

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 04:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 81704

District Court No.
A-17-763397-B

JOINT APPENDIX
Vol. 29 of 85
[JA006487-JA006725]

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

Liaison Counsel for Appellants

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

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

[Additional counsel appear on next page.]

<p>Randall J. Baron (<i>Pro Hac Vice</i>) Benny C. Goodman III (<i>Pro Hac Vice</i>) Erik W. Luedeke (<i>Pro Hac Vice</i>) ROBBINS GELLER RUDMAN & 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>
---	---

TABLE OF CONTENTS FOR VOLUME 29¹

Document	Vol.	Page No.	Date
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.

EXHIBIT 117

EXHIBIT 117

JA006487
005349

TX 102-005749

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX0152

Retailer Number 915995

ECHOSTAR RETAILER AGREEMENT

This EchoStar Retailer Agreement (the "Agreement") is made and effective as of December 31, 2004 (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 DISH TV NOW INC having a principal place of business at 1930 N POPLAR ST, SOUTHERN PINES, NC 28387 ("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 (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 "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.

1.4 "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 such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Bulk Programming services offered and/or any restrictions applicable to such Bulk Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

1.5 "Bulk Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Bulk Subscriber who purchased a commercially-invoiced 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.

1.6 "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 e-mail) or through any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a "Charlie 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 and from time to time in its sole and absolute discretion for any reason or no reason, upon notice to Retailer.

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

1.8 "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.

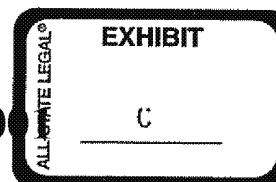
1.9 "Commercial Location" means a Public Commercial Location and/or a Private Commercial Location, as those terms

CONFIDENTIAL

Page 1 of 32

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-0



Confidential and Proprietary

JA006488
5816015
005350

Confidential/Privileged

SLC_DNC_Investigation_0012039

TX 102-005750

are defined below in Sections 1.29 and 1.25, respectively.

1.10 "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 and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Commercial Programming services offered and/or any restrictions applicable to such Commercial Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

1.11 "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.

1.12 "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 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.

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

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

1.15 "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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.16 "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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.17 "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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.18 "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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.19 "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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Guest Property or is more appropriately considered another type of location.

1.20 "Incentives" mean Monthly Incentives together with any Additional Incentives, as such terms are defined in Sections 1.23 and 1.1, respectively.

1.21 "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, 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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes an Institutional/Residential Location or is more appropriately considered another type of location.

1.22 "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 from time to time, in its sole and absolute discretion for any reason or no reason, 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.

1.23 "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.

1.24 "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.

1.25 "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, 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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Private Commercial Location, or is more appropriately considered another type of location.

1.26 "Programming" means DISH Network video, audio, data and interactive programming services. EchoStar reserves the right to change the Programming and/or any restrictions applicable to the Programming at any time and from time to time in its sole and absolute discretion for any reason or no reason.

1.27 "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 program involves leasing the equipment to the consumer) and installation of such DISH DBS System.

1.28 "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, as determined by EchoStar, 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 the 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 and from time to time in its sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.29 "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, bars, restaurants, clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Public Commercial Location, or is more appropriately considered another type of location.

1.30 "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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Bulk Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.31 "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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Commercial Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.32 "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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential MDU Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

CONFIDENTIAL

PX0152-003

JA006490
005352

1.33 "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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.34 "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.

1.35 "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, 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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Residential Location or is more appropriately considered another type of location.

1.36 "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.

1.37 "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 such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Residential MDU Programming services offered and/or any restrictions applicable to such Residential MDU Programming services at any time and from time to time in its sole discretion for any reason or no reason.

1.38 "Residential MDU Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Residential MDU Subscriber who purchased a commercially-invoiced 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.

1.39 "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 such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Residential Programming services offered and/or any restrictions applicable to such Residential Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

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

1.41 "Retailer Account" means the bank account, including account and ABA routing numbers, designated by Retailer in the manner prescribed by EchoStar, which Retailer may change from time to time by providing at least sixty (60) days' prior written notice to EchoStar.

1.42 "Subscriber Accounts" means Residential Subscriber Accounts, Residential MDU Subscriber Accounts, Commercial Subscriber Accounts and Bulk Subscriber Accounts, as such terms are defined in Sections 1.40, 1.38, 1.11 and 1.5, respectively.

