract for, or otherwise engage the services of (or assist any other person or entity to employ, hire, contract for or otherwise engage the services of), any Restricted DISH Employee on behalf of himself or herself, or as a partner,

shareholder, director, trustee, principal, agent, employee, or consultant of, or similar relationship with, any individual or entity whatsoever. For the purposes of this Section 9.7, "Restricted DISH Employee" shall mean any person then employed by DISH and/or any of its Affiliates or previously employed by DISH and/or any of its Affiliates at any time within the immediately preceding twelve (12) months: (1) as a regional sales manager, national sales manager, senior manager, director, vice president, senior vice president or executive vice president, (2) in any other position: (A) involving the management, supervision and/or control of other persons employed by DISH and/or any of its Affiliates, and (B) through which such person enjoys and exercises a degree of unsupervised independence and control over the business area, unit, team, division, group, region, territory, subject matter, and/or other similar segment or distinction (collectively, "Business Segment") for which he or she is responsible that would logically be considered reasonably similar to or greater than the degree of unsupervised independence and control generally enjoyed and exercised by any persons who satisfy the description set forth in clause (1) above with respect to their applicable Business Segment, (3) in any position involving the performance of any professional services (including without limitation legal, financial or accounting services) for any person who satisfies the description set forth in clause (1) or (2) above, or (4) who obtains or otherwise acquires any Confidential Company Information in any manner whatsoever and for any reason or no reason (regardless of whether such acquisition is within the scope of employment or authority of such employee). The provisions of this Section 9.7 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) for twelve (12) months.

9.8 **Remedies.** Retailer agrees that any breach of its obligations set forth in this Section 9 will cause substantial and irreparable harm and injury to DISH for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that DISH shall have the right, in addition to (and without limitation of) any other rights and remedies available to DISH at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Retailer, its Affiliates, employees, independent contractors, subcontractors, agents or sub-agents, as well as other equitable relief allowed by the federal and state courts. The provisions of this Section 9.8 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.9 **Economic Benefits Derived Held in Trust.** In the event that Retailer derives an economic benefit, in any form, from a violation of any of its obligations under this Section 9, it is hereby agreed that such economic benefit is the property of DISH and that Retailer shall deliver the cash value of the economic benefit to DISH immediately upon receipt of the economic benefit. It is further agreed that Retailer shall hold such economic benefit in trust for the benefit of DISH until such time as its cash value is delivered to DISH. The foregoing is agreed to without prejudice to DISH to exercise any other rights and remedies it may have at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section 9.9 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

10. **TERM AND TERMINATION.**

10.1 **Term.** This Agreement shall commence on the Effective Date and shall continue through December 31, 2012 (the "Term"), unless earlier terminated by either party hereto or otherwise in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable, and neither party hereto shall be under any obligation whatsoever to offer or to accept an agreement to renew or replace this Agreement upon its expiration. RETAILER RECOGNIZES THAT THIS AGREEMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE TERM AND THAT NO REPRESENTATIONS, WARRANTIES, COVENANTS OR GUARANTEES HAVE BEEN MADE TO RETAILER THAT RETAILER WILL REMAIN AN AUTHORIZED RETAILER DURING THE ENTIRE TERM OR THAT THE AGREEMENT WILL NOT BE TERMINATED PRIOR TO EXPIRATION OF THE TERM PURSUANT TO SECTION 10.2, 10.3, 10.4 OR 10.5 BELOW.

10.2 **Termination by Either Party for Convenience.** Either party hereto may, in its Sole Discretion, terminate this Agreement for its convenience (without cause) by giving the other party no less than sixty (60) days' prior written notice.

10.3 **Termination By Either Party Upon Default.** This Agreement may be terminated by a party hereto (the "Affected Party"), if the other party (the "Other Party") has failed to cure (if curable) any Default (as defined below) within twenty (20) days following receipt of a written notice of such Default from the Affected Party. For the purposes of this Agreement a "Default" shall occur when: (i) the Other Party fails to pay any amount to the Affected Party or its Affiliates when due under this Agreement or any Other Agreement; or (ii) the Other Party fails to perform any obligation or breaches any representation, warranty or covenant in this Agreement, any Other Agreement, or the Trademark License Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right).

10.4 **Automatic Termination.** This Agreement shall terminate automatically should any of the following occur, unless DISH notifies Retailer to the contrary in writing at any time thereafter: (i) Retailer becomes insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings are instituted against Retailer; (ii) Retailer, for more than twenty (20) consecutive days, fails to maintain operations as a going business; (iii) Retailer, for more than twenty (20) consecutive days, ceases to continuously and actively market and promote DISH Systems, Promotional Certificates, Prepaid Cards and/or Programming; (iv) Retailer, or any officer, director, substantial shareholder or principal of Retailer is convicted in a court of competent jurisdiction of any criminal offenses greater

than a Class C (or comparable) Misdemeanor; (v) Retailer fails to comply with any applicable Laws, or engages in any practice substantially related to the business conducted by Retailer in connection with this Agreement that is determined to be an unfair trade practice or other violation of any applicable Laws, including without limitation any telemarketing/do-not-call laws, spam laws, privacy laws, fair credit reporting laws or warranty laws; (vi) Retailer falsifies any records or reports required hereunder or under any Business Rule; (vii) Retailer fails to renew, or loses due to suspension, cancellation or revocation, for a period of fifteen (15) days or more, any license, permit or similar document or authority required by any Laws or by any governmental authority having jurisdiction, that is necessary in carrying out the provisions of this Agreement or to maintain its corporate or other business status in effect as of the Effective Date; (viii) Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH System, Promotional Certificate or Prepaid Card to a person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another individual or entity, (b) intended to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, (c) intended to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, (d) intended to use it, or to allow others to use it, to view Commercial Programming at a location other than a Commercial Location, (e) intended to use it, or allow others to use it, to view Bulk Programming at a location other than a Guest Property or bulk-billed MDU Property, (f) intended to use, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory, or (g) intended to authorize, or to allow others to authorize, Programming for a DISH System using a single DISH Network account or Prepaid Card that had or would have Programming authorized for multiple receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and except in the case of a Guest Property or bulk-billed MDU Property, connected to the same land-based phone line and/or broadband home network, in each case consistent with the method and manner of connectivity authorized in respect of the relevant receiver as set forth in applicable Business Rules; (ix) Retailer makes, or attempts to make, any representation, promise or agreement for or on behalf of DISH; (x) the Trademark License Agreement or any Other Agreement expires or terminates for any reason or no reason; (xi) Retailer directly or indirectly uses a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and except in the case of a Guest Property or bulk-billed MDU Property, connected to the same land-based phone line and/or broadband home network, in each case consistent with the method and manner of connectivity authorized in respect of the relevant receiver as set forth in applicable Business Rules; (xii) any actual or alleged fraud (whether directly or indirectly attributable to Retailer), misrepresentation, or illegal action of any sort by Retailer in connection with this Agreement, the Trademark License Agreement, and/or any Other Agreement; (xiii) Retailer Pre-Activates any DISH System or directly or indirectly sells, leases or otherwise transfers possession of a DISH System, Promotional Certificate or Prepaid Card to a person or entity who Retailer knew or reasonably should have known intended to Pre-Activate a DISH System; (xiv) Retailer directly or indirectly makes any payment to DISH for Programming services or otherwise on behalf of any end-user of any DISH System; (xv) the churn rate (as calculated by DISH using such methodologies as may be employed by DISH at Any Time in its Sole Discretion) experienced by DISH for DISH Network Subscribers activated through Retailer is equal to or greater than one hundred and twenty-five percent (125%) of the churn rate experienced by DISH with respect to DISH Network subscribers generally during any consecutive three-month period; (xvi) Retailer is in breach or default of any of its obligations under Section 2.6, 2.7, 2.8, 2.9, 2.12, 6.10, 6.14, 7, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7 or 14; (xvii) Retailer indefinitely ceases to actively market and promote DISH Systems, Promotional Certificates, Prepaid Cards and/or Programming, as determined by DISH in its Sole Discretion; (xviii) Retailer fraudulently receives, or attempts to receive, an Incentive or any other compensation or payment of any type to which it is not entitled under the terms and conditions of this Agreement or any Other Agreement, including without limitation by directly or indirectly misrepresenting any information concerning a prior DISH Network Subscriber to make that person or entity appear to be a new DISH Network Subscriber, creating a fictitious or fraudulent customer account or improperly modifying or canceling a pending work order; or (xix) Retailer fails to activate the applicable minimum number of new subscribers set forth in any applicable Business Rules.

10.5 Expiration or Termination of Agreement. The parties hereto agree that if this Agreement expires or terminates for any reason or no reason: (i) Retailer shall immediately discontinue the marketing, promotion and solicitation of orders for Programming, and immediately cease to represent and/or imply to any person or entity that Retailer is an Authorized Retailer of DISH; (ii) Retailer shall immediately discontinue all use of the trademarks associated or included in any way whatsoever with Programming, including, without limitation, DISH; (iii) Retailer shall, at its sole cost and expense, deliver to DISH at the address specified in Section 17.10.1 of this Agreement (or such other address(es) as may be designated in accordance with Section 17.10.2 of this Agreement), or destroy, at DISH's option, all tangible things of every kind (excluding DISH Systems) in Retailer's possession or control that bear any of the trademarks; (iv) Retailer shall upon request by DISH, certify in writing to DISH that such delivery or destruction has taken place; and (v) without limitation of DISH's and its Affiliates' available rights and remedies arising at law, in equity, under contract (including without limitation DISH's right to charge back in accordance with the terms and conditions hereof) or otherwise, Retailer shall pay all sums due DISH under this Agreement and any Other Agreement within thirty (30) days following the date of such expiration or termination. In addition to (and without limitation of) any of the foregoing, in the event Retailer does not receive written notice of DISH's option election under clause (iii) of this Section 10.5 within twenty (20) days following the date of expiration or termination of this Agreement, Retailer shall, at its sole cost and expense, deliver all tangible things described in such clause (iii) to DISH at the notice address specified in Section 17.10.1 of this Agreement (or such other address(es) as may be designated in accordance with Section 17.10.2 of this Agreement). DISH acknowledges and agrees that, following the expiration or termination of this Agreement for any reason or no reason, Retailer may

choose to sell products, programming and other services that compete with DISH products, programming and other services and that DISH cannot require Retailer to continue as an Authorized Retailer. Retailer acknowledges and agrees that it cannot require DISH to allow Retailer to remain an Authorized Retailer regardless of whether or not any other retailer is allowed to remain an Authorized Retailer.

11. **INDEPENDENT CONTRACTOR.** The relationship of the parties hereto is that of independent contractors. Retailer shall conduct its business as an independent contractor, and all persons employed in the conduct of such business shall be Retailer's employees only, and not employees or agents of DISH or any of its Affiliates. Retailer shall prominently state its business name, address and phone number and that Retailer is an "authorized DISH Network retailer" in all communications with the public, including, without limitation, marketing materials, flyers, print ads, television or radio spots, web sites, e-mails, invoices, sales slips, and the like. Notwithstanding anything set forth in this Agreement to the contrary, Retailer (including without limitation its officers, directors, employees and Permitted Subcontractors) shall not, under any circumstances, hold itself out to the public or represent that it is DISH or an employee, subcontractor, Affiliate, agent, or sub-agent of DISH or any DISH Affiliate. In furtherance (and without limitation) of the foregoing, in no event shall Retailer use DISH's name or the name of any DISH Affiliate and/or any trade name used by DISH or any DISH Affiliate in any manner which would tend to imply that Retailer is an Affiliate of DISH or that Retailer is an employee, subcontractor, Affiliate, agent, or sub-agent of DISH or any of its Affiliates or that Retailer is acting or is authorized to act on behalf of DISH or any of its Affiliates. This Agreement does not constitute any joint venture or partnership. It is further understood and agreed that Retailer has no right or authority to make any representation, warranty, promise, covenant, guarantee or agreement or take any action for or on behalf of DISH or any Affiliate of DISH.

12. **LIMITATION OF LIABILITY.** The provisions of this Section 12 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

12.1 UPON THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON WHATSOEVER, DISH AND ITS AFFILIATES SHALL HAVE NO LIABILITY OR OBLIGATION TO RETAILER WHATSOEVER AND RETAILER SHALL HAVE NO RIGHT TO REQUIRE DISH TO CONTINUE TO ALLOW RETAILER TO ACT AS AN AUTHORIZED RETAILER TO MARKET, PROMOTE, OR SOLICIT ORDERS FOR PROGRAMMING ON BEHALF OF DISH. RETAILER AGREES THAT IN THE EVENT OF EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON, NO AMOUNTS SPENT IN FULFILLMENT OF THIS AGREEMENT WILL BE RECOVERABLE BY RETAILER FROM DISH OR ANY OF ITS AFFILIATES.

12.2 IN NO EVENT SHALL ANY PROJECTIONS OR FORECASTS MADE BY OR ON BEHALF OF DISH OR ANY OF ITS AFFILIATES BE BINDING AS COMMITMENTS OR PROMISES. IN NO EVENT SHALL DISH OR ANY AFFILIATE OF DISH BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES TO RETAILER (WHETHER FORESEEABLE OR NOT), INCLUDING WITHOUT LIMITATION ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, LOSS OF GOODWILL, REIMBURSEMENT FOR EXPENDITURES OR INVESTMENTS MADE OR COMMITMENTS ENTERED INTO, CREATION OF CLIENTELE, ADVERTISING COSTS, TERMINATION OF EMPLOYEES OR EMPLOYEES' SALARIES, OVERHEAD OR FACILITIES INCURRED OR ACQUIRED BASED UPON THE BUSINESS DERIVED OR ANTICIPATED UNDER THIS AGREEMENT, OR CLAIMS UNDER DEALER TERMINATION, PROTECTION, NON-RENEWAL OR SIMILAR LAWS, FOR ANY CAUSE WHATSOEVER WHETHER OR NOT CAUSED BY NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

13. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold DISH and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively the "DISH Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) Retailer's performance or failure of performance under this Agreement, the Trademark License Agreement and/or any Other Agreement, and any direct or indirect results thereof, including without limitation Retailer's sale and/or installation of DISH Systems, Promotional Certificates or Prepaid Cards; (ii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees, independent contractors, subcontractors, Affiliates, agents and sub-agents, whether or not such acts are within the scope of employment or authority of such employees, independent contractors, subcontractors, Affiliates, agents and sub-agents) relating to the sale, leasing, transfer of possession, marketing, advertisement, promotion and/or solicitation of orders for Programming, Promotional Certificates, Prepaid Cards and/or DISH Systems and/or any other products or services of DISH or any of its Affiliates; (iii) the failure of Retailer to comply with any provision of this Agreement or any Business Rule; (iv) the breach of any of Retailer's representations or warranties contained herein; (v) all purchases, contracts, debts and/or obligations made by Retailer; (vi) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable Laws; (vii) any claim brought by Retailer's employees, independent contractors, subcontractors, Affiliates, agents, sub-agents and/or any other person or entity for compensation and/or damages arising out of or relating to the expiration or termination of this Agreement; (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers or any other person or entity (except with respect to any marketing materials supplied to Retailer by DISH); (ix) any installation and/or after-sale services performed by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (x) Retailer's, or any of its employees', independent contractors', subcontractors', Affiliates', agents' or

sub-agents' failure to comply with any performance standard; (xi) a DISH Network Subscriber's dissatisfaction with any aspect of the installation and/or after-sale services performed by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (xii) the termination, disturbance, interruption or other interference with the service provided by any public utility or damage to the equipment of any public utility caused directly or indirectly by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (xiii) Retailer directly or indirectly selling, leasing or otherwise transferring possession of a DISH System, Promotional Certificate or Prepaid Card to any person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another individual or entity, (b) intended to use it, or to allow others to use it, to (1) view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, (2) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, (3) view Commercial Programming at a location other than a Commercial Location, or (4) view Bulk Programming at a location other than a Guest Property or bulk-billed MDU Property, (c) intended to use it, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory, or (d) intended to authorize, or to allow others to authorize, Programming for a DISH System using a single DISH Network account or Prepaid Card that has or would have Programming authorized for multiple receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and except in the case of a Guest Property or bulk-billed MDU Property, connected to the same land-based phone line and/or broadband home network, in each case consistent with the method and manner of connectivity authorized in respect of the relevant receiver as set forth in applicable Business Rules; and/or (xiv) Retailer directly or indirectly using a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and except in the case of a Guest Property or bulk-billed MDU Property, connected to the same land-based phone line and/or broadband home network, in each case consistent with the method and manner of connectivity authorized in respect of the relevant receiver as set forth in applicable Business Rules. In the event of any claim for indemnification by the DISH Group under this Section 13, the DISH Group shall be entitled to representation by counsel of its own choosing, at Retailer's sole cost and expense. The DISH Group shall have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such Claims, and Retailer shall, at its own cost and expense, render all assistance requested by DISH in connection with any such negotiation, litigation, settlement or other proceeding. Each indemnity obligation set forth in this Section 13 shall be in addition to (and without limitation of) any other indemnity obligations set forth in this Agreement. The provisions of this Section 13 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

14. **CONFIDENTIALITY.** Retailer and its employees will maintain, in confidence, the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of any and all Business Rules and Promotional Programs, as well as all data, summaries, reports, communications or information of all kinds, whether oral or written, acquired, devised or developed in any manner from DISH's and/or any of its Affiliates' personnel or files, or as a direct or indirect result of Retailer's actions or performance under this Agreement, including without limitation nonpublic personal information of DISH Network Subscribers ("Confidential Information") and Retailer represents, warrants and covenants to DISH and its Affiliates that it has not and will not reveal the same to any persons not employed by Retailer, except: (i) at the written direction of DISH; (ii) to the extent necessary to comply with any applicable Laws, the valid order of a court of competent jurisdiction or the valid order or requirement of a governmental agency or any successor agency thereto, in which event Retailer shall notify DISH in writing of the information prior to making any disclosure, and shall seek confidential treatment of such information; or (iii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, provided such parent company, auditors and attorneys agree to be bound by the provisions of this paragraph. Retailer shall not issue an independent press release with respect to this Agreement or the transactions contemplated hereby without the prior written consent of DISH, which consent may be withheld in DISH's Sole Discretion. Upon expiration or termination of this Agreement for any reason or no reason whatsoever, Retailer shall return all Confidential Information (including, without limitation, all copies thereof) or at DISH's request in DISH's Sole Discretion destroy all such Confidential Information, and immediately certify in writing to DISH that such delivery or destruction has taken place. For the avoidance of doubt (and without limitation of the provisions of the immediately preceding sentence), in the event Retailer does not receive a request from DISH to destroy all Confidential Information (including, without limitation, all copies thereof) upon expiration or termination of this Agreement, Retailer shall return all such Confidential Information and copies thereof (if any) to DISH at the notice address specified in Section 17.10.1 of this Agreement (or such other address(es) as may be designated in accordance with Section 17.10.2 of this Agreement). Retailer agrees that any breach or default of any of its obligations set forth in this Section 14 will cause substantial and irreparable harm and injury to DISH for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that DISH shall have the right, in addition to (and without limitation of) any other rights and remedies available to DISH at law, in equity, under contract (including without limitation this Agreement) or otherwise (all of which are hereby expressly reserved), to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Retailer, its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents, as well as any other equitable relief allowed by the federal or state courts. The provisions of this Section 14 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

15. **DISPUTE RESOLUTION.**

Retailer acknowledges that DISH deals with thousands of retailers and that hundreds of thousands of incentive payments are made annually. Retailer acknowledges that any delay in notifying DISH of any alleged shortage or non-payment, allegedly incorrect chargeback, or any other alleged claim that may result in DISH's liability to Retailer for damages or injunctive relief may impede DISH's ability to fully and timely investigate any such claim by Retailer. Retailer agrees that it is in each party's best interest to give DISH control over claims that have to be investigated and to allow DISH to investigate any such claim at the earliest possible moment as well as maintain an orderly method for handling retailer claims. Accordingly, Retailer agrees to immediately inspect and review the statements described in Section 6.4.4 to determine any claims or disputes that Retailer believes exist and, in the event of any claim or dispute, to follow the procedures set forth below. Retailer also agrees to follow the below claims procedures for all claims that may result in DISH's liability to Retailer for damages or injunctive relief.

15.1 **Claims for Breach or Default.** IN THE EVENT OF AN OCCURRENCE THAT RENDERS, OR MIGHT RENDER, DISH LIABLE TO RETAILER FOR ANY DAMAGES OR INJUNCTIVE RELIEF AS A RESULT OF ANY ALLEGED BREACH OR DEFAULT OF THIS AGREEMENT OR ANY OTHER AGREEMENT, RETAILER SHALL GIVE WRITTEN NOTICE OF SUCH OCCURRENCE AS SOON AS PRACTICABLE TO DISH (A "NOTICE OF CLAIM"). IN NO EVENT SHALL ANY NOTICE OF CLAIM BE PROVIDED LATER THAN NINETY (90) DAYS AFTER THE DATE OF THE RELEVANT OCCURRENCE, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE). EACH NOTICE OF CLAIM SHALL STATE: (I) THE DATE, TIME AND NATURE OF THE OCCURRENCE; (II) THE TOTAL AMOUNT CLAIMED BY RETAILER, IF ANY, IN CONNECTION WITH SUCH OCCURRENCE AND THE BASIS FOR ANY AMOUNT CLAIMED, AND (III) IDENTIFICATION OF ALL DOCUMENTS AND OTHER INFORMATION IN RETAILER'S CONTROL OR POSSESSION ARISING FROM OR RELATING TO SUCH OCCURRENCE. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING INCENTIVE PAYMENTS THROUGH DISH'S RETAILER WEBSITE, <http://retailer.dishnetwork.com> (OR THROUGH SUCH OTHER WEBSITE(S) AS MAY BE EXPRESSLY SPECIFIED BY DISH AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON IN APPLICABLE BUSINESS RULES FOR USE BY RETAILER TO SUBMIT A NOTICE OF CLAIM HEREUNDER), IN ACCORDANCE WITH APPLICABLE BUSINESS RULES. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING ALL OTHER CLAIMS VIA ELECTRONIC MAIL TO executiveresolution@dishnetwork.com (OR SUCH OTHER E-MAIL ADDRESS(ES) AS DISH MAY DIRECT FROM TIME TO TIME IN APPLICABLE BUSINESS RULES FOR THE SUBMISSION OF A NOTICE OF CLAIM HEREUNDER BY RETAILER) WITH THE SUBJECT LINE "NOTICE OF CLAIM." AFTER SUBMITTING A NOTICE OF CLAIM, RETAILER SHALL PROVIDE DISH WITH ANY AND ALL ADDITIONAL INFORMATION REQUESTED BY DISH WITHIN THIRTY (30) DAYS AFTER RECEIPT OF DISH'S REQUEST. DISH SHALL BE ENTITLED TO HAVE ACCESS TO RETAILER'S BOOKS AND RECORDS DURING ITS INVESTIGATION OF RETAILER'S CLAIM. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 15.1 WITH RESPECT TO A PARTICULAR OCCURRENCE THAT RENDERS, OR MIGHT RENDER, DISH IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES OR INJUNCTIVE RELIEF SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING WITHOUT LIMITATION ANY DAMAGES RELATED THERETO.

15.2 **Mediation.** Except as expressly set forth to the contrary in the last sentence of this Section 15.2, the parties agree to submit any and all disputes, controversies or claims not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4, which may arise between Retailer and/or any of its Affiliates, on the one hand, and DISH and/or any of its Affiliates, on the other hand, including without limitation any and all disputes, controversies, and claims arising out of or relating to this Agreement including, without limitation, any and all disputes, controversies or claims related to: (i) the execution and delivery of this Agreement (whether via signature or electronic acceptance); (ii) the interpretation of this Agreement; (iii) a party's performance or failure to perform hereunder; (iv) the termination of this Agreement; and (v) any rights Retailer may have under dealer termination or non-renewal laws (collectively "Disputes"), to mandatory non-binding mediation (a "Mediation") in front of a single mediator. Either party may initiate a Mediation by giving written notice to the other party pursuant to Section 17.10 describing the Dispute (a "Notice of Mediation"). The Notice of Mediation shall include: (a) a statement of the initiating party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other persons who will accompany the executive. The Mediation shall take place in the City and County of Denver, Colorado at a mutually agreeable time and location before a mediator chosen by mutual agreement of the parties. In the event that either party fails to negotiate the selection of a mediator in good faith or unreasonably withholds its approval of a mediator, such party shall be deemed to have waived its right to select the mediator by mutual agreement of the parties and shall be required to participate in the Mediation with the mediator chosen by the other party. Each party shall participate through a representative with full settlement authority and shall bear its own costs and expenses and one-half of the costs and expenses of the mediator. Any such Mediation must be concluded within sixty (60) days following the Notice of Mediation. Nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration (as defined below) and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 11 or 14 or any provision of the Trademark License Agreement (without limitation of any rights therein) or any Other Agreement. In the event that a party (the "Non-Mediating Party") fails to: (1) pay one-half of the costs and expenses of the mediator to the mediator when due; or (2) otherwise refuses or fails to participate in or attend a Mediation that has been properly initiated pursuant to

this Section 15, then the Non-Mediating Party agrees that: (A) the Non-Mediating Party shall be deemed to have waived its right to initiate an Arbitration (as defined below) pursuant to Section 15.3, as fully participating in a Mediation pursuant to this Section 15.2 is a condition precedent to a party's right to initiate an Arbitration; (B) the other party (the "Mediating Party") shall have the right (but not the obligation) to initiate an Arbitration pursuant to Section 15.3 without any further obligation under this Section 15.2; and (C) the Mediating Party shall have the option, exercisable upon written notice to the Non-Mediating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below. In the event that the Mediating Party elects to initiate an Arbitration pursuant to clause (B) above or to resolve the underlying dispute, controversy or claim in court pursuant to clause (C) above, the parties agree that the Non-Mediating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such Arbitration or court proceeding as fully participating in a Mediation pursuant to this Section 15.2 is a condition precedent to recovery. Notwithstanding the foregoing, with respect solely to a dispute, controversy or claim not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4 that directly arises from or in connection with the automatic termination of this Agreement under Section 10.4, the parties acknowledge and agree that either of them shall have the right (but not the obligation) to initiate an Arbitration pursuant to Section 15.3 without first initiating a Mediation under this Section 15.2.

15.3 Arbitration. Except as set forth to the contrary in this Section 15.3 or Section 15.4 below, any and all disputes, controversies or claims between Retailer and/or any of its Affiliates, on the one hand, and DISH and/or any of its Affiliates, on the other hand, including without limitation any and all disputes, controversies or claims arising out of or in connection with this Agreement, including without limitation the validity of this Section 15, the circumstances concerning the execution and delivery of this Agreement (whether via signature or electronic acceptance), and any allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any Laws, which are not settled through negotiation, the claim process set forth above in Section 15.1, or the mediation process set forth above in Section 15.2, shall be resolved solely and exclusively by binding arbitration (an "Arbitration") in accordance with both the substantive and procedural laws of Title 9 of the U.S. Code ("Federal Arbitration Act") and the Commercial Arbitration Rules of the American Arbitration Association (the "Commercial Arbitration Rules"). In the event of any conflict or inconsistency between or among the Federal Arbitration Act, the Commercial Arbitration Rules, and/or the terms and conditions of this Agreement, such conflict or inconsistency shall be resolved by giving precedence in the following order: (i) this Agreement; (ii) the Federal Arbitration Act; and (iii) the Commercial Arbitration Rules. In consideration of DISH entering into this Agreement with Retailer, Retailer agrees that it will not serve as a class representative in any class action lawsuit brought by any person or legal entity concerning this Agreement in any respect. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE LAST SENTENCE OF SECTION 15.2 WITH RESPECT TO MEDIATION, NEITHER PARTY NOR ANY OF ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ANY OF ITS AFFILIATES IF IT AND/OR ANY OF ITS AFFILIATES HAS FAILED TO FULLY COMPLY WITH THE PROCEDURES SET FORTH IN SECTIONS 15.1 AND 15.2; provided, however, that nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 11 or 14 or any provision of the Trademark License Agreement (without limitation of any rights therein) or any Other Agreement.

15.3.1 Initiation of Arbitration; Selection of Arbitrators. The Arbitration must be initiated within ninety (90) days from the final day of the Mediation, or one hundred fifty (150) days from the Notice of Mediation in the event that the Mediation is not concluded within sixty (60) days following the Notice of Mediation, and shall be initiated by written notice from the initiating party to the other party pursuant to Section 17.10 stating the initiating party's intent to initiate arbitration ("Notice of Arbitration"). The Arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected as follows: (i) one arbitrator shall be selected by the claimant(s) within thirty (30) days after sending the Notice of Arbitration ("Claimant's Designated Arbitrator"); (ii) one arbitrator shall be selected by the respondent(s) within thirty (30) days following the claimant(s) notifying respondent of the identity of claimant's arbitrator ("Respondent's Designated Arbitrator"); and (iii) the third arbitrator shall be selected by the arbitrators chosen by the claimant(s) and the respondent(s) within thirty (30) days following the appointment of the respondent(s)' arbitrator ("Designated Neutral Arbitrator"). The parties acknowledge and agree that each party shall have the option, exercisable upon written notice to the other party, to designate the arbitrator selected by such party as a non-neutral arbitrator in which event such arbitrator shall not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence. Notwithstanding the foregoing, in the event that either party fails to timely select an arbitrator pursuant to this Section 15.3: (a) such party shall be deemed to have waived its right to a three-member arbitration panel and shall be required to participate in the arbitral proceedings with the one arbitrator selected by the other party without any objection, and (b) the one arbitrator selected by the other party shall thereafter be deemed a neutral arbitrator with whom neither party shall communicate *ex parte* concerning the Arbitration.

15.3.2 Authority of the Arbitrator(s); Awards. The parties hereby agree that the arbitrator(s) selected pursuant to Section 15.3.1 (the "Arbitrator(s)") are not authorized to: (i) conduct "class arbitration" in any form; and/or (ii) arbitrate any dispute on a representative basis in any form. The parties hereby agree that the Arbitrator(s) have the authority to entertain and rule upon dispositive motions, including without limitation default judgments as governed by Rule 55 of the Federal Rules of Civil Procedure, motions for summary judgment as governed by Rule 56 of the Federal Rules of Civil Procedure and motions to dismiss as governed by Rule 12 of the Federal Rules of Civil Procedure. The decision of the Arbitrator(s) shall be final and binding on the parties and, notwithstanding the last

sentence of this Section 15.3.2, any award of the Arbitrator(s) may be entered and enforced as a final judgment in any state or federal court of competent jurisdiction in the United States. The parties agree that in no event shall the Arbitrator(s)' decision include a recovery under any theory of liability, or award in any amount not expressly allowed under this Agreement, any Promotional Program or applicable Business Rules, including without limitation, punitive or treble damages. In furtherance (and without limitation) of the foregoing, any award made by the Arbitrator(s) shall be within the limitations set forth in Section 12. The parties further agree that the Arbitrator(s) may not award damages, injunctive relief or any other remedy to any person or legal entity who is not present at the Arbitration or who does not submit proof of any alleged damages at the Arbitration. Unless otherwise agreed by the parties in writing, all pleadings, discovery (oral and written), decisions, orders and awards resulting from the Arbitration shall be kept confidential.

15.3.3 Arbitration Costs. The parties agree that, subject to this Section 15.3.3, each of them will bear their own costs and expenses arising from or in connection with an Arbitration pursuant to this Agreement including without limitation all costs and expenses of the individual arbitrator selected by (or for) each party. Accordingly, the party initiating such Arbitration shall pay all costs, fees, and expenses of Claimant's Designated Arbitrator, and the responding party shall pay all costs, fees, and expenses of Respondent's Designated Arbitrator. Notwithstanding the foregoing, the following shall be borne equally by the parties during any Arbitration hereunder: (i) all administrative costs, fees and expenses assessed or imposed by the entity administering the arbitration arising from or in connection with such Arbitration; and (ii) all costs, fees and expenses of the Designated Neutral Arbitrator arising from or in connection with such Arbitration. Notwithstanding the immediately preceding sentence, the party(ies) determined by the Arbitrator(s) to be the prevailing party(ies) shall be entitled to recover from the non-prevailing party(ies) any and all costs, fees and expenses arising from any Arbitration hereunder, including without limitation, all costs, fees, and expenses of the arbitrator selected by (or for) the prevailing party, all costs of the record or transcripts thereof, if any, administrative fees, and all other fees involved (including but not limited to reasonable attorneys' fees of the prevailing party(ies)); provided, however, that such costs and expenses may otherwise be allocated in an equitable manner as determined by the Arbitrator(s).

15.3.4 Remedies for Non-Participation. The parties acknowledge and agree that: (i) in addition to (and without limitation of) the other provisions of this Section 15, each party is relying upon the provisions of this Section 15.3 to efficiently address and resolve any and all disputes, controversies and claims arising out of or relating to this Agreement; and (ii) any failure or refusal by a party (the "Non-Participating Party") to: (a) pay any amount to the American Arbitration Association ("AAA") when due ("Arbitration Payment Default"), or (b) otherwise participate in or attend an Arbitration that has been properly initiated pursuant to this Section 15 ("Other Arbitration Default") will cause substantial and irreparable harm and injury to the other party (the "Participating Party"), including without limitation the termination of arbitral proceedings by the AAA, for which monetary damages alone would be an inadequate remedy. Accordingly, each party agrees that, in the event of an Arbitration Payment Default or Other Arbitration Default (each a "Non-Participation Event"), the Participating Party shall have the right (but not the obligation), in addition to (and without limitation of) any other rights and remedies available to such party at law, in equity, under contract (including without limitation this Agreement) or otherwise (all of which are hereby expressly reserved), to obtain immediate relief from the Arbitrator(s) or a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below, in each case in the form of specific performance and/or a preliminary or permanent injunction, whether prohibitive or mandatory, against any violation or threatened violation of this Section 15.3, and without the necessity of posting or filing a bond or other security to restrain the threatened or actual violation of this Section 15.3 by the Non-Participating Party. In addition to (and without limitation of) the foregoing, in the event of a Non-Participation Event, the Participating Party shall have the option, exercisable upon written notice to the Non-Participating Party, to have the underlying dispute, controversy or claim resolved either by the individual arbitrator selected by (or for) the Participating Party as set forth in Section 15.3.1 of this Agreement (in which case the remaining designated arbitrators, if any, will be dismissed from the panel), or before a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below. In the event that the Participating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to this Section 15.3.4, the parties agree that the Non-Participating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such court proceeding as fully participating in an Arbitration pursuant to this Section 15.3 is a condition precedent to recovery.

15.4 Exceptions. Notwithstanding the foregoing, any request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to mediation or arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Colorado or in the appropriate state court of competent jurisdiction located in the City and County of Denver, Colorado pursuant to Section 15.5 below; provided, however, that nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 11 or 14 or any provision of the Trademark License Agreement (without limitation of any rights therein) or any Other Agreement.

15.5 Choice of Law; Exclusive Jurisdiction. The relationship between the parties and their present and future Affiliates, including without limitation all disputes, controversies or claims, whether arising in contract, tort, under statute or otherwise, shall be governed by and construed in accordance with the laws of the State of Colorado, applicable to contracts to be made and performed entirely within the State of Colorado by residents of the State of Colorado, without giving any effect to its conflict of law provisions. In the event that a lawsuit is brought for injunctive relief pursuant to Section 15.2, 15.3, or 15.4 above or as otherwise permitted in clause (C) of Section 15.2 or the penultimate sentence of Section 15.3.4, such lawsuit shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties and their present and future Affiliates consent to the *in personam*

jurisdiction of the United States District Court for the District of Colorado and the appropriate state court located in the City and County of Denver, Colorado for the purposes set forth in this Section 15 and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Section 1404 or 1406 (or any successor statute). Further, Retailer agrees to waive personal service of all process and hereby consents that any such service may be made by registered or certified mail directed to Retailer at the address listed on the first page of this Agreement, or such other address as Retailer may designate in writing delivered to DISH in accordance with Section 17.10.1, or at the Retailer's business address reported to the state of incorporation, if applicable. For purposes of this Section 15, in the event that the United States District Court for the District of Colorado does not have subject matter jurisdiction over any matter for which it is specified herein as the proper venue, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in the City and County of Denver, Colorado.

15.6 **Survival.** The provisions of this Section 15 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

16. **INSURANCE.**

16.1 Retailer shall, at its sole cost and expense, procure and maintain throughout the Term of this Agreement the following insurance coverages:

16.1.1 Workers' Compensation or similar employee benefit act coverage with statutory limits as prescribed by the laws of all states in which Retailer conducts business operations in connection with this Agreement and Employers' Liability coverage with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.1.2 Commercial General Liability coverage including, without limitation, coverage for Premises/Operations, Product/Completed Operations, Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.1.3 Commercial Automobile Liability coverage which includes coverage for all owned, hired, and non-owned vehicles with limits and a deductible that are reasonable and adequate for businesses involved in the sale, installation, service and repair of consumer electronics.

16.2 All such policies and coverages shall: (i) be primary and non-contributory, and issued by insurers licensed to do business in all states in which Retailer conducts business operations in connection with this Agreement; (ii) be endorsed to provide DISH at least thirty (30) days prior notification of cancellation or material change in coverage; (iii) name DISH as an additional insured; and (iv) be endorsed to provide DISH with written notice of Retailer's failure to renew any coverage not later than the anniversary date for each coverage. All such insurance shall be evidenced by a certificate of insurance acceptable to DISH, which shall be provided to DISH upon request.

16.3 All insurance policies required by this Section 16 (except Workers' Compensation) shall designate DISH, DNSLLC, their Affiliates, and their respective directors, officers, and employees (all hereinafter referred to in this Section 16.3 as "Company") as additional insureds. All such insurance policies shall be required to respond to any claim and pay any such claim prior to any other insurance or self-insurance which may be available. Any other coverage available to Company shall apply on an excess basis. Retailer understands and agrees that DISH, DNSLLC and their Affiliates and their respective directors, officers and employees are third-party beneficiaries of Retailer's obligations under this Section 16. No deductible amount on any insurance policy required by this Section 16 shall exceed ten percent (10%) of the coverage amount of the policy.

17. **MISCELLANEOUS.**

17.1 **Waiver.** Except as otherwise expressly set forth to the contrary herein, the failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature. In addition to (and without limitation of) the foregoing, the failure of DISH or any of its Affiliates to insist upon strict performance of any provision of any agreement between DISH and/or any of its Affiliates, on the one hand, and another retailer, on the other hand, shall not be construed as a waiver of DISH's right to insist upon strict performance of each and every representation, warranty, covenant, duty and obligation of Retailer hereunder. In addition to (and without limitation of) the foregoing, the election of certain remedies by DISH or any of its Affiliates with respect to the breach or default by another retailer of any agreement between DISH and/or any of its Affiliates on the one hand and such other retailer on the other hand shall not be deemed to prejudice any rights or remedies that DISH may have at law, in equity, under contract (including without limitation this Agreement) or otherwise with respect to a similar or different breach or default hereunder by Retailer (all of which are hereby expressly reserved).

17.2 **Successor Interests; No Assignment by Retailer; Third Party Beneficiaries.** This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of DISH and Retailer. In addition to (and without limitation of) the

prohibition against assignment of payments set forth in Section 6.14 above, neither party shall assign this Agreement without the prior written consent of the other party, except that DISH may assign this Agreement to any of its Affiliates in whole or in part and at Any Time in DISH's Sole Discretion without the consent of Retailer. Notwithstanding anything set forth herein or in any Business Rules to the contrary, in the event that Retailer performs any of its obligations hereunder in Puerto Rico, this Agreement shall, immediately at the time the first such performance begins in Puerto Rico, automatically be assigned by DISH to DISH Network Puerto Rico L.L.C. in whole. Because this Agreement is made and entered into by DISH in reliance on the financial, business and personal reputation of Retailer and its ownership and management, any merger, reorganization (including without limitation any change of form of entity, for example changing from a corporation to an LLC) or consolidation of Retailer shall be deemed an assignment requiring DISH's consent hereunder and if any person not a substantial stockholder of Retailer (someone with less than a twenty-five percent (25%) interest) as of the Effective Date subsequently becomes a substantial stockholder of Retailer (equal to or greater than a twenty-five percent (25%) interest), that shall be considered an assignment requiring DISH's consent hereunder. The provisions of this Agreement are for the exclusive benefit of the parties hereto, DISH's Affiliates and each of their respective heirs, legal representatives, successors and permitted assigns, and nothing in this Agreement, express or implied, is intended, or shall be deemed or construed, to confer upon any third party (other than as expressly set forth for Affiliates of DISH) any rights, benefits, duties, obligations, remedies or interests of any nature or kind whatsoever under or by reason of this Agreement.

17.3 Construction and Interpretation. Retailer and DISH hereby represent, warrant, acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or the Business Rules, including without limitation any amendments hereto or thereto. This Agreement may be executed by facsimile or electronic acceptance (in the manner specified by DISH) and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.4 Severability. The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision hereof. If any one or more of the provisions contained herein, or the application thereof to any person, entity, or circumstance, for any reason are held to be invalid, illegal, or unenforceable in any respect, then such provision(s) shall be enforced to the maximum extent permissible, and the remaining provisions of this Agreement shall be unaffected thereby and will remain in full force and effect.

17.5 Entire Agreement. This Agreement and the Business Rules constitute the entire agreement between the parties with respect to the subject matter of this Agreement. Except as otherwise expressly provided herein, no party shall be bound by any communication between them on the subject matter of this Agreement, unless such communication is: (i) in writing; (ii) bears a date contemporaneous with or subsequent to the Effective Date; and (iii) is signed by both parties to this Agreement. On the Effective Date, all prior agreements (except as set forth to the contrary in Section 2.10 and with further exception of the Business Rules and Other Agreements (including without limitation any previous "Exclusive Bounty Hunter Agreements")) or understandings between the parties shall be null and void. The parties specifically acknowledge that there are no unwritten side agreements or oral agreements between them which alter, amend, modify or supplement this Agreement. In addition to (and without limitation of) any provisions of this Agreement that expressly survive termination or expiration, any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances.

17.6 Compliance with Laws. Retailer hereby agrees to comply with, and hereby agrees that this Agreement is subject to, all applicable Laws in force or effect at any time during the Term of this Agreement.

17.7 Force Majeure. Notwithstanding anything set forth to the contrary in this Agreement, neither party shall be liable to the other party for its failure to fulfill any of its obligations hereunder if such failure is caused by or arises out of an act of force majeure including without limitation acts of God, war, riot, natural disaster, technical failure (including without limitation the failure of all or part of any communications satellite, transponder or Internet infrastructure on or through which the Programming is delivered to DISH Network Subscribers, or of related uplinking or other equipment) or any other reason beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

17.8 Remedies Cumulative. It is agreed that the rights and remedies herein provided to DISH in case of default or breach by Retailer of this Agreement are cumulative and without prejudice to any other rights and remedies that DISH may have by reason of such default or breach by Retailer at law, in equity, under contract or otherwise (all of which are hereby expressly reserved).

17.9 Records and Audit Rights. During the Term of this Agreement and for a period of five (5) years thereafter, Retailer shall keep and maintain at its principal place of business complete and accurate records and books of account, as well as all documentation of all material processes and procedures, in connection with: (i) its performance under this Agreement, the Trademark License Agreement and any Other Agreement; (ii) the payment of Incentives and any other payments to Retailer and/or any of its Affiliates by DISH and/or any of its Affiliates; and (iii) all payments made by Retailer or any of its Affiliates to DISH and/or any of its Affiliates. Such books, records and documentation shall be in sufficient detail to show all information necessary to support any Retailer claim, request or entitlement of any nature from DISH and/or any of its Affiliates. DISH shall have the right, upon two (2) days' prior written notice, to review, audit and make copies of Retailer's books, records and documentation for the purposes of: (a) determining

Retailer's compliance with its duties and obligations under this Agreement, the Trademark License Agreement or any Other Agreement; (b) determining Retailer's compliance with applicable Laws, including without limitation any telemarketing/do-not-call laws, spam laws, privacy laws, fair credit reporting laws or warranty laws; (c) investigating any claims against DISH and/or any of its Affiliates made by Retailer and/or any of its Affiliates; (d) investigating any Claims for which Retailer is obligated to indemnify the DISH Group pursuant to Section 13 hereof; and/or (e) verifying that Incentive payments and any and all other payments of any type made to Retailer and/or any of its Affiliates by DISH and/or any of its Affiliates are being properly calculated (an "Audit"). DISH shall be entitled to conduct an Audit regardless of the existence of any claim, dispute, controversy, mediation, arbitration or litigation between the parties. In addition to (and without limitation of) the foregoing, during the course of an Audit, at the request of DISH, Retailer shall provide DISH or its representative(s) with user and system level access to all computing and communications devices, systems, programs and related equipment used by Retailer in connection with Retailer's performance hereunder. If Retailer refuses to allow DISH to conduct an Audit, Retailer acknowledges that DISH shall be entitled to obtain immediate relief in the form of specific performance from either the panel of arbitrators (if arbitration has been commenced pursuant to Section 15 above) or a court located within the State of Colorado, as delineated in Section 15.5 of this Agreement. Any audit conducted by DISH shall be conducted by DISH or its representative(s) at Retailer's offices during normal business hours. If, during the course of an Audit, DISH uncovers that: (1) Retailer has failed to comply with any of its obligations under this Agreement, and/or (2) Retailer and/or any of its Affiliates has made a frivolous claim against DISH and/or any of its Affiliates, Retailer shall pay to DISH the costs and expenses incurred by DISH in connection with such Audit. If an Audit reveals that: (A) Retailer and/or any of its Affiliates have underpaid DISH and/or any of its Affiliates, or (B) Retailer has miscalculated any item bearing upon the Incentives paid to Retailer resulting in an overpayment of Incentives by DISH and/or any of its Affiliates, Retailer agrees to repay to DISH the amount of any such underpayment or overpayment, as applicable, made together with interest thereon at the highest rate allowed by law, computed from the date of such underpayment or overpayment, as applicable; and pay all reasonable costs and expenses, including without limitation reasonable attorneys' fees and accountant fees incurred by DISH and/or any of its Affiliates in connection with an Audit and with enforcing the collection of such amounts. The provisions of this Section 17.9 are without prejudice to any other rights and remedies that DISH and/or any of its Affiliates may have under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

17.10 Notices.

17.10.1 Notice to DISH. Except as otherwise provided in Sections 15 and 17.19, all notices to be given to DISH pursuant to this Agreement shall be in writing, signed by Retailer, and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid, to the following address(es) or such other address(es) as DISH may designate to Retailer at Any Time in accordance with Section 17.10.2:

If by first class certified mail:

To DISH:	DISH Network L.L.C. Attn: Vice President of Retail Services P.O. Box 6627 Englewood, CO 80155
With a copy to:	R. Stanton Dodge Executive Vice President, General Counsel and Secretary DISH Network L.L.C. P.O. Box 6655 Englewood, CO 80155

If by overnight courier service:

To DISH:	DISH Network L.L.C. Attn: Vice President of Retail Services 9601 South Meridian Blvd. Englewood, CO 80112
With a copy to:	R. Stanton Dodge Executive Vice President, General Counsel and Secretary DISH Network L.L.C. 9601 South Meridian Blvd. Englewood, CO 80112

The receipt of such notice shall constitute the giving thereof.

17.10.2 Notice to Retailer. All notices to be given to Retailer pursuant to this Agreement shall be in writing and

sent to Retailer at the address listed on the first page of this Agreement or the fax number listed on the signature page of this Agreement, or such other address or other fax number as Retailer may designate in writing delivered to DISH in accordance with Section 17.10.1. Notices to Retailer shall be sent via: (i) first class certified mail, postage prepaid; (ii) overnight courier service, services prepaid; (iii) facsimile transmission; or (iv) with the exception of notices given pursuant to Sections 10, 13 or 15, any method of mass communication reasonably directed to DISH's retailer base, including, without limitation, facts blast, e-mail, posting on DISH's retailer web site or broadcast on a "Retailer Chat." The sending of such notice with confirmation of successful receipt of the entire transmission (in the case of facsimile transmission), receipt or refusal of receipt of such notice (in the case of first class certified mail or overnight courier service), sending of such notice (in the case of e-mail), posting (in the case of DISH's retailer web site) or broadcast (in the case of Retailer Chats) shall constitute the giving thereof. It shall be Retailer's sole responsibility to keep itself informed of all notices, changes and other information set forth in any facts blast, e-mail, "Retailer Chat" or posting on DISH's retailer web site.