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

1.44 "Territory" shall have the meaning set forth in Section 3.2 below.

1.45 "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.

1.47 "Unit" means each separate living quarters in a non-bulk-billed MDU Property.

CONFIDENTIAL

2. **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:

2.1 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.

2.2 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.

2.3 Retailer represents and warrants that (i) it is a valid and existing entity in compliance with all laws and regulations related to maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not violating any federal, state or local law or regulation; (iv) it has never engaged in any of the acts prohibited under Sections 3.6, 3.7, 3.8, 3.9, 6.10, 6.14, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8 or 14 below; (v) it has not engaged in any acts that would have resulted in automatic termination or be considered a default or breach under any current or former Incentivized Retailer Agreement, Commissioned Retailer Agreement, Commissioned Dealer Agreement, Non-Incentivized Retailer Agreement, Non-Commissioned Retailer Agreement, or Non-Commissioned Dealer Agreement with EchoStar or under any other current or former Other Agreement; (vi) it is not dependent upon EchoStar or 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.

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

2.5 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE 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.

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

2.7 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.

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

2.9 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.

3. **APPOINTMENT; TERRITORY.**

3.1 **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 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

CONFIDENTIAL

Page 5 of 32

Confidential and Proprietary

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-005

JA006492
566009
005354

SLC_DNC_Investigation_0012043

TX 102-005754

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

3.2 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")

3.3 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 the 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, and requirements contained in this Agreement and all Business Rules, and only during the Term of this Agreement.

3.4 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 promises, representations or warranties 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 or revenue as 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, and from time to time, in the future may offer in its sole and absolute discretion for any reason or no reason, 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 DBS Systems, Promotional Certificates and other equipment, and (c) perform installation and maintenance services (directly and through subcontractors) for DISH DBS Systems, related accessories and other equipment, in each case throughout the Territory and in 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 services in whole or in part at any time, and from time to time in its sole and absolute discretion for any reason or no reason, and shall incur no liability to Retailer by virtue of any such cessation or suspension.

3.5 Purchase of DISH DBS Systems by Retailer from EchoStar. In the event that Retailer orders any DISH DBS Systems or Promotional Certificates from Echosphere L.L.C. or any of its Affiliates (collectively, "Echosphere" for purposes of this Section 3.5), 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 and absolute discretion for any reason or no reason 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 or Promotional Certificates back from Retailer at any time for any reason.

3.6 Sale of DISH DBS Systems. Retailer agrees that as a condition precedent to eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System or Promotional Certificate 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 it under a single DISH Network account 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, and connected to the same phone line (except in the case of a bulk-billed MDU Property). It shall be Retailer's responsibility to investigate and determine whether any sale by Retailer would be in violation of this Section. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate 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 an 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

CONFIDENTIAL

Page 6 of 32

Confidential and Proprietary

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-006

JA006493
005355

SLC_DNC_Investigation_0012044

TX 102-005755

Programming authorized for the 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 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 or Promotional Certificate to a person or entity who has, or allows others to have, Programming authorized for it under a single DISH Network account that at any time has Programming activated 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, and connected to the same 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, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate account. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 3.6, 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 3.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 3.6 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 (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

3.7 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 to any person or entity who Retailer knows or reasonably should have known intends to Pre-Activate it.

3.8 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 services 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 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 services or otherwise on behalf of the end-user of such DISH DBS System.

3.9 Installation Services. Retailer represents, warrants, covenants and agrees that all installation and after-sales services performed by Retailer and/or its subcontractors, agents and employees in connection with the sale, lease or other transfer of DISH DBS Systems will be performed by Retailer and/or its subcontractors, agents and employees in accordance with all applicable laws, codes and regulations, 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 and from time to time by EchoStar or any of its Affiliates (including, without limitation, DISH Network Service L.L.C.) in their sole and absolute discretion, for any reason or no reason, upon notice to Retailer.

3.10 Prior Retailer Agreements.

3.10.1 IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY 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 (A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE, THEN UPON THE EFFECTIVE DATE: (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 AGREEMENT SHALL BE PAYABLE BY ECHOSTAR TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) EXCEPT AS SET FORTH IN SECTION 3.10.1(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.

CONFIDENTIAL

PX0152-007

JA0064921
005356

3.10.2 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 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 AGREE TO WAIVE ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION, WITH THE SOLE EXCEPTION OF ANY CLAIMS AND CAUSES 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 MORE THAN 90 DAYS) AFTER THE EFFECTIVE DATE. 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 3.10.2 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 TERMS 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, et al. AND JOE KELLY, D/B/A AKEL-TRONICS, et al. 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; CASE NO. 500-CV-268, STYLED *SATELLITE DEALERS SUPPLY, INC. V. ECHOSTAR COMMUNICATIONS CORP.*, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TEXAS. 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 AFTER THE EFFECTIVE DATE, NOTWITHSTANDING PAYMENT BY ECHOSTAR OF ANY INCENTIVES, COMMISSIONS OR OTHER PAYMENTS 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.

3.11 **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 from time to time in their sole and absolute discretion for any reason or no reason. Retailer agrees to be bound by, and use its best efforts to support, all of the terms and conditions of (and all of such terms and conditions are hereby incorporated 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, from time to time in their sole and absolute discretion for any reason or no reason, 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 such Promotional Programs 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 from time to time in their sole and absolute discretion for any reason or no reason. 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 and absolute discretion for any reason or no reason concerning any issue arising from such ambiguity.

3.12 **MDU Property / Guest Properties.** Retailer shall ensure that no Guest Property or bulk-billed MDU Property engages directly or indirectly 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 and absolute discretion for any reason or no reason; or (iii) modifying, adding to, or deleting from any of the Bulk Programming. Retailer shall promptly notify EchoStar if it is aware of or suspects a change in the number of Units at any Guest Property or bulk-billed MDU Property subscribing to Bulk Programming. Retailer 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, as further described in applicable Business Rules and adjustable at any time and from time to time in EchoStar's sole and absolute discretion for any reason or no reason.

4. **PROGRAMMING.**

4.1 **Programming.** EchoStar shall determine from time to time, in its sole and absolute discretion for any reason or no reason, 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 and from time to time in its sole and absolute discretion for any reason or no reason. Any changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date.

CONFIDENTIAL

Page 8 of 32

Confidential and Proprietary

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-008

JA006495
005357

SLC_DNC_Investigation_0012046

TX 102-005757

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 from time to time in its sole and absolute discretion for any reason or no reason. 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 and from time to time in its sole and absolute discretion for any reason or no reason. 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 obtained on any other terms 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. 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 by EchoStar from time to time in accordance with Section 1.6 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 commercially-invoiced 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. 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 by EchoStar from time to time in accordance with Section 1.6 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 by EchoStar from time to time in accordance with Section 1.6 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 commercially-invoiced 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 by EchoStar from time to time in accordance with Section 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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.

CONFIDENTIAL

PX0152-010

JA006497
566497
005359

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, 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 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); (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, ADDITIONAL RESIDENTIAL MDU INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO COMMERCIALY-INVISED 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;

(VI) 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; AND

(VII) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, ADDITIONAL BULK INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO COMMERCIALY-INVISED 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.

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.

CONFIDENTIAL

PX0152-011

JA006498
005360

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 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 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 ANY OF ITS AFFILIATES, IN CONNECTION WITH THAT 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 and from time to time in its sole and absolute discretion for any reason or no reason.

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

CONFIDENTIAL

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 and from time to time in its sole and absolute discretion for any reason or no reason, 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 EchoStar Subscriber or any customer account information regarding any EchoStar 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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Residential Subscriber, but is already receiving—or previously received at any time—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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Residential MDU Subscriber, but is already receiving—or previously received at any time—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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Commercial Subscriber, but is already receiving—or previously received at any time—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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Bulk Subscriber, but is already receiving—or previously received at any time—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) Echosphere L.L.C. or any other 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 Echosphere L.L.C. or any other 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 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 (attached hereto as Exhibit A) 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 commercially-invoiced 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 commercially-invoiced 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 or its Affiliates under Section 13 below or for any other reason (including