17.10.3 Survival. The provisions of this Section 17.10 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

17.11 Attorneys' Fees. In the event of any suit, action or arbitration between Retailer and/or any of its Affiliates, on the one hand, and DISH and/or any of its Affiliates, on the other hand, including without limitation any and all suits, actions or arbitrations to enforce this Agreement, any Business Rules, any Promotional Program or any provisions hereof or thereof, subject to Section 15.3.3, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees, at arbitration, at trial and on appeal, in addition to (and without limitation of) all other sums allowed by law. The provisions of this Section 17.11 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

17.12 Modifications. Retailer acknowledges that DISH competes in the multi-channel video distribution market, which is highly competitive, fluid and volatile and that DISH must make changes to its marketing, promotion and sales of products and services from time to time to stay competitive. Therefore, Retailer agrees that DISH may, at Any Time in its Sole Discretion, change, alter, delete, add or otherwise modify Incentives, Incentive schedules, Incentive structures, Promotional Programs and/or Business Rules, payment terms, or the Chargeback rules associated therewith, upon notice to Retailer, without the need for any consent, written or otherwise, from Retailer. IF ANY SUCH CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION IS MATERIAL AND UNACCEPTABLE TO RETAILER, RETAILER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THIS AGREEMENT. RETAILER'S CONTINUED PERFORMANCE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF NOTICE OF A CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION.

17.13 Interstate Commerce. The parties acknowledge that the transactions contemplated by this Agreement involve interstate commerce.

17.14 General Provisions. The exhibit(s) hereto are hereby incorporated into this Agreement by reference in their entirety.

17.15 Power and Authority. Retailer represents and warrants to DISH that it has full power and authority to enter into this Agreement and perform its obligations hereunder and that its execution and delivery of this Agreement (whether via signature or electronic acceptance) and performance of its obligations hereunder does not and will not violate any Laws or result in a breach of, or default under, the terms and conditions of any contract or agreement by which it is bound.

17.16 Consent to Receive Faxes. Retailer hereby acknowledges that this Agreement serves as Retailer's express written consent to receive facsimile transmittals from DISH and its Affiliates, including without limitation facsimile transmittals which contain unsolicited advertisements. For the avoidance of doubt, such permitted facsimile transmittals from DISH or any of its Affiliates may include without limitation information about the commercial availability or quality of products, goods or services; notices of conferences and seminars; and new product, programming or promotion announcements. This written consent shall include (without limitation) all facsimile transmittals regulated by future Federal Communications Commission action.

17.17 Waiver of Evidence. No course of dealing, course of performance, or usage of trade shall be considered in the interpretation or enforcement of this Agreement. Both parties waive any right they may have to introduce evidence of any such course of dealing, course of performance, or usage of trade.

17.18 Correction of Spelling, Typographical or Clerical Errors. Retailer hereby grants to DISH a limited power of attorney to correct and/or execute or initial all spelling, typographical and clerical errors discovered in this Agreement, the Trademark License Agreement, any Other Agreement, and any amendments to any of the foregoing, including without limitation, errors or inconsistencies in the spelling of Retailer's name, address, phone number or fax number or the spelling of the name or title of the duly authorized representative signing or electronically accepting each such agreement on Retailer's behalf.

17.19 Alteration of Terms and Conditions. Retailer acknowledges and agrees that, because among other things DISH has thousands of authorized retailers, it is in each party's best interest to establish an orderly process for Retailer to propose additions,

deletions, changes, alterations and/or other modifications to the terms and conditions set forth in this Agreement and for DISH to receive such proposals prior to the parties entering into an agreement. Therefore, Retailer further acknowledges and agrees that any additions, deletions, changes, alterations and/or other modifications to the terms and conditions of this Agreement proposed by Retailer must be sent to DISH solely and exclusively via an e-mail message addressed to proposedchanges@dishnetwork.com (or such other e-mail address(es) as may be expressly specified by DISH at Any Time in its Sole Discretion in applicable Business Rules) with the subject line "Proposed Changes to DISH Network Retailer Agreement" (a "Proposal") and that such Proposals must be received by DISH prior to Retailer executing this Agreement (whether via signature or electronic acceptance). RETAILER ACKNOWLEDGES AND AGREES THAT: (I) ANY AND ALL PROPOSALS RECEIVED BY DISH AFTER RETAILER HAS EXECUTED THIS AGREEMENT SHALL BE OF NO FORCE OR EFFECT; AND (II) IN THE EVENT THAT RETAILER EXECUTES THIS AGREEMENT AFTER DISH HAS RECEIVED ONE OR MORE PROPOSALS, ALL SUCH PROPOSALS SHALL BE DEEMED TO HAVE BEEN WITHDRAWN BY SUCH EXECUTION AND SHALL BE OF NO FURTHER FORCE OR EFFECT. Consequently, in the event that the following events occur in the following order: (a) DISH receives a Proposal from Retailer, (b) Retailer executes this Agreement (whether via signature or electronic acceptance), and (c) DISH executes this Agreement, then Retailer acknowledges and agrees that the execution of this Agreement by Retailer withdrew the Proposal and Retailer and DISH will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Further, in the event that the following events occur in the following order: (1) Retailer executes this Agreement (whether via signature or electronic acceptance), (2) DISH receives a Proposal from Retailer, and (3) DISH executes this Agreement, then Retailer acknowledges and agrees that the Proposal shall be of no force or effect because it was submitted after Retailer executed this Agreement and Retailer and DISH will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Further, in the event that the following events occur in the following order: (A) DISH receives a Proposal from Retailer, (B) Retailer executes this Agreement (whether via signature or electronic acceptance), (C) DISH receives a second Proposal from Retailer, and (D) DISH executes this Agreement, then Retailer acknowledges and agrees that the execution of this Agreement by Retailer withdrew the first Proposal and the second Proposal shall be of no force or effect because it was submitted after Retailer executed this Agreement, and Retailer and DISH will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Retailer further acknowledges and agrees that a Proposal may only be accepted by DISH in a writing signed by an Executive Vice President of DISH (or his or her designee), which specifically acknowledges receipt of the applicable Proposal, includes the portion(s) of the Proposal that DISH is willing to accept, and expressly states that DISH has agreed to accept such portion(s) of the Proposal. Notwithstanding anything to the contrary set forth herein, DISH is under no obligation to receive, consider or accept any Proposals, and in the event that a Proposal received by DISH is not accepted in the manner provided in the immediately preceding sentence, then such Proposal shall automatically be deemed to have been rejected by DISH. For the avoidance of doubt, DISH has the right to not receive, consider or accept any Proposal and to reject any Proposal in its Sole Discretion.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The parties have caused this Agreement to be signed and/or accepted electronically by their duly authorized representatives effective as of the date first written above.

DISH NETWORK L.L.C.

By: _____
Name:
Title:

RETAILER

Retailer Number: 821970

Retailer Company Name: SATELLITE SYSTEMS NETWORK
(please print)

Street Address: 9831 IRVINE CENTER DR
(please print)

City, State, Zip Code: IRVINE, CA 92618
(please print)

Fax Number: (949) 241-8090
(for notice to Retailer pursuant to Section 17.10.2)
(please print)

By: _____
(signature)

Name (please print): ALEX TEHRANCHI

Title (please print): PRESIDENT

[SIGNATURE PAGE OF DISH NETWORK RETAILER AGREEMENT]

EXHIBIT A

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the "Agreement") is made and effective as of the December 31, 2010, by and between DISH Network L.L.C., formerly known as EchoStar Satellite L.L.C. ("DISH"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and **SATELLITE SYSTEMS NETWORK**, having a place of business at **9831 IRVINE CENTER DR IRVINE, CA 92618** ("Licensee").

INTRODUCTION

WHEREAS, DISH conducts business in worldwide locations as, among other things, a provider of multi-channel, digital video, audio, data, interactive and other programming services;

WHEREAS, Licensee conducts business as, among other things, a retailer of video programming products and services; and

WHEREAS, Licensee desires to be permitted to use the Listed Trademarks (as defined below) in accordance with and subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. DISH and its Affiliates hereby grant to Licensee a non-exclusive, non-transferable, non-sublicenseable, revocable license (the "License") to use the Listed Trademarks during the term of this Agreement, and no other license or term whatsoever, solely to market, promote and solicit orders for Programming and the hardware necessary to receive such Programming ("Hardware") in its advertising and promotional materials and at its business locations. Licensee shall have no right whatsoever to use any Trademark (as defined below) other than the Listed Trademarks for any purpose whatsoever, unless expressly authorized in a writing signed by an Executive Vice President of DISH (or his or her designee).

(a) Licensee expressly recognizes and agrees that Licensee shall not, in whole or in part, modify, alter, supplement, delete or otherwise change any of the Listed Trademarks (whether in typewritten, stylized or any other form) as provided to Licensee by DISH and/or any of its Affiliates, including without limitation by dissecting in any manner the form of stylized "T" in "DISH". Licensee shall have no right to use any logos, service marks or trademarks (whether in typewritten, stylized or any other form) of any programming providers (collectively, "Programmer Trademarks"), other than the Programmer Trademarks that are contained in the advertising and promotional material provided to Licensee by DISH and/or its Affiliates. At no time shall any materials created or used by Licensee indicate that any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distributorship exists between Licensee, on the one hand, and DISH and/or its Affiliates, on the other hand, unless DISH and/or its Affiliates, on the one hand, and Licensee, on the other hand, enter into a separate written agreement expressly permitting Licensee to do so.

(b) Notwithstanding any of the foregoing, in the event that Licensee's exact intended manner of use of one or more of the following has not been approved in writing by DISH in the immediately preceding twelve (12) months and with respect to Licensee, Licensee shall provide to DISH at least thirty (30) days prior to first use, and in each case in typewritten, stylized and/or any other form required by DISH at Any Time in its Sole Discretion: (i) an example of any advertising or promotional materials in which Licensee intends to use any Listed Trademarks or Programmer Trademarks; (ii) a written dispositive listing of all Trademark Paid Search Terms (as defined below) that Licensee or any of its Affiliates intends to bid upon and/or purchase in connection with Licensee's marketing, promotion or solicitation of orders for Programming, Hardware, Services or any other goods or services offered by DISH or any Affiliate of DISH; and (iii) any and all Identifying Communications Information (as defined below) that Licensee intends to use, whether in whole or in part. DISH may reject and prohibit Licensee from using such advertising and promotional materials, Identifying Communications Information and/or Trademark Paid Search Terms, as applicable, either in whole or in part, at Any Time in its Sole Discretion. If Licensee is required to, but fails to provide DISH with proposed advertising or promotional materials, Trademark Paid Search Terms and/or Identifying Communications Information at least thirty (30) days prior to first use in compliance with the foregoing, DISH may immediately terminate this Agreement upon notice to Licensee. Unless otherwise expressly set forth in applicable Business Rules or in a writing signed by an Executive Vice President of DISH (or his or her designee), if DISH does not provide a response to Licensee's submission of any proposed advertising or promotional materials, Trademark Paid Search Terms and/or Identifying Communications Information within ten (10) business days for any reason or no reason, such lack of response shall constitute DISH's denial of approval with respect to such submission. In addition to (and without limitation of) the foregoing, Licensee shall not use any advertising or promotional materials containing any Listed Trademark unless all information contained in such materials is consistent with applicable Promotional Programs as set forth in applicable Business Rules.

(c) For the purposes of this Agreement:

(i) "Identifying Communication Information" shall mean any trade name, assumed name, domain name, telephone number (toll-free or otherwise), IP address, text messaging address, or any other letter, number, character or combination thereof used in commerce that includes or refers to any Trademark, whether in whole or in part, whether separately, formatively or otherwise, and whether properly spelled or in any typographical derivation or misspelling thereof;

(ii) "Listed Trademarks" shall mean the trademarks, service marks and trade names of DISH and/or its Affiliates that are: (x) set forth in Exhibit 1 attached hereto and incorporated herein by reference in its entirety, as such exhibit may be modified at Any Time in DISH's Sole Discretion upon notice to Licensee; (y) posted (and only while posted) at www.dishmarketingsolutions.com or on such other website(s) as may be expressly specified by DISH in applicable Business Rules at Any Time in its Sole Discretion (each a "DISH Marketing Site"); and (z) set forth in applicable Business Rules which expressly permit their use by Licensee;

(iii) "Trademarks" shall mean: (x) Listed Trademarks, (y) any trademark, service mark and/or trade name of DISH and/or any of its Affiliates that is not a Listed Trademark, and (z) any trademark, service mark and/or trade name that is similar to, or in a colorable variation of, any trademark, service mark and/or trade name of DISH and/or any of its Affiliates that is not a Listed Trademark; and

(iv) "Trademark Paid Search Term" shall mean any Internet search term: (x) that includes any of the Trademarks; and (y) for which Licensee has directly or indirectly made any payment or provided any other economic benefit of any type whatsoever to any person or entity other than DISH or any of its Affiliates in connection with the placement of any advertising or promotional materials or links thereto on an Internet website.

(d) Licensee acknowledges and agrees that DISH may at Any Time, in its Sole Discretion, change, alter, delete, add or otherwise modify the Listed Trademarks set forth in Exhibit 1 hereto, on any DISH Marketing Site and/or in any Business Rules otherwise applicable to any of the Trademarks, upon notice to Licensee, without the need for any consent, written or otherwise, from Licensee.

2. This Agreement is not intended to create, nor shall it be construed as creating, any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distribution, or as creating any obligation on the part of DISH and/or any of its Affiliates to enter into any such agreement with Licensee. Further, this Agreement is not intended to, nor shall it be construed so as to, provide any rights to Licensee to purchase or sell products or programming manufactured and/or distributed by DISH and/or any of its Affiliates. Licensee expressly recognizes and agrees that any goodwill now existing or hereafter created through Licensee's sales (if any) of, or Licensee's marketing, promotion or solicitation of orders for Programming, Hardware and/or any other products, programming and/or other services manufactured and/or distributed by DISH and/or any of its Affiliates in association with the Trademarks shall inure to the sole and exclusive benefit of DISH and/or DISH's applicable Affiliate(s). This License shall be effective until terminated by either party in accordance with the terms and conditions of this Agreement, or until expiration or termination of the DISH Network Retailer Agreement to which this Agreement is attached (the "Retailer Agreement") for any reason or no reason whatsoever.

3. Licensee agrees that all products and services promoted and/or rendered by Licensee in connection with any of the Listed Trademarks, and all promotional and other uses of any of the Listed Trademarks by Licensee in association with any Programming, Hardware and/or any other products and services offered by Licensee in connection with this Agreement and/or the Retailer Agreement, shall be of a nature and quality that conforms to such standards as may be required by DISH from time to time in its Sole Discretion. Licensee acknowledges and agrees that DISH shall have the right (but not the obligation) to take any and all actions as may be determined by DISH at Any Time in its Sole Discretion to be necessary or desirable to ensure that the nature and quality of the services and/or products offered by Licensee in connection with any of the Listed Trademarks, this Agreement and/or the Retailer Agreement conform to, and are otherwise maintained at a level which reflects, the high standards of DISH and its Affiliates, including without limitation by inspecting Licensee's use of the Listed Trademarks in accordance with the audit provisions of the Retailer Agreement either directly or indirectly through DISH's authorized representatives.

4. The License granted by DISH and/or any of its Affiliates is granted to Licensee only. Licensee has no authority to transfer or grant any sublicense to any other entity or individual for any reason, and if Licensee does so, this Agreement shall automatically terminate, unless DISH notifies Licensee to the contrary in writing at any time thereafter. Licensee shall immediately cease using the Listed Trademarks in typewritten, stylized or any other form upon expiration or termination of this Agreement for any reason or no reason whatsoever. Upon expiration or termination of this Agreement for any reason or no reason whatsoever, at DISH's option, Licensee shall, at its sole cost and expense, immediately destroy or deliver to DISH any and all advertising and promotional materials in Licensee's possession with Listed Trademarks (whether in typewritten, stylized or any other form) on them and immediately cease using any Trademark Paid Search Terms and/or Identifying Communications Information. In addition to (and without limitation of) any of the foregoing, in the event Licensee does not receive written notice of DISH's option election pursuant to the immediately

preceding sentence, Licensee shall, at its sole cost and expense, deliver all materials described in such sentence to DISH at the notice address specified in Section 17.10.1 of the Retailer Agreement (or such other address(es) as may be designated in accordance with Section 17.10.2 of the Retailer Agreement). If DISH requests destruction of advertising and promotional materials and/or that Licensee cease using any Trademark Paid Search Terms and/or Identifying Communications Information, Licensee shall promptly execute an affidavit representing, at a minimum, that such materials were destroyed and/or that the use of such Trademark Paid Search Terms and/or Identifying Communications Information, as applicable, has ceased and the date and means of such destruction or last use.

5. Licensee expressly recognizes and acknowledges that this License, as well as any past use by Licensee of the Trademarks in any manner whatsoever (including without limitation use on signs, on business cards, in advertisements, in Trademark Paid Search Terms and/or as Identifying Communications Information) or in any form whatsoever (including without limitation typewritten or stylized form), shall not confer upon Licensee any proprietary or other rights, or title or interest in, to or under any of the Trademarks, including, without limitation, any existing or future goodwill in any of the Trademarks. Further, Licensee waives any and all past, present, or future claims it has or might have in the future in, to, or under any of the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between DISH and its Affiliates on the one hand, and Licensee and its Affiliates on the other hand, DISH and its Affiliates have the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that DISH and its Affiliates retain full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein.

6. LICENSEE REPRESENTS AND WARRANTS THAT LICENSEE AND ITS AFFILIATES, IF ANY, HAVE NOT PREVIOUSLY RESERVED, FILED OR REGISTERED, AND LICENSEE HEREBY AGREES THAT LICENSEE SHALL NOT, AND SHALL ENSURE THAT ITS AFFILIATES, IF ANY, DO NOT, IN THE FUTURE RESERVE, FILE, OR REGISTER, ANY MARK OR FORMATIVE MARK THAT CONTAINS OR INCORPORATES IN WHOLE OR IN PART ANY WORD, PHRASE, DESIGN OR OTHER ELEMENT WHICH APPEARS, OCCURS OR ARISES (VERBALLY, AUDIBLY, VISUALLY OR OTHERWISE) IN WHOLE OR IN PART IN ANY OF THE TRADEMARKS (WHETHER IN TYPEWRITTEN, STYLIZED OR ANY OTHER FORM) (HEREAFTER, COLLECTIVELY "FORMATIVE MARKS"). IN ADDITION TO (AND WITHOUT LIMITATION OF) ANY OF THE FOREGOING, LICENSEE REPRESENTS AND WARRANTS THAT LICENSEE AND/OR ITS AFFILIATES HAVE NOT PREVIOUSLY REGISTERED, AND HEREBY AGREES THAT LICENSEE SHALL NOT AND SHALL ENSURE THAT ITS AFFILIATES, IF ANY, DO NOT, IN THE FUTURE REGISTER, ANY IDENTIFYING COMMUNICATION INFORMATION: (I) THAT INCLUDES ANY FORMATIVE MARKS; (II) WHICH MAY OTHERWISE BE CONFUSINGLY SIMILAR TO ANY FORMATIVE MARKS; OR (III) FOR WHICH SUCH REGISTRATION WOULD NOT BE IN ACCORDANCE WITH THE USAGE STANDARDS (AS DEFINED BELOW). IN THE EVENT THAT LICENSEE: (A) HAS PREVIOUSLY RESERVED, FILED OR REGISTERED, OR IN THE FUTURE RESERVES, FILES OR REGISTERS, ANY SUCH FORMATIVE MARK; OR (B) HAS PREVIOUSLY REGISTERED, OR IN THE FUTURE REGISTERS, ANY SUCH IDENTIFYING COMMUNICATION INFORMATION, IN EACH CASE IN CONTRAVENTION OF ANY OF THE FOREGOING, LICENSEE AGREES TO NOTIFY DISH IMMEDIATELY, AND SHALL IMMEDIATELY UPON THE REQUEST OF DISH, ASSIGN TO DISH OR ITS DESIGNATED AFFILIATE ANY AND ALL RIGHTS, TITLE, AND INTERESTS THAT ARE OBTAINED OR MAY BE OBTAINED THROUGH THE RESERVATION, FILING, OR REGISTRATION OF ANY SUCH FORMATIVE MARKS (WHETHER IN THE U.S. OR ANY FOREIGN JURISDICTION) OR THE REGISTRATION OF ANY SUCH IDENTIFYING COMMUNICATION INFORMATION, AS APPLICABLE, AND HEREBY ACKNOWLEDGES AND AGREES THAT ANY SUCH RESERVATION, FILING, OR REGISTRATION, WHENEVER OCCURRING, SHALL BE ON BEHALF OF AND FOR THE SOLE AND EXCLUSIVE BENEFIT OF DISH, AND LICENSEE WAIVES ANY AND ALL CLAIMS OR RIGHTS TO ANY COMPENSATION WHATSOEVER THEREFOR. LICENSEE'S OBLIGATIONS IN THIS SECTION 6 SHALL SURVIVE THE EXPIRATION OR TERMINATION (FOR ANY REASON OR NO REASON WHATSOEVER) OF THIS AGREEMENT INDEFINITELY.

7. Licensee agrees not to hold itself out as DISH Network, DISH, any DISH Affiliate, or any other related or affiliated entity. To avoid any confusion in this respect, unless otherwise expressly agreed to in advance in a writing signed by an Executive Vice President of DISH (or his or her designee), Licensee agrees not to use, register, submit an application for, obtain, acquire or otherwise seek as part of its business name, trade name or otherwise any trademark or service mark that DISH at Any Time in its Sole Discretion deems to be confusingly similar to any of the Trademarks, Formative Marks or any other trademark with respect to which DISH or any of its Affiliates: (i) has registered; (ii) used in commerce; or (iii) is then seeking or otherwise pursuing registration (whether within the Territory or otherwise). In addition to (and without limitation of) any of the foregoing, Licensee agrees not to, and shall ensure that its Affiliates, if any, do not, register, submit an application for, obtain or otherwise use any Identifying Communications Information that DISH at Any Time in its Sole Discretion deems to be confusingly similar to: (a) any Identifying Communications Information then being used by DISH or any of its Affiliates; or (b) any Identifying Communications Information that DISH advises Licensee that either DISH or any of its Affiliates intends to use. In addition to (and without limitation of) any of the foregoing, Licensee shall conform any and all use of Listed Trademarks, including without limitation "DISH," to such usage standards as may be set forth by DISH at Any Time in its Sole Discretion in applicable Business Rules, or on any DISH Marketing Site ("Usage Standards"). Licensee further agrees to immediately transfer to DISH or its designated Affiliate(s), upon DISH's request, all right, title and interest in, to and under any trademark, service mark, or Identifying Communications Information that Licensee has registered, submitted an application for, obtained, acquired, or otherwise sought to register in contravention of any of the provisions of this Agreement, any applicable Business Rules

and/or the Usage Standards. Licensee's failure to comply with the provisions of this Section 7 shall constitute a material breach of this Agreement. Upon request, Licensee shall provide DISH with a list of all domain names, trademarks, service marks and/or Identifying Communications Information Licensee uses in connection with its marketing, promotion or solicitation of orders for Programming, Hardware and/or any other services or products offered by DISH and/or any of its Affiliates. Licensee's obligations in this Section 7 shall survive the expiration or termination (for any reason or no reason whatsoever) of this Agreement indefinitely.

8. Nothing in this Agreement shall be construed to bar or restrict in any way DISH and its Affiliates from protecting their right to the exclusive use of the Trademarks (whether in typewritten, stylized or any other form and/or whether or not included in any Identifying Communications Information) against infringement thereof by any party or parties, including without limitation Licensee and its Affiliates, either during the term of this Agreement or following any expiration or termination of Licensee's right to use the Listed Trademarks pursuant to this Agreement for any reason or no reason whatsoever. Licensee will promptly and fully advise DISH of any use of any mark or other use of Identifying Communications Information that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with DISH and its Affiliates in the defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at DISH's and/or its Affiliates' expense. Similarly, nothing in this Agreement shall be construed to require that DISH and/or its Affiliates take any action to protect any of the Trademarks in any instance, and DISH and its Affiliates shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

9. (a) This Agreement shall continue for a period of time equal to the term of the Retailer Agreement, unless terminated earlier for any reason provided herein. The provisions of this Agreement that expressly survive and such other rights and obligations hereunder as would logically be expected to survive expiration or termination of this Agreement shall continue in full force and effect for the period specified or for a reasonable period under the circumstances if no period is specified.

(b) This Agreement may be terminated by a party (the "Affected Party") if the other party (the "Other Party") defaults on any obligation or breaches any representation, warranty or covenant in this Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right), and such default or breach, if curable, is not cured within twenty (20) days following receipt of written notice from the Affected Party. The parties agree that all obligations, representations, warranties and covenants contained in this Agreement, whether or not specifically designated as such, are material to the agreement of the parties to enter into and continue this Agreement.

(c) This Agreement shall terminate automatically upon the expiration or termination of the Retailer Agreement for any reason or no reason whatsoever and upon termination of any Other Agreement for any reason or no reason whatsoever, unless DISH notifies Licensee to the contrary in writing.

10. The relationship between the parties, including without limitation all disputes, controversies and claims, whether arising under contract, in tort, under statute or otherwise, shall be governed by and construed in accordance with the laws of the State of Colorado without giving any effect to its conflict of law provisions. Licensee and DISH acknowledge and agree that they and their counsel have reviewed, or have been given a reasonable opportunity to review, this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

11. Any and all disputes, controversies or claims arising out of, or in connection with, the interpretation, performance or nonperformance of this Agreement and any and all disputes, controversies or claims arising out of, or in connection with, transactions in any way related to this Agreement and/or the relationship between the parties for any reason whatsoever (including without limitation the termination of this Agreement or the relationship and Licensee's rights thereunder or disputes under rights granted pursuant to statutes or common law, including without limitation those in the state in which Licensee is located) shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties consent to the *in personam* jurisdiction of said court for the purposes of any such litigation, and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C.S. 1404 or 1406 (or any successor statute). In the event the United States District Court for the District of Colorado does not have subject matter jurisdiction over any such dispute, controversy or claim, then such dispute, controversy or claim shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in the City and County of Denver, Colorado.

12. Licensee agrees that any breach of its obligations under this Agreement will cause substantial and irreparable harm and injury to DISH for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Licensee agrees that DISH shall have the right, in addition to (and without limitation of) any other rights and remedies available to DISH at law, in equity, under contract (including without limitation this Agreement and the Retailer Agreement) or otherwise (all of which are hereby expressly reserved), to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Licensee, its Affiliates, employees, independent contractors, subcontractors, agents or sub-agents, as well as other equitable relief allowed by the federal and state courts. The provisions of this Section 12 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

13. This Agreement may be executed by facsimile or electronic acceptance (in the manner specified by DISH) and in two

or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Retailer Agreement.

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TX 102-003925

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and/or electronically accepted by their duly authorized representatives as of the date first written above.

DISH NETWORK L.L.C.

By: _____
Name:
Title:

LICENSEE

Retailer Number: 821970

Retailer Company Name: **SATELLITE SYSTEMS NETWORK**
(please print)

Street Address: **9831 IRVINE CENTER DR**
(please print)

City, State, Zip Code: **IRVINE, CA 92618**
(please print)

Fax Number: **(949) 241-8090**
(please print)

By: _____
(signature)

Name (please print): **ALEX TEHRANCHI**

Title (please print): **PRESIDENT**

[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]

EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT



EXHIBIT 69

EXHIBIT 69

JA004666

Indirect Sales

June 6th 2011



KRAKAUER v. DISH

Plaintiff's Exhibit
PX0089

PX0089-001

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JA004667

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TX 102-003929

Overview of Responsibilities

- **Subscriber Acquisition**

- TVRO (Full Service Retailer, Sales/Installation/Service)
- OE (National Sales Partner, Sales)
- Telco (Sales and Customer Service)
- National Accounts (Sales)
- Other:
 - RV/Mobile
 - Liberty Bell (Dish Phone and Internet)
 - IPTV
 - AK/HI/PR
 - Events and Mall Kiosks
 - D2D Selling

- **Product Pack out and Distribution**

- All pack out and distribution of both new and remanufactured products

- **Sales Channel Training**

- Responsible for the development and deployment of both internal and external channel specific training

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2

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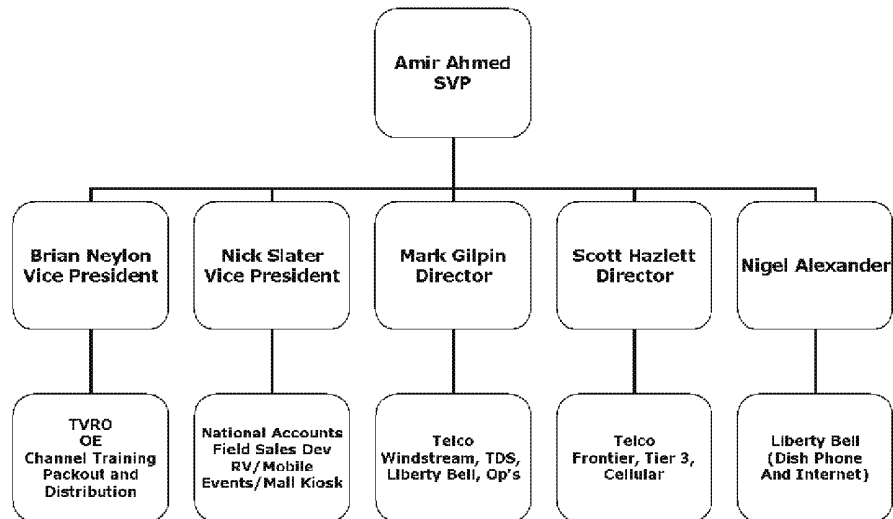
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High Level Organizational View



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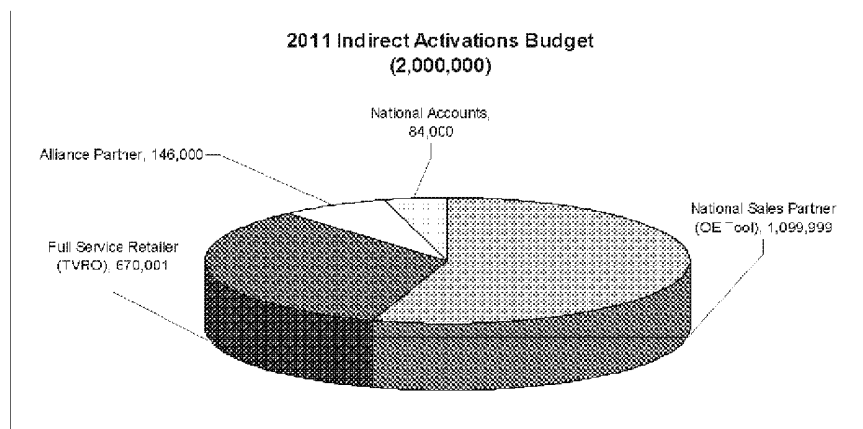
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2011 Indirect Activations Budget



2011 Budgeted Activations by Sales Channel

Budgeted Activations	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
National Sales Partner (OE Tool)	92,165	93,777	92,378	93,665	97,563	93,030	95,127	175,423	100,566	93,557	92,763	95,634	983,558
Full Service Retailer (TVRO)	66,176	64,535	65,777	64,595	63,506	65,427	64,118	63,063	64,893	67,147	67,947	63,506	750,071
Alliance Partner	10,650	11,850	11,850	11,800	11,100	11,510	11,510	12,900	12,800	13,510	14,500	14,850	146,000
National Accounts	1,031	1,187	6,065	5,107	7,337	7,683	5,267	3,367	6,874	5,503	11,347	8,530	51,000
Grand Total	162,934	166,246	166,169	166,946	166,005	170,932	173,000	197,672	182,278	170,042	182,798	182,890	2,000,000

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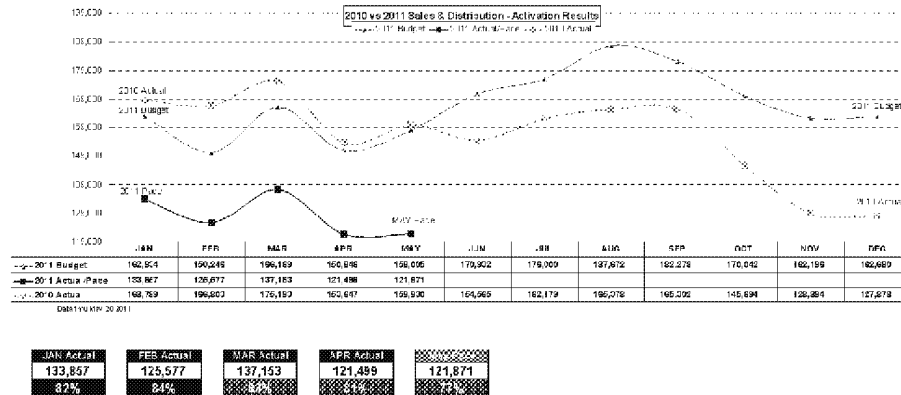
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Indirect Sales 2010 VS 2011 Performance



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2011 Budget/Actual by Channel

2011 Budgeted Activations by Sales Channel													
Budgeted Activations	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
National Sales Partner (OE Tool)	92,205	93,374	92,070	93,565	97,365	93,030	95,727	105,423	100,502	93,992	94,702	95,594	1,093,359
Full Service Retailer (TVRO)	56,176	51,235	56,176	51,235	53,206	58,147	59,119	63,059	61,099	57,147	57,267	52,206	670,001
Alliance Partner	10,860	10,860	10,860	10,860	11,100	11,300	11,800	12,300	13,800	13,800	14,300	14,800	146,000
National Accounts	3,823	4,587	6,455	5,145	6,338	7,895	9,394	6,890	5,804	5,103	17,907	9,930	84,000
Grand Total	162,934	150,246	166,169	150,846	158,005	170,332	176,000	187,672	182,278	170,042	182,196	162,630	2,008,800

Actual Acts by Channel	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
National Sales Partner (OE Tool)	79,422	76,881	79,617	70,092	68,847								374,859
Full Service Retailer (TVRO)	43,209	38,277	44,833	40,067	41,304								207,690
Alliance Partner	10,009	9,991	11,710	10,131	9,622								51,263
National Accounts	1,217	1,436	1,235	1,203	1,190								6,355
Grand Total	133,857	125,577	137,153	121,498	121,071								639,357

Percentage Performance to 2011 Activations Budget													
% of Budgeted Acts	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Grand Total
National Sales Partner (OE Tool)	86%	91%	85%	84%	80%								85%
Full Service Retailer (TVRO)	77%	75%	80%	79%	79%								77%
Alliance Partner	94%	94%	110%	94%	86%								95%
National Accounts	32%	31%	20%	23%	19%								24%
Grand Total	82%	84%	83%	81%	77%								81%

Date thru May 20 2011

Performance Shortfall May 20 2011	
OE Tool	-65,406
TVRO	-60,338
Alliance Partner	-2,487
National Accounts	-20,002
Grand Total	-148,243

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National Sales Partner (OE Tool)

- **OE** (National Sales Partner, Sales)
 - Personnel:
 - Managed by 1 Director
 - ~35% of Company Subscriber Acquisition
 - ~45 active NSP's
 - Top 3 NSP's account for 52% of channel
 - Top 10 NSP's account for 83% of channel

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Full Service Retailer (TVRO)

- **TVRO** (Full Service Retailer, Sales/Installation/Service)

- Personnel:
 - Managed by 4 Directors
- ~20% of Company Subscriber Acquisition
- ~3,500 Retailers

	<u># of Retailers</u>	<u>Subs (Avg/mt)</u>
■ Pinnacle Retailers	468	17,246
■ Summit Retailers	961	7,053
■ 14+ Subs Retailers	195	11,671
■ 4 – 14 Subs Retailers	438	2,982

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Sales Channel Dashboard

May 28 2011 Performance Report	2010	2011	2010 Q1 % Chg	2011 Q1 % Chg	2010 Q2 % Chg	2011 Q2 % Chg
YTD Total April	166,377	304,696	5,155	41,827	317,230	
Month						
Activations	40,547	41,228	70,082	68,487	1,208	1,327
% to Budget	78%	78%	84%	78%	23%	18%
Place	11.2%	11.6%	10.0%	11.8%	9.4%	8.3%
Lat/Long	32.5%	32.4%	2.4%	5.3%	5.5%	5.0%
Dist. Address	4.6%	5.3%	12.7%	14.6%	5.3%	10.6%
Dist. Address Error	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%
Dist. Address Valid	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
AT 120	23.8%	24.8%	35.2%	29.1%	34.3%	35.6%
AT 250	22.4%	22.2%	35.0%	38.9%	28.2%	24.9%
AT 500	12.5%	13.0%	15.1%	3.6%	14.0%	11.8%
ASP	2.1%	2.1%	1.9%	1.9%	0.9%	1.6%
AD (alt)	54%	55%	69%	70%	70%	74%
PD Platform	24.1%	15.9%	53.1%	41.6%	39.0%	28.7%
DVR	46.9%	42.1%	21.4%	51.0%	55.1%	56.7%
Auto Pay	51.0%	51.8%	55.8%	54.8%	69.7%	66.9%
Prerecorded Content	55.5%	59.3%	51.6%	49.7%	6.5%	7.4%
Low Rate	51.8%	55.0%	55.6%	55.6%	59.2%	71.4%
High Rate	32.2%	32.0%	44.4%	44.6%	29.8%	28.9%
Concurrent CH	12.7%		34.0%		37.9%	
Revenue Only	8.7%		18.6%		26.0%	
Event %	35.2%	35.9%	21.7%	20.9%	73.4%	73.0%
Other TVOC Initiatives						
NAM - TVOC	For Rev	158	Auto Pay	16,768	Retailer Events	ATD
Tier A Retailers	For Rev	1,236	Auto Pay	18,861	Retailer Multi-Track	For Rev
Tier B Retailers	For Rev	5,121	Auto Pay	7,620		

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Channel Training

- **Channel Training**
 - Responsible for the development and deployment of both internal and external channel specific training (TVRO, OE, National Accounts, Telco)
 - **Content Creation and Deployment**
 - Creation of training collateral and web based training
 - **Delivery**
 - Management of DISH Portal and DISH U
 - Instructor Lead Training
 - Facilitator and Participant guides
 - Train the Trainer sessions
 - Training certification (for Trainers)
 - **Video production**
 - Live broadcasts
 - Ad hoc video assets, training videos
 - Management of Retailer News Channel
 - **Operations and event management**
 - Budgeting, analytics, event management/planning

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Product Pack Out and Distribution

- **PRODUCT PACKOUT**

- Responsible for the pack out of all Dish Network products that arrive from either an OEM (New), Service (Reman) or CRM (reman)
 - Facilities
 - 2 Pack out facilities
 - Atlanta GA (Leased)
 - Denver CO (Leased)

- **PRODUCT DISTRIBUTION**

- Responsible for the processing and shipment of all hardware to both internal (DNS) and external (RSP's, Sub Contractors, Retailers, Channel Distributors) clients
 - Facilities
 - 3 Distribution Facilities
 - Atlanta GA (Leased)
 - Denver CO (Leased)
 - Sacramento CA (Owned)

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Brian Neylon
Full Service Retailer
National Sales Partner
Pack Out and Distribution
Channel Training

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Neylon - Organization Overview

- **Subscriber Acquisition**

- TVRO (Full Service Retailer, Sales/Installation/Service)
 - Support current and source new opportunities
 - Support Distributor Partners
 - AK/HI/PR (Existing and New)
 - Events and Mall Kiosks
 - D2D Selling
- OE (National Sales Partner, Sales)
 - Support current and source new *incremental* opportunities
 - Ensure quality is enforced and not sacrificed for volume

- **Product Pack out and Distribution**

- All pack out and distribution of both new and remanufactured products to both internal and external clients

- **Sales Channel Training**

- Responsible for the development and deployment of both internal and external channel specific training

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TVRO and OE Performance V's DIRECTV

DIRECTV	2010/Sum	2011/Jan	2011/Feb	2011/Mar	2011/Apr	2011/May	2011/Sum
NSP TOTAL (DTV's OE)	418,961	34,757	37,311	38,527	33,855	29,327	173,477
LSP TOTAL (TVRO)	458,544	35,580	33,160	38,808	35,723	36,697	179,978
TOTAL DEALER CHANNEL	877,505	70,347	70,471	77,335	69,578	66,024	353,455

DISH NETWORK	2010/Sum	2011/Jan	2011/Feb	2011/Mar	2011/Apr	2011/May	2011/Sum
OE Tool	1,052,845	79,422	75,965	79,317	70,092	63,457	373,152
TVRO	630,461	43,209	38,268	44,833	40,067	41,010	207,388
TOTAL DEALER CHANNEL	1,683,306	122,631	114,133	124,150	110,159	109,467	580,540

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Sales Team Responsibilities & Headcount

■ Total Headcount: 145

Insides Sales

- 1 – **National Sales Manager (NSM)** The NSM is responsible for directing all national and regional activities that are initiated in an effort to achieve all Echosphere execution priorities.
- 3 – **Inside Sales Manager (ISM)** Responsible for high level management of the Inside Sales Account Managers with responsibilities that include outbound call coaching, product training, employee training, employee recruiting and problem resolution.
- 4 – **Sales Coordinators** – Sales Operations including Retailer On-boarding, Inside Sales Reporting
- 35 – **Inside Sales Account Manager (ISAM)** -Responsible for inbound calls from Retailers placing Echosphere equipment orders. Also, outbound calls to ensure that retailers understand Dish Network products, promotions, policies and procedures.

Specialized Distribution

- 1 – **Director** Manages the Relationship with the 6 Distributors used by Dish Network for the distribution of hardware. Support all aspects of Distributors business including , Sales, Marketing, Risk Management and inventory.
- 1 – **National Sales Manager (NSM)** provides Sales support to Distributors
- 2 – **National Account Managers (NAM)** 1 focused on the largest Latino retailers and 1 focused on Puerto Rico
- 1 – **Business Analyst** provides operational support to Distributors

- Vice President 1
- PM (Sales Operations) 1
- Administrative Assistant 1

Sales

- Directors 5
- Regional Sales Managers 5
- National Account Managers 16
- Latino Area Sales Managers 5
- Area Sales Managers 46
- National Sales Manager 2
- Inside Sales Managers 3
- Sales Coordinators 4
- Business Analyst 2
- Inside Sales Account Manager 35

Channel Training (19)

- General Manager 1
- Training Manager 3
- Instructional Designer 4
- Training Specialist 1
- Program Manager 4
- Associate Program Manager 2
- Operations Analyst 1
- Marketing Specialist 2
- Graphic Designers 1

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Team Responsibilities & Headcount continued

Outside Sales

Territory Sales Team

- 3 – **Directors** is the primary strategy and vision leader at the regional level. The Director provides high level coaching and direction for all members of the Outside Sales team. Accountable for regional acquisition strategy and provides a high level of Retailer satisfaction.
- 5 – **Regional Sales Managers** is a supervisory level manager who directs a team of Account Managers.
- 7 – **National Account Managers (NAM)** NAM's are more account relationship focused and maintain more frequent contact with a small number of larger retailers which produce more than 900 GSA yearly.
- 5 – **Latino Area Sales Managers** Each Latino AM is assigned to a Regional Sales Manager and focuses on the Latino retailers in their assigned territory.
- 46 – **Area Sales Managers** Account Managers are responsible for all retailers in an assigned territory. Each Account Managers is also assigned 25-30 focus retailers called "Tier A" retailers that are to be visited 1-2 times per month and received an extra level of support.

National Sales Partner Team (OE Tool Retailers)

- 1 – **Director** is the primary strategy and vision leader at the regional level. The Director provides high level coaching and direction for all members of the Outside Sales team. Accountable for regional acquisition strategy and provides a high level of Retailer satisfaction.
- 7 – **National Account Managers** Are responsible for approximately 8 assign retailers called "National Sales Partners". These are the Largest retailers selling nationally and receive the highest level of support.

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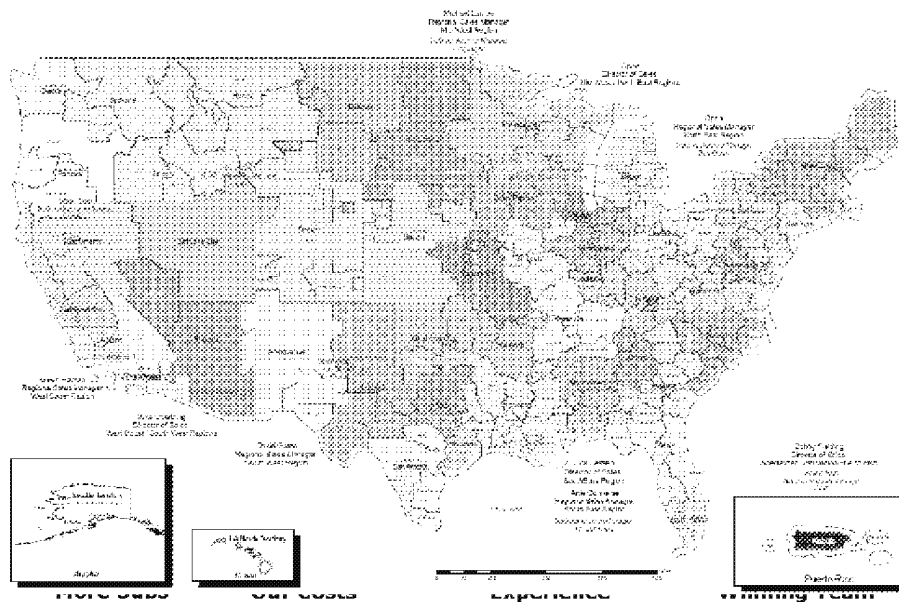
16

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DISH5-0000090762
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TX 102-003944

Territory Map



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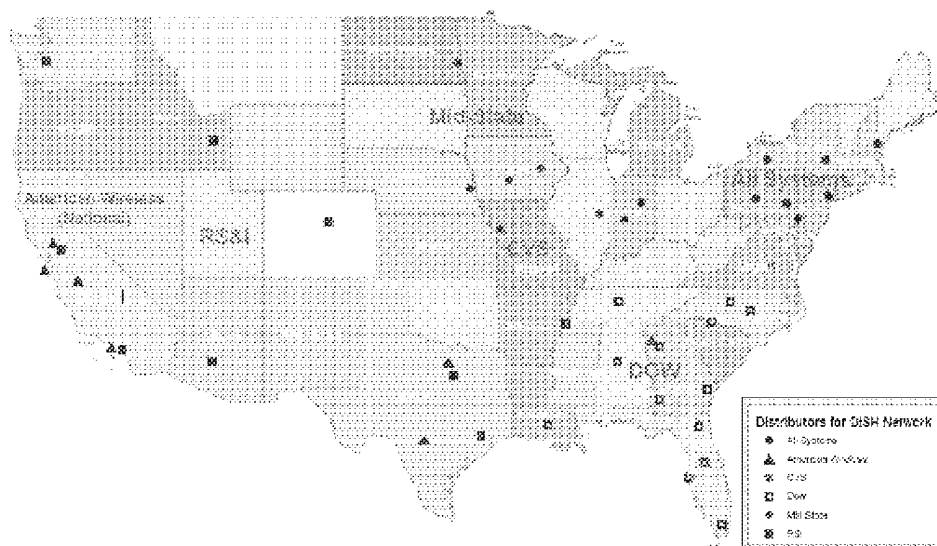
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17

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DISH5-0000090763
SLC_DNC_Investigation_0007063
TX 102-003945

Distributor Map



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SLC_ DNC_Investigation_0007064

TX 102-003946

Team Responsibilities & Headcount continued

Channel Training

The Sales Channel Training team serves the external Indirect Sales Channels (TVRO, National Sales Partners, Telco Partners and National Accounts) and the internal teams that support them.

They provide the Training resources and support tools that help the Indirect Sales organization achieve their goals and the goals of DISH Network. The Sales Channel Training team does this by utilizing Instructor Lead Training (ILT), Web Based Training (WBT), document creation, video assets and Training events to provide the widest possible scope and diversity to ensure that all necessary information is available and in a format that the audience can utilize.