CONFIDENTIAL

PX0152-014

JA006501
005363

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 Agreements. 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 and from time to time in its sole and absolute discretion for any reason or no reason, 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 its Affiliates to EchoStar and 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 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 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 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 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 agree that at all times (including but not limited to in 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 RELATING TO ANY ALLEGED FAILURE TO PAY ANY AMOUNTS DUE AND OWING FROM ECHOSTAR AND/OR ITS AFFILIATES, ON THE ONE HAND, TO RETAILER AND/OR ITS AFFILIATES, ON THE OTHER HAND, OR RELATING TO ANY CHARGEBACKS 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 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, Affiliates or sub-agents, to fulfill its obligations hereunder without EchoStar's specific prior written consent, which consent may be withheld in EchoStar's sole and absolute discretion for any reason or no reason. In the event EchoStar does grant consent to Retailer to use persons not employed by Retailer to perform activities contemplated hereunder, Retailer shall be responsible for the acts and omissions of such persons under this Agreement 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 and absolute discretion and for any reason or no reason, 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 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 and absolute discretion for any reason or no reason.

7.3 Retailer shall comply with all Business Rules, including without limitation all Business Rules which govern or are applicable to any Promotional Program in which Retailer participates. Retailer shall disclose to each prospective DISH Network Subscriber the relevant terms of the Promotional Program in which the prospective DISH Network Subscriber is interested as well as any other terms as set forth in any applicable Business Rule. 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 the sale of DISH DBS Systems, and Retailer shall cooperate by supplying EchoStar with information relating to those actions as EchoStar reasonably requests. Failure of Retailer to adhere to any Business Rules may result in disciplinary action up to and including termination of this Agreement and/or any Other Agreement in the sole and absolute discretion of EchoStar for any reason or no reason, and the exercise by EchoStar of any other remedy provided in this Agreement, at law, in equity or otherwise.

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 from time to time, in its sole and absolute discretion for any reason or no reason, without incurring any liability to Retailer. 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 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, which agreement is hereby incorporated by reference in its entirety.

CONFIDENTIAL

Page 16 of 32

Confidential and Proprietary

L:\JDG\VECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-016

ESI 0030
JA006503
005365

SLC_DNC_Investigation_0012054

TX 102-005765

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 image or goodwill in any way. Retailer shall under no circumstances take any action which could be considered disparaging to EchoStar. 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 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, and connected to the same 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 not in 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 and Programming may not currently be sold outside of the Territory. Retailer represents and warrants that it will not directly or indirectly arrange for or participate in the export or sale of DISH DBS Systems, Promotional Certificates 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 and Programming outside of the Territory by others who purchase from Retailer and who might reasonably be expected to export or sell them outside 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 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 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 other than EchoStar or any of its Affiliates (including without limitation Retailer or any of its Affiliates) 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 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, 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 MPVD. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

CONFIDENTIAL

Page 17 of 32

Confidential and Proprietary

L:\JDC\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-017

JA0065041
005366

SLC_DNC_Investigation_0012055

TX 102-005766

9.5 Subscriber Information. All consumers who directly or indirectly subscribe to, purchase, lease or otherwise receive and/or acquire (i) Programming, (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 anyone other than EchoStar and its Affiliates, or promote the sale, lease or other acquisition of any Hardware used in connection with services offered by any one 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 and absolute discretion for any reason or no reason; 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 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, subcontractors or 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 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) indefinitely.

9.8 Sales and Use Tax. Any transactions between Retailer and consumers for the purchase of DISH DBS Systems, Promotional Certificates and/or related 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 and related equipment, EchoStar does not acquire or retain title (except in connection with certain lease-based Promotional Programs) in such DISH DBS Systems and related 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 transactions between Retailer and consumers.

10. TERM AND TERMINATION.

10.1 Term. This Agreement shall commence on the Effective Date and shall continue through December 31, 2006 (the "Term"), unless earlier terminated by either party 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 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 SECTIONS 10.2, 10.3, 10.4 OR 10.5 BELOW

10.2 Termination by Either Party for Convenience. Either party may, in its sole and absolute discretion for any reason or no reason, terminate this Agreement for its convenience (without cause) by giving the other party no less than sixty (60) days prior written notice.