Sales Channel Team

- 1 – General Manager
- 3 – Training Managers
- 4 – Instructional Designer
- 1 – Training Specialist
- 4 – Program Manager
- 2 – Associate Program Manager
- 1 – Operations Analyst
- 2 – Marketing Specialist
- 1 – Graphic Designers

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19

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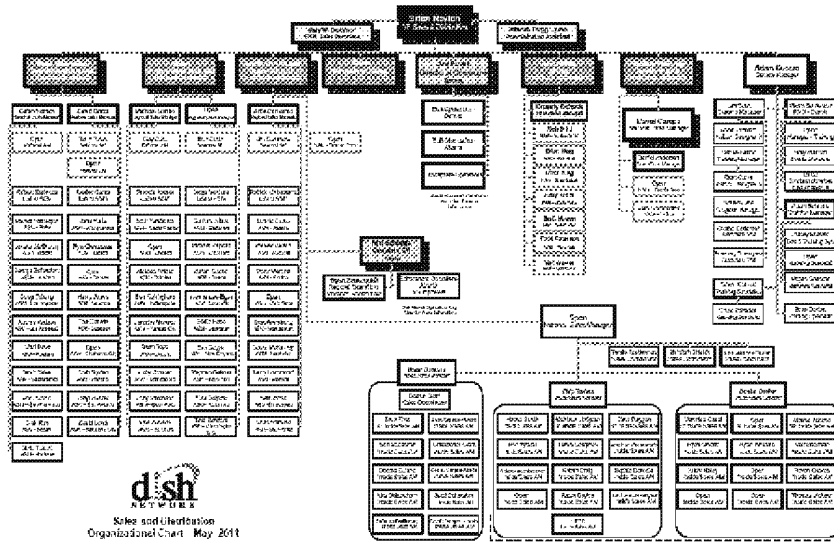
19

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DISH5-0000090765
SLC_DNC_Investigation_0007065

TX 102-003947

Neylon - Sales and Distribution Org Chart



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TX 102-003948

Packout Team Responsibilities & Headcount

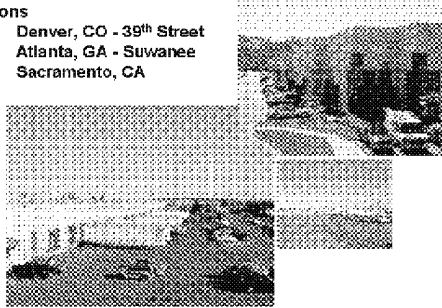
Total Headcount: 263

Echosphere Operations

- Receiving & inventorying bulk equipment
- Quality control from incoming to finished product
- Packout of bulk components into finished product
- Distribution and inventorying of finished product, and
- Call Center (consumer) & Marketing order fulfillment
- Consumer direct service returns

3 Locations

- Denver, CO - 39th Street
- Atlanta, GA - Suwanee
- Sacramento, CA



By Title:

• Admin. Asst	7
• Corp. Warehouse Manager	3
• Director	1
• Facilities Manager	2
• General Manager	1
• Inventory Specialist	3
• Janitorial	8
• Lead Tech	2
• Maintenance Tech	10
• Materials Handler	183
• Office Manager	1
• Ops Analyst	4
• Ops Analyst Manager	1
• Regional Operations Manager	2
• Safety Specialist	1
• Senior Inventory	3
• Special Events Coord.	2
• Supervisor	17
• Truck Driver	2
• Warehouse Manager	9

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21

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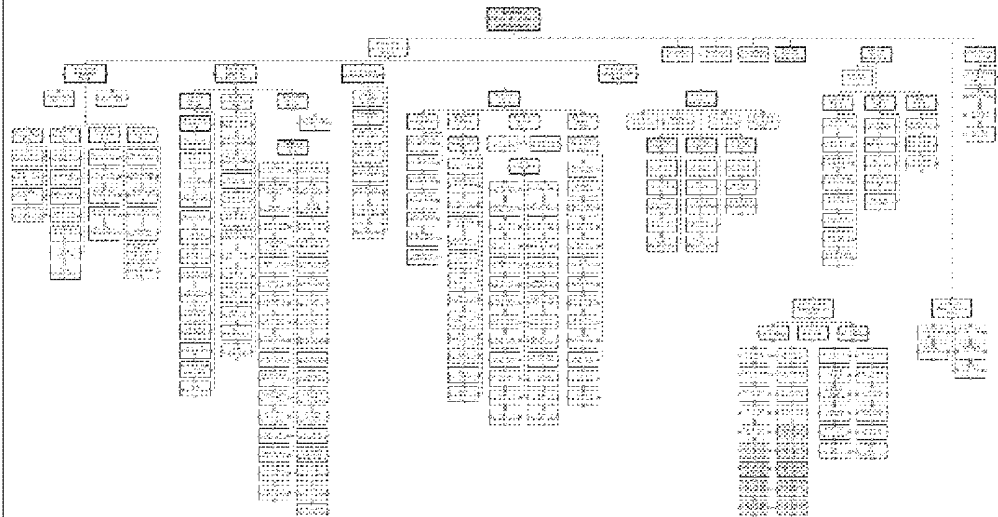
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Docket 81704 Document 2021-08967

TX 102-003949

Neylon – Packout Org Chart



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TX 102-003950

**Nick Slater
National Accounts
Field Sales Development
RV/Mobile
Events/Kiosks**

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TX 102-003951

Slater - Organization Overview

Developmental Focus Areas

- Indirect Sales New Business Development
 - Channel development for New Product Launches & Business Units
 - RV sales & distribution (Tailgater & Pace/Winegard)
 - International IPTV Product sales & distribution
 - Creation of new sales channels for existing Indirect retailers
 - Mall Kiosks
 - Event Management
- Core Business Management
 - OE & Alliance partner training and ongoing development
 - TVRO retailer development (underperforming opportunity retailers)
 - National Retail accounts

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24

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SLC_ DNC_Investigation_0007070

TX 102-003952

Team Responsibilities & Headcount

■ Total Headcount: 162

- 103 – **Territory (Field) Sales Team**. Training and merchandising for National Retailers. Local retailer development and oversight of strategic initiatives: RV Market, International IPTV.
- 34 – **Strategic Sales Team**. Ongoing training and support for OE and Alliance partner call centers.
- 7 – **Business Development Managers**. Manage new sales development initiatives in the TVRO channel: Mail Kiosks, Events, Door to Door, and TVRO mid-tier development strategies.
- 8 – **Creative Services**. Develop marketing materials for TVRO Channel for local retailer campaigns. Assist with Coop management.
- 2 – **New Product Channel Development Managers**. Lead Sales Channel development for RV and IPTV markets. Currently leveraging Territory Sales Team to develop local markets.
- 7 – **National Accounts** (1 GM, 3 Outside Sales, 2 Inside Support, 1 Merchandising). Manage Radio Shack, Costco, Amazon, Sears, BJ's, TigerDirect.
- 1 – **Vice President**

By Title:

• Vice President	1
• Director	1
• General Manager	1
• National Sales Manager	8
• Inside Sales Manager	1
• Area Sales Manager	1
• Business Development Manager	6
• Marketing Specialist	8
• Territory Sales Manager	10
• Territory Sales Representative	92
• Strategic Sales Manager	3
• Strategic Sales Representative	30

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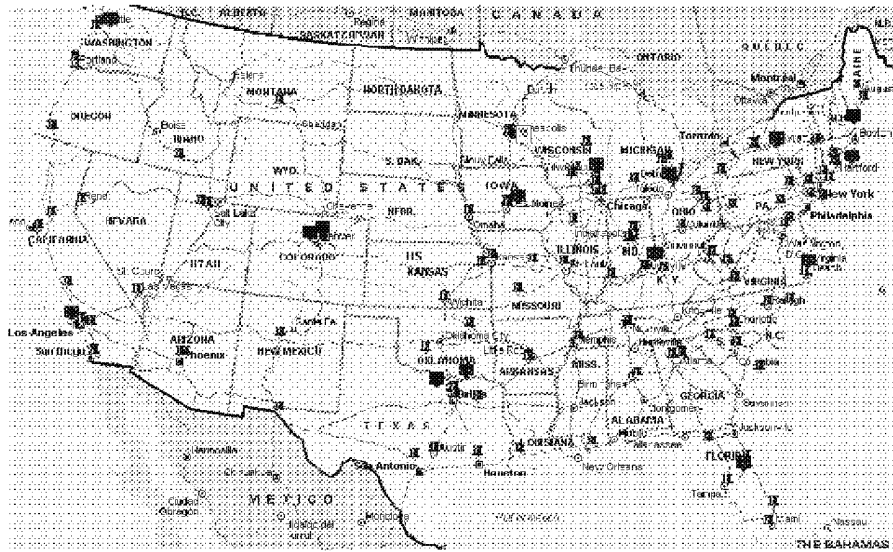
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DISH5-0000090771
SLC_ DNC_Investigation_0007071

TX 102-003953

Personnel Map

Blue - SSR
Red - TSR
Green - National Retail Sales
SQUARE - Manager



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26

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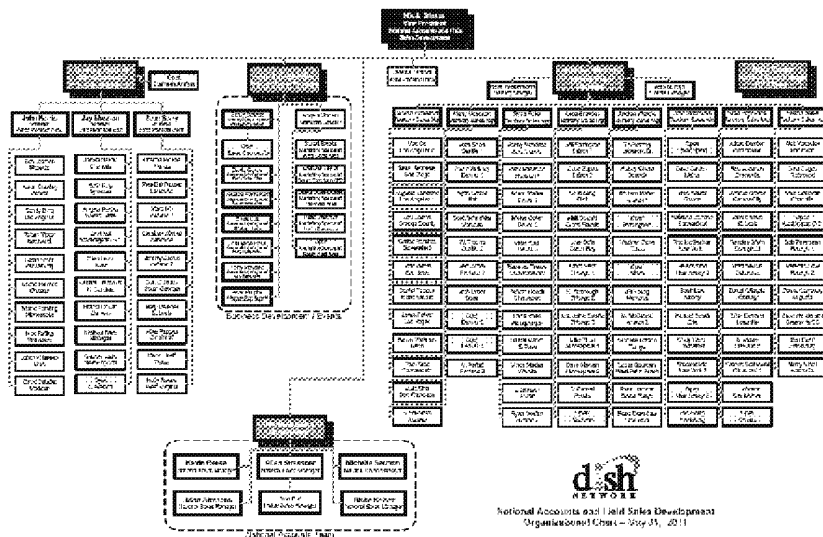
26

Confidential-

DISH5-0000090772
SLC_ DNC_ Investigation_0007072

TX 102-003954

Organizational Chart



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Mark Gilpin and Scott Hazlett Telco

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SLC_ DNC_Investigation_0007074

TX 102-003956

Gilpin/Hazlett - Organization Overview

- **Developmental Focus Areas**
 - Indirect Sales New Business Development
 - Tier 3 Telcos and Wireless Carriers (Cellular South, Metro PCS, US Cellular)
 - Liberty Bell/DISH phone and Internet
 - Core Business Management
 - Existing Telco partners: Windstream, Frontier and TDS

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SLC_ DNC_Investigation_0007075

TX 102-003957

Team Responsibilities & Headcount

Total Headcount: 8

- 3 – Program Managers. (1) Responsible for Windstream management and sales development. Typically travel 2-3 days a week. (*) Responsible for provisioning systems, ops management and data/ payment reconciliation for all Telco's. (1) Responsible for weekly/monthly and ad hoc reporting for all Telco's.
- 2 – National Sales Managers. Responsible for Frontier and TDS management and sales development. Responsible for Tier 3 Telco management and new business development (wireless carriers and Tier 3 Telco). Typically travel 2-3 days a week.
- 1 – General Manager. Responsible for Liberty Bell integration. Responsible for operations of existing Telco partners and on-boarding of new partners.
- 2 – Directors. Set overall sales strategy, develop relationships at executive levels at Telco corporate and field locations, and achievement of activation quota.
- 1 – Open Program Manager or National Sales Manager. Individual will be responsible for day to day management of Liberty Bell sales and territorial development.

By Title:

• Vice President	0
• Director	2
• General Manager	1
• National Sales Manager	2
• Project Manager	3

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RETAIL SERVICES

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31

EXHIBIT 70

EXHIBIT 70

JA004698

TX 102-003960

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Durham Division**

THOMAS H. KRAKAUER,
on behalf of a class of persons,

Plaintiff,

v.

No. 14-cv-333

DISH NETWORK, L.L.C.,

Defendant.

CLASS ACTION COMPLAINT

Preliminary Statement

1. This action arises under the federal Telephone Consumer Protection Act, or TCPA, a remedial statute enacted in 1991 in response to consumer outrage over the proliferation of intrusive, nuisance telemarketing practices. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012). Among other things, the TCPA and its accompanying regulations prohibit telemarketers from making telephone solicitations to persons who have listed their telephone numbers on the national Do Not Call Registry, a database established to allow consumers to exclude themselves from telemarketing calls unless they consent to receive the calls in a signed, written agreement.

2. Plaintiff Thomas H. Krakauer is one of the millions of consumers who have listed telephone numbers on the Do Not Call Registry. Nonetheless, he has received numerous telemarketing sales calls from an authorized dealer of Defendant Dish Network, L.L.C.

3. At the time of these calls, Defendant Dish Network, LLC knew that many of its authorized dealers were flagrantly violating the TCPA in their efforts to sell Dish satellite

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television subscriptions. However, Dish failed to take effective action to stop the violations, and instead gratefully accepted the new business its dealers generated through illegal means. Dish took the view that compliance was the dealers' responsibility, and fell back on self-serving contractual provisions to attempt to shield itself from liability for the illegal telemarketing conducted on its behalf.

4. Under the TCPA, Dish's efforts to avoid responsibility fail. The statute imposes liability for violations not only on businesses that *place* unlawful calls, but also on businesses *on whose behalf, and for whose benefit* the calls are made.

5. Vicarious liability is a critical feature of the TCPA. According to the Federal Communications Commission, the agency charged with interpreting the statute, sellers like Dish are not exempt from liability simply because *others* violate the law on their behalves and for their benefit. This is so because the dealers that place illegal calls often are judgment proof and difficult to identify, and sellers are best positioned to monitor and control their activities. Under these circumstances, and in service of protecting consumers from the nuisance of unwanted telemarketing, liability is imputed to the more reputable and more financially solvent sellers such as Dish.

6. Plaintiff brings this action on behalf of a proposed class defined below, and seeks statutory damages of \$500-\$1500 per illegal call, plus injunctive relief requiring Dish to comply with the law.

Parties

7. Plaintiff Thomas H. Krakauer is a resident of this District.

8. Defendant Dish Network, L.L.C. is a Colorado limited liability company organized for profit, with its principal place of business in that state.

Jurisdiction and Venue

9. The Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2). The matter in controversy exceeds \$5 million, as each member of the proposed class is entitled to up to \$1500 in statutory damages for each unlawful call. Further, at least one class member resides in a state other than Colorado, where Dish is located.

10. The Court also has federal question jurisdiction under 28 U.S.C. § 1331 because this action involves violation of a federal statute, the TCPA.

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because Plaintiff resides here, a substantial part of the events giving rise to the claim occurred here, and because the Defendant's contacts with the District are sufficient to subject it to personal jurisdiction.

Applicable Law

12. The TCPA was enacted more than twenty years ago to regulate the explosive growth of telemarketing, which Congress recognized as a nuisance and an intrusive invasion of privacy.

13. Consumers who do not want to receive telemarketing calls may indicate their preference by registering their telephone numbers on the national Do Not Call Registry. 47 C.F.R. § 64.1200(c)(2). According to the Federal Trade Commission, the Registry, which was established in 2003, currently has over 223 million active registrations. During 2013 alone, approximately 5.8 million numbers were added.

14. These registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. *Id.*

15. Because a telephone subscriber listed on the Registry must take an affirmative step to register his or her number, a telemarketer who wishes to call a person listed on the Registry must take a similarly affirmative step, and must obtain the registrant's signed, written agreement to be contacted by the telemarketer. *Id.* § 64.1200(c)(2)(ii). The written agreement must also include the telephone number to which the calls may be placed. *Id.*

16. A person whose number is on the Registry and has received more than one telephone solicitation within any twelve-month period by or on behalf of the same entity in violation of the TCPA, can sue the violator and seek the greater of actual damages or \$500, a figure that may be trebled for willful or knowing violations. 47 U.S.C. § 227(c)(5).

17. Telemarketers who wish to avoid calling numbers listed on the Registry can easily and inexpensively do so by “scrubbing” their call lists against the Registry database. The scrubbing process identifies those numbers on the Registry, allowing telemarketers to remove those numbers and ensure that no calls are placed to consumers who opt-out of telemarketing calls.

18. To avoid violating the TCPA by calling registered numbers, telemarketers must scrub their call lists against the Registry at least once every thirty-one days. *See* 16 C.F.R. § 310.4(b)(3)(iv).

19. It has long been the law that a seller of goods or services can be liable for TCPA violations even if the seller does not directly place or initiate the calls.

20. The provision that establishes a private right of action against an entity that violates the DNC Registry restrictions provides that “[a] person who has received more than one telephone call within any 12-month period ***by or on behalf of*** the same entity in violation of the

regulations prescribed under this subsection” may bring an action for damages and injunctive relief. 47 U.S.C. § 227(c)(5) (emphasis added).

21. As explained by the FCC, the TCPA and its regulations “generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Mem. and Order, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995).

22. The agency reiterated this principle in 2005, when it stated that “a company on whose behalf a telephone solicitation is made bears the responsibility for any violation of our telemarketing rules, and calls placed by a third party on behalf of that company are treated as if the company itself placed the call.” *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*; Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling, Declaratory Ruling, 20 FCC Rcd. 13664, 13667 ¶ 7 (2005).

23. The FCC reaffirmed this in 2013, when it held that (a) a seller may, under principles of apparent authority, actual authority, and ratification, be liable for violations of § 227(c) by third parties, and (b) a seller may also be liable, under the express terms of § 227(c), for calls placed “on behalf of” the seller. *In re Joint Pet. Filed by Dish Network*, 28 FCC Rcd. 6574 (2013).

Facts Supporting the Claims

24. Between May 2009 and September 2011, Dr. Krakauer received numerous telemarketing calls on his residential telephone line, (XXX) XXX-9459, a number he had listed on the Do Not Call Registry since 2003.

25. These calls, which included at least two calls in a twelve-month period, were placed by authorized Dish dealer Satellite Systems Network, or SSN, in an effort to sell Dr. Krakauer a Dish satellite television subscription.

26. Because Dr. Krakauer did not provide SSN with a signed, written agreement to receive Dish telemarketing calls from SSN, the calls violated the TCPA.

27. Dish is liable for the calls because:

- a. SSN placed the calls on behalf of, and for the benefit of, Dish, because the calls were placed to sell Dish satellite television subscriptions;
- b. SSN placed the calls under Dish's actual or apparent authority because SSN was authorized to market and sell Dish subscriptions, and to hold itself out as an authorized Dish dealer; and
- c. Dish ratified SSN's illegal conduct by accepting the illegal business it generated and rewarding it with payments for that business.

28. Dish sells its satellite television services through a network of dealers, including SSN.

29. Dish authorized these dealers to market on its behalf, and to use the Dish trade name, trademark, or service mark.

30. Dish provided these dealers with access to confidential, proprietary information regarding pricing and products, and also provided them with access to Dish's internal information systems.

31. Because of scores of consumer telemarketing complaints, private TCPA lawsuits, and government enforcement actions, Dish has known for years that its dealers violated the TCPA in marketing and selling Dish subscriptions.

32. For example, in July of 2009, Dish entered into an Assurance of Voluntary Compliance with the attorneys general of 48 states (the “AG settlement agreement”).

33. The AG settlement agreement included allegations of unlawful telemarketing being conducted on Dish’s behalf.

34. As stated in the AG settlement agreement, Dish can control the conduct, practices and procedures of its dealers:

- a. through its Dish Network Retailer Agreement;
- b. through “Business Rules” that are established by Dish Network and must be followed by retailers;
- c. through training that Dish Network provides to its retailers;
- d. by requiring retailers to take all actions and refrain from taking any action reasonably requested by Dish Network in connection with marketing, advertising, promotion, solicitation, and orders;
- e. by requiring retailers to market, promote and describe Dish products and services in a manner approved by Dish;
- f. by setting all processes for its programming and related promotions, and limiting its retailers’ ability to offer and sell other goods and services to Dish customers; and
- g. by requiring retailers to use Dish’s trademarks, logos and service marks in connection with the retail sale of Dish services, and by otherwise controlling their appearance and conduct when interacting with consumers.

35. Also in 2009, the Federal Trade Commission and the States of California, Illinois, Ohio and North Carolina filed suit against Dish for telemarketing to consumers whose phone numbers were listed on the Do Not Call Registry, and for telemarketing via pre-recorded message. *United States v. Dish Network, LLC*, 667 F. Supp. 2d. 952 (C.D. Ill. 2009) (denying Dish's motion to dismiss, and holding that Dish may be liable under the TCPA for the actions of its telemarketers).

36. This litigation was pending when the calls were placed to Dr. Krakauer.

37. Dish knew or should have known that its dealers, including SSN, were engaging in telemarketing in violation of the TCPA.

38. Because Dish failed to take effective action to end the violations, the Plaintiff and putative class members received telemarketing calls from SSN.

Class Action Allegations

39. Plaintiff brings this action under Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class tentatively defined as:

All persons throughout the United States whose telephone numbers were listed on the Do Not Call Registry, and to whom, at any time within the applicable limitations period, more than one call within any twelve-month period was placed by or at the direction of Satellite Systems Network, to promote the sale of Dish satellite television subscriptions.

40. Plaintiff reserves the right to modify this class definition as he obtains relevant information, including telemarketing call records, through discovery.

41. The proposed class can be identified through telephone records and databases used in transmitting the telemarketing calls.

42. The number of class members is believed to be in the thousands, rendering the class so numerous that individual joinder of all class members is impracticable.

43. Plaintiff is a member of the proposed class.

44. There are questions of law and fact common to Plaintiff and to the proposed class, including but not limited to the following:

- a. Did SSN place telemarketing calls to Plaintiff and class members?
- b. Is Dish liable under TCPA § 227(c) for telemarketing calls placed by SSN?
- c. Did SSN place the calls under Dish's actual authority?
- d. Did SSN place the calls under Dish's apparent authority?
- e. Did Dish ratify SSN's illegal conduct by accepting the benefit of its illegally-generated business and failing to exercise its authority to end the violations?
- f. Were the SSN calls placed for Dish's benefit, or on its behalf?
- g. Do Dish's dealer agreements shield it from liability for SSN's TCPA violations?

45. Plaintiff's claims are typical of the claims of the class. Like all class members, he received SSN telemarketing calls on a number listed on the national Do Not Call Registry.

46. Plaintiff is an adequate class representative because his interests do not conflict with class members' interests, he will fairly and adequately protect the interests of the class, and he is represented by counsel skilled and experienced in TCPA and other class actions.

47. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy.

48. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to pursue individual litigation; the low dollar-value of individual claims; the lack of an attorney fee-shifting provision in the TCPA; the fact that class members are unlikely to know that their rights have been violated; and the fact that few if any recipients of SSN telemarketing calls have brought private TCPA enforcement actions against Dish or SSN.

Legal Claim

Violation of 47 U.S.C. 227(c)— Telemarketing in violation of the TCPA's Do Not Call provisions

49. In violation of 47 U.S.C. § 227(c), Plaintiff and all class members received telemarketing calls promoting the sale of Dish services from Dish's authorized dealer Satellite Service Network on residential telephone lines listed on the national Do Not Call Registry.

50. Plaintiff and class members received more than one such call in a twelve-month period.

51. Dish is liable for those violations under principles of actual authority, apparent authority, and ratification, and because the calls were placed on Dish's behalf and for its benefit.

Relief Sought

On behalf of himself and all class members, Plaintiff requests:

1. That the Court grant class certification as proposed above or in a motion for class certification after discovery; that the Court appoint the Plaintiff as class representative; and that the Court appoint Plaintiff's counsel as class counsel;
2. That Plaintiff and all class members be awarded \$500 in statutory damages for each violation of the TCPA;

3. That Plaintiff be awarded \$1500 for each willful or knowing violation of the TCPA;
4. That the Court enjoin Dish from violating the TCPA; and
5. That the Plaintiff and class members be granted such other relief as is just and equitable under the circumstances.

Plaintiff respectfully requests a jury trial.

THOMAS H. KRAKAUER
By Counsel.

s/ J. Matthew Norris
J. Matthew Norris
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mccue@massattorneys.net

EXHIBIT 71

EXHIBIT 71

JA004711

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Durham Division**

**THOMAS H. KRAKAUER,
on behalf of a class of persons,**

Plaintiff,

v.

No. 1:14-cv-00333-CCE-JEP

DISH NETWORK, L.L.C.,

Defendant.

FIRST AMENDED CLASS ACTION COMPLAINT

Preliminary Statement

1. This action arises under the federal Telephone Consumer Protection Act, or TCPA, a remedial statute enacted in 1991 in response to consumer outrage over the proliferation of intrusive, nuisance telemarketing practices. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012). Among other things, the TCPA and its accompanying regulations prohibit telemarketers from making telephone solicitations to persons who have listed their telephone numbers on the national Do Not Call Registry, a database established to allow consumers to exclude themselves from telemarketing calls unless they consent to receive the calls in a signed, written agreement.

2. Plaintiff Thomas H. Krakauer is one of the millions of consumers who have listed telephone numbers on the Do Not Call Registry. Nonetheless, he has received numerous telemarketing sales calls from an authorized dealer of Defendant Dish Network, L.L.C.

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3. At the time of these calls, Defendant Dish Network, LLC knew that many of its authorized dealers were flagrantly violating the TCPA in their efforts to sell Dish satellite television subscriptions. However, Dish failed to take effective action to stop the violations, and instead gratefully accepted the new business its dealers generated through illegal means. Dish took the view that compliance was the dealers' responsibility, and fell back on self-serving contractual provisions to attempt to shield itself from liability for the illegal telemarketing conducted on its behalf.

4. Under the TCPA, Dish's efforts to avoid responsibility fail. The statute imposes liability for violations not only on businesses that *place* unlawful calls, but also on businesses *on whose behalf, and for whose benefit* the calls are made.

5. Vicarious liability is a critical feature of the TCPA. According to the Federal Communications Commission, the agency charged with interpreting the statute, sellers like Dish are not exempt from liability simply because *others* violate the law on their behalves and for their benefit. This is so because the dealers that place illegal calls often are judgment proof and difficult to identify, and sellers are best positioned to monitor and control their activities. Under these circumstances, and in service of protecting consumers from the nuisance of unwanted telemarketing, liability is imputed to the more reputable and more financially solvent sellers such as Dish.

6. Plaintiff brings this action on behalf of a proposed class defined below, and seeks statutory damages of \$500-\$1500 per illegal call, plus injunctive relief requiring Dish to comply with the law.

Parties

7. Plaintiff Thomas H. Krakauer is a resident of this District.

8. Defendant Dish Network, L.L.C. is a Colorado limited liability company organized for profit, with its principal place of business in that state.

Jurisdiction and Venue

9. The Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2).

The matter in controversy exceeds \$5 million, as each member of the proposed class is entitled to up to \$1500 in statutory damages for each unlawful call. Further, at least one class member resides in a state other than Colorado, where Dish is located.

10. The Court also has federal question jurisdiction under 28 U.S.C. § 1331 because this action involves violation of a federal statute, the TCPA.

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because Plaintiff resides here, a substantial part of the events giving rise to the claim occurred here, and because the Defendant's contacts with the District are sufficient to subject it to personal jurisdiction.

Applicable Law

12. The TCPA was enacted more than twenty years ago to regulate the explosive growth of telemarketing, which Congress recognized as a nuisance and an intrusive invasion of privacy.

13. Consumers who do not want to receive telemarketing calls may indicate their preference by registering their telephone numbers on the national Do Not Call Registry. 47 C.F.R. § 64.1200(c)(2). According to the Federal Trade Commission, the Registry, which was established in 2003, currently has over 223 million active registrations. During 2013 alone, approximately 5.8 million numbers were added.

14. These registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. *Id.*

15. Because a telephone subscriber listed on the Registry must take an affirmative step to register his or her number, a telemarketer who wishes to call a person listed on the Registry must take a similarly affirmative step, and must obtain the registrant's signed, written agreement to be contacted by the telemarketer. *Id.* § 64.1200(c)(2)(ii). The written agreement must also include the telephone number to which the calls may be placed. *Id.*

16. A person whose number is on the Registry and has received more than one telephone solicitation within any twelve-month period by or on behalf of the same entity in violation of the TCPA, can sue the violator and seek the greater of actual damages or \$500, a figure that may be trebled for willful or knowing violations. 47 U.S.C. § 227(c)(5).

17. Telemarketers who wish to avoid calling numbers listed on the Registry can easily and inexpensively do so by “scrubbing” their call lists against the Registry

database. The scrubbing process identifies those numbers on the Registry, allowing telemarketers to remove those numbers and ensure that no calls are placed to consumers who opt-out of telemarketing calls.

18. To avoid violating the TCPA by calling registered numbers, telemarketers must scrub their call lists against the Registry at least once every thirty-one days. *See* 16 C.F.R. § 310.4(b)(3)(iv).

19. Regulations implementing the TCPA also require entities to maintain internal Do Not Call registries. 47 C.F.R. § 64.1200(d). Once an entity receives a request from a residential telephone subscriber not to receive calls, the number must be placed on the entity's internal registry within a reasonable time, not to exceed thirty days from the date of the request. *Id.* at § (d)(3).

20. It has long been the law that a seller of goods or services can be liable for TCPA violations even if the seller does not directly place or initiate the calls.

21. The provision that establishes a private right of action against an entity that violates the DNC Registry restrictions provides that “[a] person who has received more than one telephone call within any 12-month period ***by or on behalf of*** the same entity in violation of the regulations prescribed under this subsection” may bring an action for damages and injunctive relief. 47 U.S.C. § 227(c)(5) (emphasis added). Likewise, 47 C.F.R. § 64.1200(d)(3) provides that once a number is added to an entity's internal Do Not Call registry, “***the person or entity on whose behalf the telemarketing call is made*** will be liable for any failures to honor the do-not-call request.”

22. As explained by the FCC, the TCPA and its regulations “generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” *See* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Mem. and Order, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995).

23. The agency reiterated this principle in 2005, when it stated that “a company on whose behalf a telephone solicitation is made bears the responsibility for any violation of our telemarketing rules, and calls placed by a third party on behalf of that company are treated as if the company itself placed the call.” *See* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling, Declaratory Ruling, 20 FCC Rcd. 13664, 13667 ¶ 7 (2005).

24. The FCC reaffirmed this in 2013, when it held that (a) a seller may, under principles of apparent authority, actual authority, and ratification, be liable for violations of § 227(c) by third parties, and (b) a seller may also be liable, under the express terms of § 227(c), for calls placed “on behalf of” the seller. *In re Joint Pet. Filed by Dish Network*, 28 FCC Rcd. 6574 (2013).

Facts Supporting the Claims

25. Between May 2009 and September 2011, Dr. Krakauer received numerous telemarketing calls on his residential telephone line, (XXX) XXX-9459, a number he had listed on the Do Not Call Registry since 2003.

26. These calls, which included at least two calls in a twelve-month period, were placed by authorized Dish dealer Satellite Systems Network, or SSN, in an effort to sell Dr. Krakauer a Dish satellite television subscription.

27. Dr. Krakauer indicated to the callers that he did not wish to receive any telemarketing calls; as a result, since at least May 2009, his residential telephone line, (XXX) XXX-9459, was placed on the Defendant's and SSN's internal Do Not Call registries.

28. Despite that step, however, SSN continued to place telemarketing calls to Dr. Krakauer and other individuals who (a) were on Dish's internal "do not call" list and (b) had previously indicated that they did not want to receive any more calls from SSN, who was at that time exclusively promoting Dish's services.

29. Because Dr. Krakauer did not provide SSN with a signed, written agreement to receive Dish telemarketing calls from SSN, the calls violated the TCPA.

30. Dish is liable for the calls because:

- a. SSN placed the calls on behalf of, and for the benefit of, Dish, because the calls were placed to sell Dish satellite television subscriptions;

- b. SSN placed the calls under Dish's actual or apparent authority because SSN was authorized to market and sell Dish subscriptions, and to hold itself out as an authorized Dish dealer; and
- c. Dish ratified SSN's illegal conduct by accepting the illegal business it generated and rewarding it with payments for that business.

31. Dish sells its satellite television services through a network of dealers, including SSN.

32. Dish authorized these dealers to market on its behalf, and to use the Dish trade name, trademark, or service mark.

33. Dish provided these dealers with access to confidential, proprietary information regarding pricing and products, and also provided them with access to Dish's internal information systems.

34. Because of scores of consumer telemarketing complaints, private TCPA lawsuits, and government enforcement actions, Dish has known for years that its dealers violated the TCPA in marketing and selling Dish subscriptions.

35. For example, in July of 2009, Dish entered into an Assurance of Voluntary Compliance with the attorneys general of 48 states (the "AG settlement agreement").

36. The AG settlement agreement included allegations of unlawful telemarketing being conducted on Dish's behalf.

37. As stated in the AG settlement agreement, Dish can control the conduct, practices and procedures of its dealers:

- a. through its Dish Network Retailer Agreement;
- b. through “Business Rules” that are established by Dish Network and must be followed by retailers;
- c. through training that Dish Network provides to its retailers;
- d. by requiring retailers to take all actions and refrain from taking any action reasonably requested by Dish Network in connection with marketing, advertising, promotion, solicitation, and orders;
- e. by requiring retailers to market, promote and describe Dish products and services in a manner approved by Dish;
- f. by setting all processes for its programming and related promotions, and limiting its retailers’ ability to offer and sell other goods and services to Dish customers; and
- g. by requiring retailers to use Dish’s trademarks, logos and service marks in connection with the retail sale of Dish services, and by otherwise controlling their appearance and conduct when interacting with consumers.

38. Also in 2009, the Federal Trade Commission and the States of California, Illinois, Ohio and North Carolina filed suit against Dish for telemarketing to consumers whose phone numbers were listed on the Do Not Call Registry, and for telemarketing via pre-recorded message. *United States v. Dish Network, LLC*, 667 F. Supp. 2d. 952 (C.D.

Ill. 2009) (denying Dish's motion to dismiss, and holding that Dish may be liable under the TCPA for the actions of its telemarketers).

39. This litigation was pending when the calls were placed to Dr. Krakauer.

40. Dish knew or should have known that its dealers, including SSN, were engaging in telemarketing in violation of the TCPA.

41. Because Dish failed to take effective action to end the violations, the Plaintiff and putative class members received telemarketing calls from SSN.

Class Action Allegations

42. Plaintiff brings Count I of this action under Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class tentatively defined as:

All persons throughout the United States whose telephone numbers were listed on the Do Not Call Registry, and to whom, at any time within the applicable limitations period, more than one call within any twelve-month period was placed by or at the direction of Satellite Systems Network, to promote the sale of Dish satellite television subscriptions.

43. Plaintiff reserves the right to modify this class definition as he obtains relevant information, including telemarketing call records, through discovery.

44. Plaintiff brings Count II of this action under Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class tentatively defined as:

All persons throughout the United States whose telephone numbers were listed on either the Defendant's or SSN's company-specific Do Not Call registries, but who received telemarketing calls by or at the direction of Satellite Systems Network, to promote the sale of Dish satellite television subscriptions.

45. Plaintiff reserves the right to modify this class definition as he obtains relevant information, including telemarketing call records, through discovery.

46. The proposed classes can be identified through telephone records and databases used in transmitting the telemarketing calls.

47. The number of class members is believed to be in the thousands, rendering the classes so numerous that individual joinder of all class members is impracticable.

48. Plaintiff is a member of both proposed classes.

49. There are questions of law and fact common to Plaintiff and to the proposed classes, including but not limited to the following:

- a. Did SSN place telemarketing calls to Plaintiff and class members?
- b. Is Dish liable under TCPA § 227(c) for telemarketing calls placed by SSN?
- c. Did SSN place the calls under Dish's actual authority?
- d. Did SSN place the calls under Dish's apparent authority?
- e. Did Dish ratify SSN's illegal conduct by accepting the benefit of its illegally-generated business and failing to exercise its authority to end the violations?
- f. Were the SSN calls placed for Dish's benefit, or on its behalf?
- g. Do Dish's dealer agreements shield it from liability for SSN's TCPA violations?

50. Plaintiff's claims are typical of the claims of the classes. Like all class members, he received SSN telemarketing calls on a number listed on the national Do Not Call Registry. Like all members of the Count II class, he received SSN telemarketing calls on a number that was listed on the company-specific Do Not Call registries.

51. Plaintiff is an adequate class representative because his interests do not conflict with class members' interests, he will fairly and adequately protect the interests of the classes, and he is represented by counsel skilled and experienced in TCPA and other class actions.

52. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy.

53. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to pursue individual litigation; the low dollar-value of individual claims; the lack of an attorney fee-shifting provision in the TCPA; the fact that class members are unlikely to know that their rights have been violated; and the fact that few if any recipients of SSN telemarketing calls have brought private TCPA enforcement actions against Dish or SSN.

Legal Claims

Count I

Violation of 47 U.S.C. 227(c)— Telemarketing in violation of the TCPA's Do Not Call provisions

54. In violation of 47 U.S.C. § 227(c), Plaintiff and all class members received telemarketing calls promoting the sale of Dish services from Dish's authorized dealer Satellite Service Network on residential telephone lines listed on the national Do Not Call Registry.

55. Plaintiff and class members received more than one such call in a twelve-month period.

56. Dish is liable for those violations under principles of actual authority, apparent authority, and ratification, and because the calls were placed on Dish's behalf and for its benefit.

Count II

Violation of 47 C.F.R. § 64.1200(d)(3) Failure to honor company-specific Do Not Call requests

57. In violation of 47 C.F.R. § 64.1200(d)(3), Dish's authorized dealer Satellite Service Network continued to make telemarketing calls to Plaintiff and class members after they were listed on either the Defendant's or SSN's internal Do Not Call registries.

58. Plaintiff and class members received more than one such call in a twelve-month period.

59. Dish is liable for those violations under principles of actual authority, apparent authority, and ratification, and because the calls were placed on Dish's behalf and for its benefit.

Relief Sought

On behalf of himself and all class members, Plaintiff requests:

1. That the Court grant class certification as proposed above or in a motion for class certification after discovery; that the Court appoint the Plaintiff as class representative; and that the Court appoint Plaintiff's counsel as class counsel;
2. That Plaintiff and all class members be awarded \$500 in statutory damages for each violation of the TCPA;
3. That Plaintiff be awarded \$1500 for each willful or knowing violation of the TCPA;
4. That the Court enjoin Dish from violating the TCPA; and
5. That the Plaintiff and class members be granted such other relief as is just and equitable under the circumstances.

Plaintiff respectfully requests a jury trial.

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EXHIBIT 72

EXHIBIT 72

JA004727

TX 102-003989

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

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

MEMORANDUM OPINION AND ORDER

Catherine C. Eagles, District Judge.

This matter is before the Court on a motion for class certification filed by the plaintiff, Thomas Krakauer. (Doc. 47.) Dr. Krakauer is a member of the proposed classes and has demonstrated that the members of the proposed classes are ascertainable. Dr. Krakauer's claims are typical of class members, common questions of law and fact predominate, and the class action is the superior method of adjudication. The defendant's arguments against predominance are largely speculative and otherwise present minor potential individual issues that are manageable and that do not defeat the predominance of the common, central issues in this case. The Court will grant the motion for class certification.

BACKGROUND

The Telephone Consumer Protection Act ("TCPA") authorizes the Federal Communications Commission to regulate telemarketing activities and prohibits sellers from making phone solicitations to people who list their phone numbers on a national do-

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not-call registry (“NDNC list”) without consent. *See* 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2); *see also Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745-46 (2012). Congress enacted the TCPA “to curb abusive telemarketing practices that threaten the privacy of consumers and businesses” by “placing restrictions on unsolicited, automated telephone calls.” *Ashland Hosp. Corp. v. Serv. Emps. Int’l Union*, 708 F.3d 737, 740-41 (6th Cir. 2013); *see also Mims*, 132 S. Ct. at 745. Individuals may register land-line and wireless telephone numbers on the NDNC list. *See United States v. Dish Network, L.L.C.*, 75 F. Supp. 3d 942, 961 (C.D. Ill. 2014), *vacated in part on other grounds on reconsideration*, ___ F. Supp. 3d ___, 2015 WL 682875 (C.D. Ill. Feb. 17, 2015).

The TCPA also requires sellers and telemarketers to maintain an “internal” do-not-call list (“IDNC list”), that is, “a list of persons who request not to receive telemarketing calls made by or on behalf of that [seller].” 47 C.F.R. § 64.1200(d); *see also Dish Network*, 75 F. Supp. 3d at 960. The TCPA prohibits a telemarketer from calling individuals on its IDNC list or on the IDNC list of a seller on whose behalf the telemarketer calls, even if those individuals’ phone numbers are not on the NDNC list. *See* 47 C.F.R. § 64.1200(d)(3), (6).

The TCPA creates a private right of action for injunctive and monetary relief for any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the [TCPA] regulations.” 47 U.S.C. § 227(c)(5); *see also* 47 C.F.R. § 64.1200(d)(3) (liability for IDNC list violations). These rules only apply to residential telephone numbers; calls to business are not actionable. *See* 47 C.F.R. § 64.1200(c)(2), (d)(3). Calls are also not actionable if a seller has an

“established business relationship” (“EBR”) with a person,¹ which is created after an individual makes a purchase, inquiry, or application for products or services and lasts for a certain number of months. *See* 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(c)(2), (f)(5); *see also* *Snow v. Glob. Credit & Collection Corp.*, No. 5:13-CV-721-FL, 2014 WL 5781439, at *4 (E.D.N.C. Nov. 6, 2014) (collecting cases).

DR. KRAKAUER’S MOTION FOR CLASS CERTIFICATION

In 2003, Dr. Krakauer registered his residential phone number on the NDNC list. (Doc. 48-1 at 8.) Dr. Krakauer alleges that Dish Network, a seller of satellite television programming and related services, (Doc. 56-4 at ¶ 5), or its authorized dealer, Satellite Systems Network (“SSN”), called him on this number numerous times between May 2009 and September 2011, including at least two calls in a 12-month period, in violation of the TCPA. (Doc. 32 at ¶¶ 25-30, 54-59.) In these calls, SSN attempted to sell Dr. Krakauer Dish services. (Doc. 32 at ¶ 26.) The calls continued even after Dr. Krakauer called Dish to complain about SSN’s sales tactics and after Dish placed Dr. Krakauer on its IDNC list and instructed SSN to do the same. (Doc. 32 at ¶¶ 27-28; *see also* Doc. 81-51 at 3-12; Doc. 81-54.) During this time, SSN was an authorized dealer for Dish and only marketed for Dish. (Doc. 32 at ¶ 28; *see also* Doc. 48-5 at 6.)

¹ The EBR defense does not apply to an individual’s internal do-not-call request. *See* 47 C.F.R. § 64.1200(f)(5)(i) (“The subscriber’s seller-specific do-not-call request . . . terminates an [EBR] for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.”).

Dr. Krakauer contends that Dish is liable for these calls under agency principles of actual authority, apparent authority, and ratification. (Doc. 32 at ¶¶ 30, 54-59.) He seeks injunctive and monetary relief, (Doc. 32 at 14), and class-wide relief on behalf of two proposed classes: (1) all persons whose telephone numbers were on the NDNC list for at least 30 days, but who received telemarketing calls from SSN to promote Dish between May 1, 2010, and August 1, 2011 (the “NDNC class”); and (2) all persons whose telephone numbers were on the IDNC list of Dish or SSN, but who received telemarketing calls from SSN to promote Dish between May 1, 2010, and August 1, 2011 (the “IDNC class”). (Doc. 47.)

ANALYSIS

“The class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Comcast Corp. v. Behrend*, 133 S. Ct. 1426, 1432 (2013) (internal quotation marks omitted). To show that a case falls within the exception, the plaintiff “must affirmatively demonstrate his compliance” with Federal Rule of Civil Procedure 23. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011); *see also Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 318 (4th Cir. 2006) (noting that “district courts must conduct a rigorous analysis to ensure compliance with Rule 23” (internal quotation marks omitted)).

As threshold matters, the putative class representative must show that he is a member of the proposed class, *see* Fed. R. Civ. P. 23(a) (“One or more members of a class may sue . . . as representative parties on behalf of all members . . .”), and must establish that the members of the proposed class are “readily identifiable” or

“ascertainab[le].” *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). The plaintiff must then establish that the case satisfies all four requirements of Rule 23(a) and fits into at least one of the three subsections of Rule 23(b). *Comcast*, 133 S. Ct. at 1432; *see also Bussey v. Macon Cty. Greyhound Park, Inc.*, 562 F. App’x 782, 787-88 (11th Cir. 2014) (per curiam).

It is undisputed that each of Dr. Krakauer’s two proposed classes is so numerous that joinder of all members is impracticable. *See* Fed. R. Civ. P. 23(a)(1). The NDNC class as proposed includes 20,450 members and the IDNC class includes 7,831 members. (*See* Doc. 48 at 10-12; Doc. 48-2 at 10-15.) Dish has not challenged that there are common questions of law and fact as to either class, *see* Fed. R. Civ. P. 23(a)(2); discussion *infra*, nor has Dish challenged Dr. Krakauer’s ability to fairly and adequately protect the interests of the classes. *See* Fed. R. Civ. P. 23(a)(4); (*see generally* Doc. 56.) Thus it is undisputed that Dr. Krakauer has met the requirements of Rule 23(a)(1), (2), and (4), and the Court so finds. As to the NDNC class, Dish also does not dispute that Dr. Krakauer is a member of the putative class. (*See* Doc. 56 at 33-34.)

As to the IDNC class, Dish challenges whether Dr. Krakauer has met the threshold requirement of membership in the class and therefore contends that his claims are not typical. (*See* Doc. 56 at 33-34); Fed. R. Civ. P. 23(a)(3). As to both proposed classes, Dish challenges whether the class members are ascertainable, (*see* Doc. 56 at 14-19), and whether common questions predominate over questions affecting only individual members as required by Rule 23(b)(3). (*See* Doc. 56 at 19-33); Fed. R. Civ. P. 23(b)(3).

I. Threshold Issues: Membership in the IDNC Class and Ascertainability

A. Membership in the IDNC Class

In 2009, Dr. Krakauer had an account with another satellite television provider, DirecTV. (Doc. 102 at 3.) In May 2009, he received a call from a man named “Ken” who led him to believe that he could save money on DirecTV. (*See* Doc. 102 at 14-15.) Dr. Krakauer gave Ken his credit card information and, later in the call, believed Ken had used this information to pose as him and get his account information from DirecTV. (*See* Doc. 102 at 15; Doc. 56-1 at 3.) At some point, Ken said if Dr. Krakauer switched to Dish he could save money. (*See* Doc. 102 at 15.) Dr. Krakauer became “annoyed” that Ken posed as him to get details of his DirecTV account and ended the call. (Doc. 102 at 15.) When asked if he “told Ken not to call [him] back again,” Dr. Krakauer testified that he did not. (Doc. 102 at 17.)

Days later, Dr. Krakauer called Dish and DirecTV to complain. (*See* Doc. 102 at 15-16.) Dr. Krakauer spoke to “Rebecca” with Dish who discovered that Ken worked for SSN. (*See* Doc. 102 at 15; Doc. 56-1.) Dr. Krakauer told Rebecca that he “was annoyed” and thought it “was completely inappropriate . . . what [Dish was] doing.” (Doc. 102 at 15.) In explaining why he called Dish, Dr. Krakauer testified that he “was trying to find out what had happened, why [he] had received this call and why somebody affiliated with Dish Network would [call to get him] to change . . . to Dish” and that he called “to see if Dish Network could stop it.” (Doc. 102 at 16.) Dr. Krakauer testified that someone with Dish told him that Ken was not a Dish employee, but a contractor, so Dish was “not able to do anything.” (Doc. 102 at 16.)

In internal emails, Dish and SSN employees characterize Dr. Krakauer's complaint as a "DNC issue" or a "'Do Not Call' violation." (See Doc. 56-1; Doc. 74-7 at 2-3; Doc. 74-1 at ¶ 21.) In one email, a Dish employee states that she "received the DNC" and characterizes Dr. Krakauer's complaint as "his DNC issue." In SSN emails, an SSN employee states that, before Dr. Krakauer's complaint, SSN "did not know that [he] wanted off [SSN's] calling list" and characterizes the complaint as the type where a customer asks not to be contacted again. (See Doc. 74-7 at 2.) Dish also directed SSN to add Dr. Krakauer to SSN's IDNC list. (See Doc. 81-54; see also Doc. 87 at 7 n.1.)

Dish does not dispute that Dr. Krakauer continued to receive calls from SSN promoting Dish. (See generally Doc. 56.) Dr. Krakauer testified that all calls after May 2009 were "virtually identical[]" on the caller's end and that, each time, he either "was pleasant and said [he was] not interested . . . or [he] just hung up." (Doc. 102 at 17.)

The TCPA regulations state that if a person makes "a request . . . not to receive calls" from a telemarketer, the telemarketer must place that person on its IDNC list and not call that person without consent. 47 C.F.R. § 64.1200(d)(3). Neither the TCPA nor its regulations define what constitutes "a request." Dish contends that Dr. Krakauer has not provided sufficient evidence "that he made an affirmative request not to receive future calls." (See Doc. 56 at 33-34.) Dr. Krakauer contends that no "magic words" are required and that he made a request. (See Doc. 81 at 18-20.)