CONFIDENTIAL

PX0152-018

JA0065052
005367

10.3 Termination By Either Party Upon Default. This Agreement may be terminated by a party (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 (Exhibit A) (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 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 federal, state or local law or regulation, 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 federal, state or local law or regulation, including without limitation any violations of 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 law 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 or Promotional Certificate 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 it using a single DISH Network account 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, and connected to the same phone line (except in the case of a bulk-billed MDU Property); (ix) Retailer makes, or attempts to make, any representation, promise or agreement on behalf of EchoStar; (x) the Trademark License Agreement (Exhibit A hereto) or any Other Agreement expires or terminates for any reason; (xi) Retailer directly or indirectly uses a single DISH Network account 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, and connected to the same 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 to a person or entity who Retailer knew or reasonably should have known intended to Pre-Activate it; (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 its obligations under Sections 3.6, 3.7, 3.8, 3.9, 6.10, 6.14, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8 or 14; (xvii) Retailer indefinitely ceases to actively market and promote DISH DBS Systems and/or Programming, as determined in EchoStar's sole and absolute discretion for any reason or no reason; (xviii) Retailer fraudulently receives, or attempts to receive, an Incentive or other payment to which it is not entitled under 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: (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 the 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 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

CONFIDENTIAL

Page 19 of 32

Confidential and Proprietary

L:\VDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-019

ESL 8038
JA006508
005368

SLC_DNC_Investigation_0012057

TX 102-005768

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 its Affiliates. Retailer shall prominently state its business name, address and phone number 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 in this Agreement to the contrary, Retailer (including without limitation its officers, directors, permitted subcontractors, permitted agents and employees) shall not, under any circumstances, hold itself out to the public or represent that it is an agent, employee, subcontractor or Affiliate of EchoStar or any EchoStar Affiliate. In furtherance of (and without limiting) the foregoing, in no event shall Retailer use EchoStar's name or the name of any EchoStar Affiliate in any manner which would tend to imply that Retailer is an Affiliate of EchoStar or that Retailer is an agent, subcontractor or employee of EchoStar or one of its Affiliates or that Retailer is acting or is authorized to act on behalf of EchoStar or one 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, promise or agreement or take any action on behalf of EchoStar or an EchoStar Affiliate.

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 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 TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON, NO AMOUNTS SPENT IN FULFILLMENT WILL BE RECOVERABLE FROM ECHOSTAR OR ANY OF ITS AFFILIATES BY RETAILER.

12.2 IN NO EVENT SHALL PROJECTIONS OR FORECASTS MADE BY ECHOSTAR 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' 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 or Promotional Certificates; (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 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, statute, ordinance, governmental administrative order, rule or regulation; (vii) any claim brought by Retailer's employees, subcontractors and/or agents for compensation and/or damages arising out of 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 (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 subcontractors, employees or agents; (x) Retailer's, or any of its subcontractors, agents or employees 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 the Retailer, or any of its subcontractors, employees or 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 subcontractors, employees or agents; (xiii) Retailer directly or indirectly selling, leasing or otherwise transferring possession of a DISH DBS System or Promotional Certificate 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 it using a single DISH Network account 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 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 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, and connected to the same 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 claim 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 herein shall be in addition to and not in limitation of any other indemnity obligation set forth herein. 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 and provisions of this Agreement, the terms 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 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 applicable law, 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 of the information in advance, prior to making any disclosure, and shall seek confidential treatment of such information; (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; or (iv) to the extent necessary to permit the performance of obligations under this Agreement. 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 and absolute discretion for any reason or no reason. 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 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 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 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 or agents, as well as other equitable relief allowed by the federal and 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 RENDER, 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) THE NOTICE OF CLAIM SHALL STATE:

CONFIDENTIAL

Page 21 of 32

Confidential and Proprietary

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-021

ESL0035
JA006508
005370

SLC_DNC_Investigation_0012059

TX 102-005770

(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 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 executiveresolution@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 RENDER, 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 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 in connection with this Agreement including, without limitation, 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 (the "Mediation") in front of a single mediator. Either party may initiate mediation by giving written notice to the other party 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 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of 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: (A) the Non-Mediating Party agrees that the other party (the "Mediating Party") shall have the right to obtain immediate relief in the form of specific performance from a court located in the State of Colorado, as delineated in Section 15.5 below; and (B) 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 located in Colorado, as delineated in Section 15.5 below. In the event that the Mediating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to clause (B) 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 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 and in 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 allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any state or federal law, which are not settled through negotiation, the claim process above, or the mediation process set forth above, shall be resolved solely and exclusively by binding 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. In the event of any conflict between the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association, the Federal Arbitration Act will control. 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. The Arbitration must be initiated within ninety (90) days from the final day of mediation, or one hundred and fifty (150) days from the Notice of Mediation in the event 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 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