Dish relies primarily on *Bailey v. Domino's Pizza, LLC*, 867 F. Supp. 2d 835 (E.D. La. 2012). (See Doc. 56 at 33-34; Doc. 74 at 12.) In *Bailey*, the court granted the defendant's motion to dismiss the plaintiff's IDNC claims because he did not allege that

he made an “affirmative request” to not receive calls. *See Bailey*, 867 F. Supp. 2d at 842. Given the procedural posture and short discussion of the relevant regulations, that case is not particularly helpful in determining what language or evidence would or would not would constitute “a request” not to receive calls. *See id.*

Dr. Krakauer’s testimony as to what he told a Dish employee and the purpose of his calls to Dish along with Dish’s and SSN’s internal documents concerning his complaints support the determination that Dr. Krakauer made “a request” not to be called. Dr. Krakauer testified that he called Dish to find out why someone affiliated with Dish would call “to get [him] to change from DirecTV to Dish” and “to see if Dish . . . could stop it.” (Doc. 102 at 16.) Dish contends that Dr. Krakauer was only trying to get Dish to “stop” having its retailers impersonate him to get account information. (*See* Doc. 87 at 5-7.) Dr. Krakauer’s testimony is equally consistent with Dr. Krakauer asking Dish to “stop” having its retailers call him to get him to switch to Dish. That is in fact how Dish and SSN interpreted his calls, as their own internal documents show. (*See* Docs. 56-1, 74-7.)

Dish’s argument to the contrary depends on a strained interpretation of its own internal documents and the internal documents of its authorized dealer and ignores their common sense meaning. In internal emails, Dish and SSN employees generally characterized Dr. Krakauer’s complaint as a “DNC issue” or ““Do Not Call’ violation,” (*see* Docs. 56-1, 74-7), and discussed practices to remove such individuals who do not want to be called. (*See* Doc. 74-7 at 2.) While there was one email which characterized Dr. Krakauer’s complaint as one based on harassment, that email is ambiguous as to the

DNC request.² The *post hoc* testimony from a Dish manager that Dish added Dr. Krakauer to its IDNC list “even though the . . . [c]omplaint d[id] not reflect that [Dr.] Krakauer requested to be added to DISH’s IDNC list,” (Doc. 56-4 at ¶ 14), is not persuasive in the face of the emails written at the time.

On the whole, Dr. Krakauer has established by a preponderance of the evidence that he is a member of the proposed IDNC class. *See Brown v. Nucor Corp.*, 785 F.3d 895, 931-32 (4th Cir. 2015) (collecting cases). For purposes of this motion, the Court so finds.

B. Ascertainability

As a threshold matter, Rule 23 requires “that the members of a proposed class be readily identifiable” or “ascertainab[le].” *EQT*, 764 F.3d at 358 (internal quotation marks omitted). “A class cannot be certified unless a court can readily identify the class members in reference to objective criteria.” *Id.* The plaintiff bears the burden of offering “a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.” *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 355 (3d Cir. 2013). If a court cannot identify class members “without extensive and individualized fact-finding or ‘mini-trials,’ then a class action is inappropriate.” *EQT*, 764 F.3d at 358; *see also* 7A Charles Alan Wright et al., *Federal Practice and Procedure* § 1760 (3d ed. 2005) (“[T]he requirement that there be a class will not be deemed

² In one Dish email, Dr. Krakauer’s complaint is characterized as one for “harassment.” Under “Nature of the complaint,” Dish marked “Yes” beside “Harassment, a malicious call pattern” and “No” beside “Caller hung up when asked for identity or to be added to DNC.” (Doc. 56-1 at 3; *see also* Doc. 56-4 at ¶ 12.)

satisfied unless . . . it is administratively feasible for the court to determine whether a particular individual is a member.”). The Court concludes that the class members are ascertainable.

1. The putative class lists

Dr. Krakauer has offered evidence from Anya Verkhovskaya who, with her company A.B. Data, analyzed SSN’s call records and other data to identify putative class members for both classes. (*See* Doc. 48 at 9-12; Docs. 48-2 to 48-4.) Dr. Krakauer received records for calls placed by SSN from Five9, Inc., a company that provided SSN with software to assist in making telemarketing calls. (*See* Doc. 48 at 10-11; Doc. 48-2 at 8-9; Doc. 56-8 at 4-5.) Ms. Verkhovskaya used a five-step process and other information from various data vendors to remove calls that could not possibly result in TCPA liability,³ (*e.g.*, Doc. 103 at 11), and, as a result, identified 20,450 members in the NDNC class and 7,831 members in the IDNC class. (*See* Doc. 48 at 11-12; Doc. 48-2 at 10-16.)

As to the NDNC class, Ms. Verkhovskaya determined which of the more than 1.6 million calls in the SSN records were “connected.” (Doc. 48 at 11; Doc. 48-2 at 8-10; Doc. 103 at 21.) Second, she identified numbers that received more than one connected call in any 12-month period during the class period. (Doc. 48-2 at 10; Doc. 103 at 14-15); *see also* 47 U.S.C. § 227(c)(5). Third, she used data from Nexxa, Inc., a vendor that collects data on when individuals registered on the NDNC list, to determine which of

³ Dish separately challenged Ms. Verkhovskaya’s report and analysis. (Doc. 57.) The Court denied Dish’s motion to strike and found her expert report and testimony admissible. (Doc. 110.) That Order discusses Ms. Verkhovskaya’s methodology in additional detail. (*See* Doc. 110 at 4-8.)

these numbers were registered on the NDNC list as of April 1, 2010. (Doc. 48 at 11; Doc. 48-2 at 4, 10; *see also* Doc. 103 at 24-25.) Fourth, she removed non-actionable calls to businesses by (1) removing calls “assigned the disposition ‘Business’” in the SSN call logs and then (2) coordinating with LexisNexis, a vendor that provides information on whether a number is associated with a business or residence during a specific time period, to remove additional business numbers. (Doc. 48 at 11; Doc. 48-2 at 5, 10-11; Doc. 103 at 26-28.) Last, she removed non-actionable calls to Dish customers by removing calls “assigned the disposition of ‘Dish Customer’” in the SSN call logs. (Doc. 48-2 at 11; Doc. 48 at 11; Doc. 103 at 15.) This resulted in a list of 20,450 unique numbers that received 57,900 calls. (Doc. 48 at 11-12; Doc. 48-2 at 11-12.) Using information already in the SSN call logs and supplemented by Lexis data, she obtained the names and addresses of most persons associated with these numbers during the class period. (Doc. 48 at 12; Doc. 48-2 at 8-9, 12, 15-16; Doc. 103 at 34, 37; *see also* Docs. 48-2 to 48-4.) These persons make up the NDNC class. (*See* Doc. 47.)

For the IDNC class, she performed a similar analysis. (*See* Doc. 48-2 at 12-15.) As to Dish’s IDNC list, Dr. Krakauer provided Ms. Verkhovskaya with files containing Dish’s IDNC list, and she followed the same methodology as with the NDNC list and identified 7,117 unique numbers. (Doc. 48-2 at 12-14.) As to SSN’s IDNC list, she used the SSN call logs to identify connected calls with “DNC” or “Do Not Call” in the disposition field, (Doc. 48-2 at 14); she took this to mean that these numbers were on SSN’s IDNC list. (Doc. 103 at 15-17, 21-22.) She then performed steps two through five above and identified 714 unique numbers. (Doc. 48-2 at 14-15.) Adding the numbers

from SSN's and Dish's IDNC lists, she identified 7,831 numbers that received 22,607 calls in the IDNC class. (*See* Doc. 48-2 at 13-15.) As with the NDNC class, Ms. Verkhovskaya used the SSN call logs supplemented by Lexis data to obtain the names and addresses of most persons associated with these numbers during the class period. (Doc. 48-2 at 13-16; *see also* Doc. 48-4 at 36-175.)

2. Standing to sue under Section 227(c)

First, Dish contends that only the telephone number subscriber has standing to sue under the TCPA for receiving a telemarketing call on a number on the NDNC list. (Doc. 56 at 15.) Dish contends that the data Ms. Verkhovskaya used does not identify the subscriber and therefore the class members for both proposed classes are not ascertainable. (Doc. 56 at 15-17; *see also* Doc. 103 at 37-38; Doc. 56-13 at ¶ 7.)

Section 227(c) of the TCPA and the related regulations protect the privacy of residential telephone subscribers and allow them to register their numbers on the NDNC list. *See* 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2) (“No person or entity shall initiate any telephone solicitation to . . . [a] residential telephone subscriber who has registered his or her telephone number on the [NDNC list]”); *see also Mims*, 132 S. Ct. at 746. The standing provision, Section 227(c)(5), states that “[a] person who has received” a call in violation of the Section 227(c) regulations may sue. 47 U.S.C. § 227(c)(5). Dish’s argument that only the subscriber has standing to sue under Section 227(c) appears to focus on the provisions allowing subscribers to register their numbers on the NDNC list, *see id.* § 227(c)(1)-(3), and ignores the broader standing provision of Section 227(c)(5).

In *Moore v. Dish Network L.L.C.*, 57 F. Supp. 3d 639 (N.D.W. Va. 2014), the district court considered the standing provision under Section 227(b). *See Moore*, 57 F. Supp. 3d at 648-50. Section 227(b) prohibits the use of autodialers and prerecorded messages without the consent of the “called party” and allows “[a] person or entity” to sue for a violation. *See* 47 U.S.C. § 227(b)(1), (3). In *Moore*, the defendant contended that only the “called party” had standing to sue for a Section 227(b) violation. *Moore*, 57 F. Supp. 3d at 648. The court disagreed and sided with numerous other courts in concluding that the “plain language” of Section 227(b)’s standing provision does not limit standing to the called party and “simply states that ‘a person or entity’” can sue. *See id.* at 648-50 (collecting cases); *see also* 47 U.S.C. § 227(b)(3).

In considering whether an individual has statutory standing, courts consider whether the individual “is a member of the class given authority by a statute to bring suit.” *CGM, LLC v. BellSouth Telecomms., Inc.*, 664 F.3d 46, 52 (4th Cir. 2011). “Normally, where the statutory language provides a clear answer, [the] analysis begins and ends with that language.” *Id.* at 53 (internal quotation marks omitted). The *Moore* defendant presented a similar argument as Dish has here, and the standing provision under the TCPA section at issue in *Moore* and the one here are similarly broader than the *Moore* defendant and Dish contend. *Compare* 47 U.S.C. § 227(b)(3), *with* 47 U.S.C. § 227(c)(5); *see also Moore*, 57 F. Supp. 3d at 648-50; (Doc. 56 at 15.)

The TCPA simply states that “[a] person who has received” a call in violation of the Section 227(c) regulations may sue and, by its plain language, does not limit standing to only subscribers. *See* 47 U.S.C. § 227(c)(5); *see also Charvat v. EchoStar Satellite*,

LLC, 630 F.3d 459, 465 (6th Cir. 2010); *Roylance v. ALG Real Estate Servs., Inc.*, No. 5:14-cv-02445-PSG, 2015 WL 1522244, at *3 (N.D. Cal. Mar. 16, 2015) (Grewal, M.J., report and recommendation, adopted by Freeman, J.) (stating that the plaintiff “has standing to pursue a claim under Section 227(c) because he alleges that he had received eight calls in violation of Section 227(c)”). As did the court in *Moore*, the Court rejects Dish’s argument to the contrary.

3. Date of NDNC list registration

Dish contends that the data Ms. Verkhovskaya used to determine when individuals registered on the NDNC list is inaccurate and therefore the members of the NDNC class are not ascertainable. (*See* Doc. 56 at 17-18.) The only example Dish provides concerns Dr. Krakauer’s registration date. (*See* Doc. 56 at 17-18.) That example is a red herring.

The data from Nexxa that Ms. Verkhovskaya used indicates that he registered on June 1, 2003, but the NDNC list website shows that he registered on July 3, 2003. (*See* Doc. 56 at 17-18; Docs. 56-14, 56-15.) The discrepancy occurred because Dr. Krakauer registered his number twice; a Nexxa employee testified that Nexxa maintains the initial date of registration while the date on the NDNC website can be “overwritten” by a later registration. (*See* Doc. 76 at 14; Doc. 76-4 at ¶¶ 2-5.) This quirk seems unlikely to occur often, and it is unlikely to be material. As to Dr. Krakauer, under either date his number was on the NDNC list for at least 30 days before he received calls from SSN.

4. Individuals on the IDNC lists of Dish or SSN

Finally, Dish contends that the data Ms. Verkhovskaya used to identify individuals on the IDNC lists is inaccurate and unreliable and therefore the members of the IDNC

class are not ascertainable. (*See* Doc. 56 at 18-19.) The TCPA regulations require telemarketers to maintain IDNC lists, that is, “a list of persons who request not to receive telemarketing calls made by or on behalf of [a] person or entity.” 47 C.F.R.

§ 64.1200(d). A telemarketer must record on its IDNC list the name and number of a subscriber who makes “a request” not to receive calls and honor that request. *Id.*

§ 64.1200(d)(3), (6).

Dish has offered evidence that its IDNC list is not limited to individuals who ask not to be called, but also includes other individuals Dish has decided not to call for other reasons, such as allegations of rude behavior. (*See* Doc. 56 at 19; Doc. 56-4 at ¶¶ 9-10.) Dish contends that because its IDNC list includes more than just individuals who request not to be called and because neither Dr. Krakauer nor Dish can tell who on the list made such a request, the members of the IDNC class are not ascertainable without “individual fact-finding” as to each putative class member. (*See* Doc. 56 at 19.)

Dish’s argument that its IDNC list is overinclusive and therefore the IDNC class members are not ascertainable is not persuasive. Dish made this same argument in an earlier case, and the Court agrees with that court’s reasoning. *See Dish Network*, 75 F. Supp. 3d at 1014. If the Court were to deny certification because Dish does not keep an accurate list as the regulations require and Dish itself cannot identify which individuals on the list actually requested not to be called, it would create the perverse incentive for entities to keep poor records and to violate the TCPA’s clear requirement that such a list be kept. *See id.* at 1014 n.21; *see also Carrera v. Bayer Corp.*, No. 12-2621, 2014 WL 3887938, at *3 (3d Cir. May 2, 2014) (Ambro, J., dissenting) (“Where . . . a defendant’s

lack of records and business practices make it more difficult to ascertain the members of an otherwise objectively verifiable low-value class, the consumers who make up that class should not be made to suffer.”).

The fact that Dish has listed a person on its IDNC list is persuasive circumstantial evidence that a person associated with that number asked Dish not to make telemarketing calls. *See Dish Network*, 75 F. Supp. 3d at 1014. Dish’s claim that it failed to distinguish persons who made an internal do-not-call request from other persons Dish says it decided not to call for different reasons does not make the list unreliable or the class members not ascertainable.

As to SSN, Dr. Krakauer did not receive files containing SSN’s IDNC list as he did with Dish; rather, he took the disposition codes “DNC” and “Do Not Call” in SSN’s call records to mean that the called individual was on SSN’s IDNC list. (*See* Doc. 48-2 at 14-15; Doc. 103 at 33.) Dish has provided evidence that these codes mean something completely different: SSN’s general manager testified that these codes “do not indicate a ‘do not call’ request,” but rather signal other SSN agents to not call the individual because a “particular SSN agent would personally call back that individual (*i.e.*, it was ‘their lead’).” (Doc. 56-10 at ¶ 4; *see also* Doc. 56 at 18.) Dish contends that the IDNC class members Dr. Krakauer identified as coming from SSN’s IDNC list are therefore not ascertainable. (Doc. 56 at 18-19.)

At the Court’s June 30 hearing on the pending motions, Dish’s counsel stated without dispute that “SSN is no longer in business, so there is no subpoena to SSN” for

its IDNC list. (*See* Minute Entry June 30, 2015.) The list derived from SSN’s call logs appears to be the best record there is of the numbers on SSN’s IDNC list.

This dispute does not make the SSN IDNC class members not ascertainable. Ascertainability only requires that a court be able to “identify the class members in reference to objective criteria,” *EQT*, 764 F.3d at 358, which means “that identifying class members is a manageable process that does not require much, if any, individual inquiry.” *Bussey*, 562 F. App’x at 787. Here, Dr. Krakauer’s IDNC class definition is, *inter alia*, numbers on SSN’s IDNC list during the class period. As discussed *supra*, every telemarketer is required to maintain an IDNC list and should have a system in place to notify its employees of who is on that list. The phrases “DNC” and “Do Not Call” in SSN’s call records are, in context, persuasive circumstantial evidence that persons associated with those numbers had asked to not be called and, for purposes of this motion, suffice to provide the IDNC list required by the class definition. Thus, those class members are ascertainable. Dr. Krakauer is not required to prove that, without a doubt, every single person on the class list would be able to recover to satisfy the ascertainability requirement.⁴ *See, e.g., In re Nexium Antitrust Litig.*, 777 F.3d 9, 22-23 (1st Cir. 2015); *see also* discussion *infra*.

II. Rule 23(b)(3)

Dr. Krakauer asserts that this action falls under Rule 23(b)(3). (*See* Doc. 47; Doc. 48 at 13.) “Rule 23(b)(3) has two components: predominance and superiority.” *Thorn*,

⁴ Whether Dr. Krakauer’s list of persons on SSN’s IDNC list will persuade a factfinder on the merits is simply a common question of fact. *See* discussion *supra*.

445 F.3d at 319. First, the predominance requirement tests whether the proposed class is “sufficiently cohesive to warrant adjudication by representation” and is satisfied when “questions of law or fact common to the members of the class predominate over any questions affecting only individual members.” *Gariety v. Grant Thornton, LLP*, 368 F.3d 356, 362 (4th Cir. 2004); *see also* Fed. R. Civ. P. 23(b)(3). “A common question is one that can be resolved for each class member in a single hearing” rather than one that “turns on a consideration of the individual circumstances of each class member.” *Thorn*, 445 F.3d at 319. The predominance requirement focuses on the quality of common issues rather than just the quantity. *See Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 429 (4th Cir. 2003); *see also EQT*, 764 F.3d at 366 (noting that, to satisfy predominance, the plaintiff must show that the defendant’s common conduct has sufficient bearing on the central issue in the litigation). Second, “[t]he superiority requirement ensures that ‘a class action is superior to other available methods for the fair and efficient adjudication of the controversy.’” *Thorn*, 445 F.3d at 319 (quoting Fed. R. Civ. P. 23(b)(3)).

Rule 23(b)(3) provides a non-exclusive list of factors for courts to consider in deciding whether a class action meets these two requirements:

(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3); *see also Thorn*, 445 F.3d at 319; *Stillmock v. Weis Mkts., Inc.*, 385 F. App’x 267, 278 (4th Cir. 2010).

Dr. Krakauer identifies a number of common questions of law and fact, (*see* Doc. 48 at 17-18), and specifically urges that two common issues appropriate for class resolution predominate over individual issues such that a class action is superior to other methods for resolving the case. (*See* Doc. 48 at 21-22); *see also* Fed. R. Civ. P. 23(b)(3). These issues are: (1) whether SSN called a number on the NDNC or IDNC lists; and (2) whether Dish is liable for SSN's actions. (Doc. 48 at 21-22.)

A. Predominance

1. Common Questions

a. Whether SSN called a putative class member

Dr. Krakauer proposes to prove that SSN called the numbers in both classes during the class period through testimony from one expert witness and using the SSN call logs. (*See* Doc. 48 at 23.) Dish has not disputed that the SSN logs this expert used represent calls SSN made to promote and sell Dish products and services during the relevant period. (*See* Doc. 56 at 8, 11-13.) Nor has Dish disputed that the question of whether SSN called a number on the NDNC list, Dish's IDNC list, or SSN's purported IDNC list is a common question that can be decided in one hearing. (*See* Doc. 56 at 19-30.) This is the first key question for determining liability, and it is a common question of fact.

b. Vicarious liability of Dish for SSN's calls

The question of whether SSN made these calls on Dish's behalf is the second key question for determining liability, and its importance cannot be minimized. Indeed, it is the central issue on which liability depends. *See* 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(d)(3). Dish concedes that the question of whether Dish may be held liable for

SSN's calls under a theory of actual authority is a common question, but contends that questions as to liability based on apparent authority and ratification are not common questions. (*See* Doc. 56 at 30-33.)

Under the TCPA, a seller like Dish may be held vicariously liable for violations committed by a third-party telemarketer like SSN if the telemarketer is acting "on behalf of" the seller. *See* 47 U.S.C. § 227(c)(5); *see also Smith v. State Farm Mut. Auto. Ins. Co.*, 30 F. Supp. 3d 765, 773 (N.D. Ill. 2014) (noting that vicarious liability attaches to violations of Section 227(c)(5)). While neither the TCPA nor its regulations define "on behalf of," courts have applied ordinary principles of agency law to make this determination. *See, e.g., Jackson v. Caribbean Cruise Line, Inc.*, __ F. Supp. 3d __, __, 2015 WL 667862, at *5-6 (E.D.N.Y. Feb. 17, 2015); *Smith*, 30 F. Supp. 3d at 777; *Donaca v. Dish Network, LLC*, 303 F.R.D. 390, 394 (D. Colo. 2014); *Mey v. Monitronics Int'l, Inc.*, 959 F. Supp. 2d 927, 932 (N.D.W. Va. 2013). A seller can be held vicariously liable if there is actual authority, apparent authority, or ratification. *See Smith*, 30 F. Supp. 3d at 772-73; *Donaca*, 303 F.R.D. at 394; *Mey*, 959 F. Supp. 2d at 932. Dr. Krakauer relies on all three theories. (*See* Doc. 48 at 17-18; Doc. 75 at 19-23.)

It is well-established that whether an agency relationship exists is a factual determination. *See Ashland Facility Operations, LLC v. N.L.R.B.*, 701 F.3d 983, 990 (4th Cir. 2012). As noted *supra*, Dish does not dispute that the question of actual authority is a question common to all class members, (*see* Doc. 56 at 30-33), as actual authority depends only on the relationship and conduct between Dish and SSN. *See Ashland Facility*, 701 F.3d at 990. If Dr. Krakauer can prove to a jury's satisfaction that SSN had

actual authority to make the calls at issue on Dish's behalf, the class may recover from Dish for any violations by SSN. Thus, the issue of actual authority is a common question of fact that is central to this case.

The issues of apparent authority and ratification are less clear. There is a significant dispute between the parties as to the appropriate legal tests to be applied to determine liability under apparent authority and ratification.

For both theories, Dr. Krakauer relies on the FCC's interpretation embodied in a 2013 declaratory ruling. (*See* Doc. 75 at 19-23); *see also In re Dish Network, LLC*, 28 FCC Rcd. 6574, 2013 WL 1934349 (May 9, 2013); *Mey*, 959 F. Supp. 2d at 932. As to apparent authority, Dr. Krakauer contends that it is sufficient to show that Dish allowed SSN to hold itself out as an authorized Dish dealer or that Dish allowed SSN to use certain information and systems in Dish's control. (*See* Doc. 75 at 20-22); *see also In re Dish Network*, 2013 WL 1934349, at *15; *Mey*, 959 F. Supp. 2d at 932. As to ratification, he contends that it is sufficient to show that Dish was aware that SSN routinely violated the TCPA and did not terminate SSN as an authorized dealer. (*See* Doc. 75 at 22-23); *see also In re Dish Network*, 2013 WL 1934349, at *15. If Dr. Krakauer is correct, both theories would present common questions of fact as they, too, concern only the relationship between Dish and SSN.

Dish contends that apparent authority requires proof that: (1) the called individual reasonably believed that Dish consented to have SSN act for Dish; and (2) the individual's belief is based on some conduct traceable to Dish. (*See* Doc. 56 at 30-31.) Dish contends that ratification requires proof that: (1) SSN represent to each caller that it

is calling on Dish's behalf; (2) Dish have knowledge of and assent to each call; and (3) knowingly accept some benefit from each call. (*See* Doc. 56 at 32; *see also* Doc. 74 at 22-25.) If Dish's view is correct, both theories would present individual questions of fact as to every class member.

Numerous courts have concluded that the FCC's guidance on apparent authority and ratification is not binding nor entitled to deference and have rejected this guidance as inconsistent with common law agency principles. *See, e.g., Dish Network, L.L.C. v. F.C.C.*, 552 F. App'x 1, 2 (D.C. Cir. 2014) (per curiam) ("The FCC agrees that the 'guidance' in question has no binding effect on courts [and] is not entitled to deference"); *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 744-45 (N.D. Ill. 2014); *Smith*, 30 F. Supp. 3d at 778-79; *Dish Network*, 75 F. Supp. 3d at 1018.

The question of what legal standard applies to the determination of apparent authority and ratification is a common question of law. Dish is highly likely to win on this question, however, as the reasoning in the cases it cited is quite persuasive. (*E.g.*, Doc. 56 at 30-32.) This would mean that apparent authority and ratification would involve many individual questions. On the other hand, it will not be necessary to reach apparent authority or ratification if Dr. Krakauer and the class prevail on an actual authority theory. It is also likely that Dr. Krakauer will be unable to muster sufficient evidence of apparent authority or ratification, *see Dish Network*, 75 F. Supp. 3d at 1016-18 (discussing the plaintiff's lack of class-wide evidence on these theories), such that these two issues will likely disappear from the case.

2. Individual questions

Dish identifies several issues concerning both classes that it says will have to be determined on an individual basis and contends that these individual issues predominate and preclude certification under Rule 23(b)(3). (*See* Doc. 56 at 20.) Dish contends that an individual determination will have to be made as to whether: (1) a phone number, including a wireless number, is associated with a business; (2) Dish had an established business relationship with a class member at the time of a call; (3) an individual first called SSN; and (4) an individual consented to be called. (*See* Doc. 56 at 20-30.)

a. Is the number called a business number?

The TCPA section at issue only prohibits calls to residential numbers. *See* 47 C.F.R. § 64.1200(c)(2), (d)(3); *see also* 47 U.S.C. § 227(c)(5). Dr. Krakauer, as the plaintiff, bears the burden to prove that a number called was residential. *See Dish Network*, 75 F. Supp. 3d at 1024. Dish contends that Dr. Krakauer's expert did a poor job of removing business numbers from the putative class list and made no effort to remove wireless numbers associated with businesses. (*See* Doc. 56 at 23-26; *see also* Docs. 56-18 to 56-21.) As a result, Dish says that "hundreds" of individual inquiries will be needed. (*See* Doc. 56 at 23-26.)

Dish has not presented evidence to support these contentions. Dish has only presented evidence of a few dozen numbers that appear to be business or mixed use, (*see* Docs. 56-18 to 56-21), and has submitted no evidence, and indeed only counsel's assertions in a brief, that there are "hundreds" or "many" others. (*See* Doc. 56 at 23-26); *see also* *Adjabeng v. GlaxoSmithKline, LLC*, No. 1:12-CV-568, 2014 WL 459851, at *3

(M.D.N.C. Feb. 5, 2014) (collecting cases holding that counsel’s unsworn statements in briefs are not evidence).

The fact that a class list contains members whose claims may fail on the merits does not mean that the class cannot be certified. “[E]xcluding all uninjured class members at the certification stage is almost impossible in many cases, given the inappropriateness of certifying what is known as a ‘fail-safe class’—a class defined in terms of the legal injury.” *Nexium*, 777 F.3d at 22; *see also Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012) (noting that a fail-safe class “is improper because a class member either wins or, by virtue of losing, is defined out of the class and is therefore not bound by the judgment”). But, “a class should not be certified if it is apparent that it contains a great many persons who have suffered no injury at the hands of the defendant.” *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009). “There is no precise measure for ‘a great many.’ Such determinations are a matter of degree, and will turn on the facts as they appear from case to case.” *Messner*, 669 F.3d at 825.

Dr. Krakauer will have to prove that the class members are entitled to relief, *i.e.*, that their numbers were used for residential purposes at the time. Certifying the class with a few dozen possible business numbers included does not obviate Dr. Krakauer’s ultimate burden of proof. Based on the record before the Court, it does not appear that the putative class list “contains a great many persons who have suffered no injury.” *See Kohen*, 571 F.3d at 677. Even if resolution of these issues requires some individualized

inquiry, these issues are not complex and are entirely manageable. *See* Fed. R. Civ. P. 23(b)(3)(D).

As to wireless numbers, Dish additionally relies on *United States v. Dish Network* where the court noted that the FCC presumes that a wireless number on the NDNC list is residential but “may require a complaining wireless subscriber to provide further proof of the validity of that presumption.” *Dish Network*, 75 F. Supp. 3d at 1024; (*see also* Doc. 56 at 26.) The wireless phone user still bears the burden of proving that the number was used for residential purposes; the “administrative presumption” only allows wireless users to register on the NDNC list. *See Dish Network*, 75 F. Supp. 3d at 1024; (*see also* Doc. 56 at 26.) Dish contends that this means that, at the certification stage, Dr. Krakauer must show that any wireless number is a residential number. (*See* Doc. 56 at 26.) However, the district court discussed the presumption in the context of summary judgment and noted that it was an issue of fact for trial as to whether the wireless calls were to residences. *See Dish Network*, 75 F. Supp. 3d at 1024. This case says nothing about the wireless residential/business issue at the certification stage.

To the extent Dish has evidence that some numbers on Dr. Krakauer’s putative class list were associated with businesses during the class period, Dish can present that evidence through an expert witness using data from Lexis or another vendor. On the record before the Court, to the extent resolution of these issues presents individual questions, these questions appear few in number, straightforward, and peripheral to the central issues in this litigation discussed *supra*.

b. Is there an established business relationship?

A call is exempt from TCPA section at issue if the seller has an established business relationship (“EBR”) with the residential subscriber. *See* 47 U.S.C. § 227(a)(4), (c)(3)(F); 47 C.F.R. § 64.1200(c)(2), (f)(5), (f)(14)(ii); *see also* *Snow*, 2014 WL 5781439, at *4 (collecting cases); *Wolfkiel v. Intersections Ins. Servs. Inc.*, 303 F.R.D. 287, 291 (N.D. Ill. 2014); *but see supra* note 1. EBR is a defense for Dish to prove, and the absence of an EBR is not an element of a TCPA claim that Dr. Krakauer has to prove. *See Dish Network*, 75 F. Supp. 3d at 1008 (discussing the EBR defense and stating that “[a]n exemption from the general rule is treated as an affirmative defense for which [the defendant] bears the burden of proof”). Nonetheless, Ms. Verkhovskaya testified that she excluded from Five9 call logs phone numbers with “Dish Customer” in the disposition field. (*See* Doc. 103 at 15, 32; *see also* Doc. 48-2 at 11.)

Dish first contends that it provided a customer list to Dr. Krakauer and that he failed to remove “thousands” of customers on this list from the class. (*See* Doc. 56 at 21-22.) Dr. Krakauer contends that the list has not been prepared in a way that allowed him or his expert to exclude customers from the class list. (*See* Doc. 75 at 17.) The list itself is certainly incomprehensible, (*see* Doc. 75 at 17; *see, e.g.*, Doc. 56-16 at 2), and Dish has not provided evidence or explained to the Court as to how it could be used to exclude such customers.

Dish next contends that Dr. Krakauer must offer a method that would allow Dish to prove this EBR defense on a class-wide basis and that he has failed to do so. (*See* Doc. 56 at 22-23.) This position is correct.

First, the presence of affirmative defenses does not “automatically” render class certification inappropriate. *See Brown v. Kelly*, 609 F.3d 467, 483 (2d Cir. 2010). “Rather, like other considerations, affirmative defenses must be factored into the calculus of whether common issues predominate.” *Gunnells*, 348 F.3d at 438. When the defendant’s affirmative defenses “may depend on facts peculiar to each [class member’s] case, class certification is erroneous.” *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 342 (4th Cir. 1998) (internal quotation marks omitted). In cases where the Fourth Circuit has denied certification based on issues presented by an affirmative defense, the defense at issue involved “considerable individual inquiry.” *See Gunnells*, 348 F.3d at 434 (each class member’s reliance); *Thorn*, 445 F.3d at 317 (each class member’s knowledge); *Broussard*, 155 F.3d at 342-43 (both).

Here, Dish has again provided no evidence to support its assertion that there are “thousands” of customers on the class list as to whom it would be entitled to an EBR defense; indeed, it has identified only 16 such persons. (*See* Doc. 56 at 22; Doc. 56-17.) As noted *supra*, unsubstantiated claims in a brief do not preclude class certification. *See Adjabeng*, 2014 WL 459851, at *3 (collecting cases).

Moreover, even if there are several times this number, it appears highly likely that this defense can in fact be resolved on a class-wide basis, at least in large part. As Dr. Krakauer has demonstrated, (*see* Doc. 48 at 21-22; Doc. 75 at 17), Dish can prove this defense by, for example, offering a comprehensible customer list along with testimony about the list and which calls were to Dish customers; the factfinder could then determine whether those individuals as a group are not entitled to recover because of an EBR. To

the extent there are a few situations where individual inquiry into the dates during which Dish is entitled to the EBR defense may be needed or where the parties dispute these dates, these issues appear to be easily manageable.

Resolution of the EBR defense does not involve “considerable individual inquiry,” and individual hearings will not be routinely necessary to determine if a putative class member was a Dish customer at the time of a call. *Cf. Gunnells*, 348 F.3d at 434; *Thorn*, 445 F.3d at 317. Rather, identifying a company’s customers during a time period should be an “objectively verifiable” task. *See Carrera*, 2014 WL 3887938, at *3 (Ambro, J., dissenting). Dr. Krakauer has demonstrated how Dish can assert this defense on a class-wide basis. To the extent resolution of this defense involves any inquiry into individual circumstances, such an inquiry is simple and mundane. *See Gunnells*, 348 F.3d at 429.

c. Did a putative class member contact SSN?

If an individual first contacted SSN and made an “inquiry or application” for Dish products or services, this would establish an EBR and allow SSN to contact that individual for up to three months. *See* 47 C.F.R. § 64.1200(f)(5). Dish contends that such calls cannot be determined without individualized inquiry. (Doc. 56 at 26-28.) Just as with its arguments on business numbers and EBRs with customers, Dish has done little more than speculate about the frequency of this potential issue and the difficulties it would raise in a class setting.⁵ (*See* Doc. 56 at 26-27; Doc. 56-22.)

⁵ Indeed, Dish’s statement that there are “a multitude” of instances of a putative class member initiating a call to SSN, (Doc. 56 at 27), is of no moment, as unsworn statements by counsel in briefs such as these are not evidence. *See Adjabeng*, 2014 WL 459851, at *3

Moreover, to the extent Dish contends that the call records on which Dr. Krakauer relies are insufficient to allow Dish to identify every possible call to which it can assert this defense, (*see* Doc. 56 at 27-28; Doc. 56-23 at 3; Doc. 56-10 at ¶¶ 9, 12), that is not Dr. Krakauer's fault. If the records that Dish and its affiliates keep do not allow Dish to identify every possible EBR, that should not preclude persons with valid claims from recovering, nor does it prevent class certification under Rule 23(b)(3).

d. Did a putative class member consent to be called on a NDNC number?

Dish maintains that there is no TCPA violation if an individual voluntarily gives a telemarketer a number registered on the NDNC or asks to be called back at such a number.⁶ (Doc. 56 at 28-30); *see* 47 C.F.R. § 64.1200(c)(2), (f)(14)(i); *see also Mais v. Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1118 (11th Cir. 2014). Ms. Verkhovskaya testified that her analysis did not identify calls where SSN first called an individual on a non-NDNC number and the individual asked to be called back on a different number on the NDNC list. (*See* Doc. 103 at 25, 37; Doc. 56 at 28.)

(collecting cases). Further, if one were to speculate, one might speculate that it is unlikely that a person who asked to be placed on a do-not-call list would actually initiate a telephone call to a telemarketer making calls on behalf of Dish. One might also speculate that a person interested in Dish products would call Dish, not a Dish telemarketer. Lastly, Dish has only presented an exhibit of 14 numbers it contends are instances of an individual first calling SSN. (*See* Doc. 56 at 27; Doc. 56-22.) For these few individuals, the Court can manage the individual EBR defense.

⁶ Dish contends that these calls would be exempt from the TCPA either because of the called individual's consent, *see* 47 C.F.R. § 64.1200(c)(2), (f)(14)(i); *Mais v. Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1118 (11th Cir. 2014), or by establishing an EBR based on an inquiry. *See* 47 C.F.R. § 64.1200(f)(5); *Hamilton v. Spurling*, No. 3:11cv00102, 2013 WL 1164336, at *10-11 (S.D. Ohio Mar. 20, 2013) (opinion of Ovington, M.J.); (Doc. 56 at 28-30.)

Dish contends that this gives rise to individual issues, but it again provides only a handful of examples supported by unsworn statements in a brief.⁷ (See Doc. 56 at 29-30; Docs. 56-24, 56-25.) Second, as discussed *supra*, the fact that it is impossible to exclude all uninjured class members at this stage does not prevent certification. See *Nexium*, 777 F.3d at 22; *Kohen*, 571 F.3d at 677.

3. Evaluation of predominance

“[P]redominance under Rule 23(b)(3) requires that common issues predominate, but does not require all issues to be common.” *In re Polyester Staple Antitrust Litig.*, No. 3:03CV1516, 2007 WL 2111380, at *27 (W.D.N.C. July 19, 2007) (collecting cases). There are two central factual issues that loom over this entire case: (1) whether SSN made the calls at issue; and (2) whether Dish is liable for SSN’s calls under agency principles. To recover from Dish, Dr. Krakauer would have to prove that SSN called a number on the NDNC list or the IDNC list of Dish or SSN at least twice during any 12-month period, that SSN made these calls on behalf of Dish, and that Dish is liable for SSN’s actions under agency principles. (See Doc. 48 at 17, 21-22.)

⁷ As to the calls where Dish contends SSN first called an individual on a NDNC number and the individual asked to be called back, Dish cites an affidavit from an SSN general manager who testified that the call logs had a “Comments” field where SSN agents could enter notes or additional information about the calls. (See Doc. 56 at 30; Doc. 56-10 at ¶ 6.) This testimony says nothing about how frequently putative class members requested to be called back. Dish filed an exhibit including 10 numbers it contends are calls where an individual asked to be called back, but this conclusion appears to be based solely on Dish’s counsel’s interpretation of the comments. (See Doc. 56 at 30; Doc. 56-25.) Dish’s assertion that this happened to any calls in the putative class list is largely speculative and unsupported by evidence. See *Adjabeng*, 2014 WL 459851, at *3 (collecting cases).

Moreover, to the extent that Dish has admissible evidence that these 10 calls were made in response to an individual’s request to be called back, it can present such evidence, and the Court can easily manage any individual issues as to these few numbers and calls.

These questions “can be resolved for each class member in a single hearing” and do not “turn[] on a consideration of the individual circumstances of each class member.” *Thorn*, 445 F.3d at 319. Indeed, these are the central issues to this litigation and predominate in quality and complexity over any potential individual issues. *See EQT*, 764 F.3d at 366; *Gunnells*, 348 F.3d at 429 (noting that a greater quantity of individual issues as compared to common issues does not necessarily mean common issues do not predominate where the common issues “far exceed in complexity [as compared to] the more mundane individual . . . issues”).

As discussed *supra*, the question of whether a putative class member was a Dish customer at the time of a call should be a simple and objectively verifiable task, requiring little more than reference to Dish’s own records. Dish’s claim that the putative class list contains “hundreds” or “a multitude” of non-actionable calls, (Doc. 56 at 23, 27), is not supported by evidence. While there are potentially a number of individual issues, these issues appear to apply to only a small number of class members and are straightforward. These minor, peripheral issues do not defeat the predominance of the central issue: whether the calls were made by Dish’s agent. The essential elements of the class members’ claims can be proven at trial with common, as opposed to individualized, evidence. *See Hayes*, 725 F.3d at 359.

The Court finds that common questions of fact and law predominate.

B. Superiority

A class action is the superior method of litigation in this case. Given the relatively small statutory damages, *see* 47 U.S.C. § 227(c)(5), the class members likely have little

interest in controlling the litigation in this case. *See* Fed. R. Civ. P. 23(b)(3)(A); *Gunnells*, 348 F.3d at 425; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 616-17 (1997); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533-34 (3d Cir. 2004). Further, the type of injury allegedly suffered by the class members is not, for example, a personal injury or death where a plaintiff would ordinarily have “a substantial stake in making individual decisions on whether and when to settle.” *Amchem*, 521 U.S. at 616.

There is no evidence of any litigation begun by or against any class members, *see* Fed. R. Civ. P. 23(b)(3)(B); *Gregory v. Finova Capital Corp.*, 442 F.3d 188, 191-92 (4th Cir. 2006), and given the large number of class members and claims, class-wide adjudication of the claims would be more efficient. *See Gunnells*, 348 F.3d at 432-33; *Warfarin*, 391 F.3d at 533-34. Adjudicating these claims in one forum would provide flexibility, control, and consistency that would not exist with individual litigation. *See* Fed. R. Civ. P. 23(b)(3)(C); *Gunnells*, 348 F.3d at 425. And, as discussed *supra*, the potential individual issues do not present great difficulties in managing the class. *See* Fed. R. Civ. P. 23(b)(3)(D).

The Supreme Court has noted that, through Rule 23(b)(3), “the Advisory Committee sought to cover cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” *Amchem*, 521 U.S. at 615 (internal quotation marks and ellipsis omitted). Class-wide adjudication would achieve each of these goals.

Moreover, the legislative intent behind the TCPA supports the view that class action is the superior method of litigation. “[I]f the goal of the TCPA is to remove a ‘scourge’ from our society, it is unlikely that ‘individual suits would deter large commercial entities as effectively as aggregated class actions and that individuals would be as motivated . . . to sue in the absence of the class action vehicle.’” *Jay Clogg Realty Grp., Inc. v. Burger King Corp.*, 298 F.R.D. 304, 309-10 (D. Md. 2014) (quoting *Landsman & Funk PC v. Skinder-Strauss Assocs.*, 640 F.3d 72, 95 (3d Cir. 2011)); see also *Amchem*, 521 U.S. at 617.

III. Conclusion

Dr. Krakauer has met the threshold requirements for class certification by demonstrating that he is a member of both proposed classes and that the class members are ascertainable. It is undisputed that Dr. Krakauer’s proposed classes satisfy the numerosity, commonality, and adequacy of representation requirements of Rule 23(a)(1), (2), and (4). By demonstrating membership in the classes, Dr. Krakauer has satisfied the typicality requirement of Rule 23(a)(3). Dr. Krakauer’s proposed classes satisfy Rule 23(b)(3) as common questions of law and fact predominate, and class action is the superior method of adjudication. As to Dish’s arguments against predominance, the Court concludes that Dr. Krakauer has demonstrated that Dish may raise most of its defenses on a class-wide basis with minimal, if any, individual inquiry and that Dish’s other arguments are largely speculative; any individual issues that exist are minor and do not defeat the class action because common issues nevertheless predominate.

It is **ORDERED** that the motion for class certification, (Doc. 47), is **GRANTED**.

This the 9th day of September, 2015.

UNITED STATES DISTRICT JUDGE

EXHIBIT 73

EXHIBIT 73

JA004762

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

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

ORDER

This matter is before the Court on the defendant's motion for summary judgment. (Doc. 73.) The Court concludes that Dish's motion should be denied as to Dr. Krakauer's IDNC claim and as to actual authority. As to the remaining arguments, the Court retains the motion under advisement.

Dish moves for summary judgment on Dr. Krakauer's IDNC claim and alleges that Dr. Krakauer did not make an affirmative request to stop the calls. (Doc. 74 at 12-13.) As discussed in the Court's order granting class certification, Dr. Krakauer offered evidence sufficient to establish that he made such a request. (Doc. 111 at 8-9.) The Court finds that there are disputed questions of material fact on this issue and concludes that the motion for summary judgment as to this claim should be denied.

Dish also moves for summary judgment on the plaintiff's theories of vicarious liability. (Doc. 74 at 13.) Dish first contends that SSN lacked actual authority to act on Dish's behalf. (Doc. 74 at 13-20.) Dr. Krakauer has offered evidence sufficient to allow a jury to conclude that SSN had actual authority to act on Dish's behalf when it made the

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calls at issue. (*See, inter alia*, Docs. 74-2, 85.) Given the existence of disputed questions of material fact on this issue, the Court will deny the motion.

Dish further contends that there is no evidence to support vicarious liability under the theories of apparent authority and ratification. (Doc. 74 at 20, 22.) As to these theories, the Court retains the motion under advisement.

It is **ORDERED** that the defendant's motion for summary judgment, (Doc. 73), is **DENIED in part**, as follows:

1. Dish's motion for summary judgment as to Dr. Krakauer's IDNC claim is **DENIED**;
2. Dish's motion for summary judgment on the theory of vicarious liability because of actual authority is **DENIED**;
3. The other issues raised by the motion remain under advisement.

This the 22nd day of September, 2015.

UNITED STATES DISTRICT JUDGE

EXHIBIT 74

EXHIBIT 74

JA004765

TX 102-004027

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

THOMAS H. KRAKAUER,

Plaintiff,

v.

DISH NETWORK L. L. C.,

Defendant.

)
)
)
)
)
)
)
)
)

1:14-CV-333

ORDER

This matter is before the Court on the defendant's motion for summary judgment. (Doc. 73.) The Court previously decided that the motion should be denied to the extent it was based on lack of evidence of actual authority, and kept the issues of apparent authority and ratification under advisement. (Doc. 113.)

Upon consideration, the Court grants the motion to the extent it is based on lack of evidence of apparent authority and ratification. The Court concludes as a matter of law that the plaintiff has not presented evidence sufficient to give rise to a disputed question of material fact as to either theory of vicarious liability.

It is **ORDERED** that the defendant's motion for summary judgment, (Doc. 73), is **GRANTED** to the extent stated herein and **DENIED** to the extent previously stated. (See Doc. 113.)

This the 29th day of September, 2015.

UNITED STATES DISTRICT JUDGE

JA004766

EXHIBIT 75

EXHIBIT 75

JA004767

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

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

ORDER

This matter is before the Court on plaintiff Thomas Krakauer's motion for partial summary judgment. (Doc. 71). Dish has raised affirmative defenses of prior express consent and established business relationship. Dr. Krakauer seeks summary judgment on those two defenses as to some of the calls at issue here based on collateral estoppel, also known as issue preclusion. (Doc. 72 at 5). Dr. Krakauer contends that the defenses were rejected in *United States v. Dish Network, LLC*, an ongoing case in the Central District of Illinois. *See* 75 F. Supp. 3d 942 (C.D. Ill. 2014), *vacated in part on reconsideration on other grounds*, 80 F. Supp. 3d 917 (C.D. Ill. 2015).

While the Court concludes that the issues sought to be precluded are identical to ones previously litigated; that the issues were actually determined in the prior proceeding; that the determination of the issues was a critical and necessary part of the decision in the prior proceeding; and that Dish, the party against whom collateral estoppel is asserted, had a full and fair opportunity to litigate the issue in the previous forum, *see Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 217 (4th Cir. 2006), it is not clear that the Illinois

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district court's decision on partial summary judgment is final. However, the Court sees no realistic possibility that the Illinois court's summary judgment decision against Dish will change and it seems likely that the decision will become final and valid at some point. The Court therefore will deny the motion for partial summary judgment, but without prejudice to renewal should further developments in the Illinois case so warrant.

At the pretrial conference on April 21, the Court intends to discuss settlement possibilities, to review the pretrial submissions with the parties, and to make such decisions as are appropriate for this stage of the case. The parties should be prepared for a wide-ranging discussion focused on resolving such issues as can be resolved and narrowing other issues, all with a goal of trying the case fairly and efficiently. Among other things, counsel should be prepared to discuss with the Court:

- (1) Whether it is possible and advisable to sever the issues subject to the plaintiff's motion for partial summary judgment and how such severance might be managed.
- (2) Whether it is possible and advisable to sever the agency issue and try it first, and how such severance might be managed.
- (3) Whether the Court is correct that the parties have not identified any issues, exhibits, or witnesses which relate only to the matters subject to the plaintiff's motion for partial summary judgment. (*See* Doc. 157).
- (4) The proposed verdict sheets and jury instructions. The Court is dissatisfied with these submissions. Dr. Krakauer's proposals do not separate the agency issue and do not adequately explain to the jury what the plaintiff has to prove

in order to prevail. Dish appears to have gone overboard with special interrogatories.

It is **ORDERED** that Dr. Krakauer's motion for summary judgment, (Doc. 71), is **DENIED without prejudice**.

This the 19th day of April, 2016.

✓ _____
UNITED STATES DISTRICT JUDGE