CONFIDENTIAL

Confidential and Proprietary

LAVDGECHOSTAR RETAILER AGREEMENT FINAL 110404 doc

PX0152-022

ESL0036
JA006599
005371

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. In the event that either party fails to timely select an arbitrator pursuant to this Section 15.3, 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. The parties hereby agree that the arbitration panel selected pursuant to this Agreement is not authorized to: (a) conduct "class arbitration" in any form; and/or (b) arbitrate any dispute on a representative basis in any form. The parties hereby agree that the arbitration panel has 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 arbitrators shall be final and binding on the parties and any award of the arbitrators 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 arbitrators' 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 arbitrators shall be within the limitations set forth in Section 12. The parties further agree that the arbitration panel selected pursuant to this Agreement 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. The cost of any arbitration hereunder, including without limitation the cost of the record or transcripts thereof, if any, administrative fees, and all other fees involved, shall be paid by the party(ies) determined by the arbitrators to not be the prevailing party(ies), or otherwise allocated in an equitable manner as determined by the arbitrators. NEITHER PARTY HERETO NOR ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES IF IT AND/OR ITS AFFILIATES HAVE 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 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of any Other Agreement. In the event that a party (the "Non-Participating Party") fails to: (1) pay any amount to the American Arbitration Association when due; or (2) otherwise refuses or fails to participate in or attend an arbitration that has been properly initiated pursuant to this Section 15, then: (A) the Non-Participating Party agrees that the other party (the "Participating Party") shall have the right to obtain immediate relief in the form of specific performance from the arbitration panel or a court located in the State of Colorado, as delineated in Section 15.5 below; and (B) 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 located in 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 clause (B) above, 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, the 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 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of 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, or under statute, 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 a lawsuit is brought for injunctive relief pursuant to Sections 15.2, 15.3, or 15.4 above or as permitted in clause (B) of Section 15.2 or clause (B) of Section 15.3, 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. Sections 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 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.

CONFIDENTIAL

PX0152-023

ESL0037
JA006510
005372

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 among 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 among EchoStar and/or any of its Affiliates on the one hand and the other retailer on the other hand shall not be deemed to prejudice any rights and remedies that EchoStar may have at law, in equity, under contract 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 not in 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 an Affiliate in whole or in part at any time without the consent of Retailer. Because this Agreement is made 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.

CONFIDENTIAL

PX0152-024

ESL0038
JA006511
005373

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 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 the communication is: (i) in writing; (ii) bears a date contemporaneous with or subsequent to the date of this Agreement; and (iii) is signed by all parties to this Agreement. On the date this Agreement becomes effective as provided herein, all prior agreements (except as set forth to the contrary in Section 3.10 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 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 Law.** Retailer hereby agrees to comply with, and hereby agrees that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

17.7 **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other for failure to fulfill its obligations hereunder if such failure is caused by or arises out of an act of force majeure including acts of God, war, riot, natural disaster, technical failure (including 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 its Affiliates by EchoStar and its Affiliates; and (iii) all payments made by Retailer and its Affiliates to EchoStar and 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. 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) investigating claims against EchoStar and/or any of its Affiliates made by Retailer and/or any of its Affiliates; and (c) verifying that Incentive payments and any and all other payments made to Retailer and its Affiliates by EchoStar and 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 EchoStar 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 overpayment made together with interest thereon at the highest rate allowed by law, computed from the date of overpayment; and pay all reasonable costs and expenses, including reasonable attorney fees and accountant fees incurred by EchoStar and/or any of its Affiliates in connection with its Audit and with enforcing the collection of such amounts. The provisions of this Section

CONFIDENTIAL

Page 25 of 32

Confidential and Proprietary

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-025

ESL0039
JA006512
005374

SLC_DNC_Investigation_0012063

TX 102-005774

17.9 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 (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely even if termination is due to a breach or default by EchoStar.

17.10 Notices.

17.10.1 **Notice to EchoStar.** Except as otherwise provided in Section 15, all notices to be given to EchoStar pursuant to this Agreement shall be in writing, signed by the 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 6655 Englewood, CO 80155
With a copy to:	David K. Moskowitz Executive Vice President, General Counsel and Secretary EchoStar Satellite L.L.C. (same address)

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 (d) 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 "Charlie 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), 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 Charlie Chats) shall constitute 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 "Charlie Chat" or posting on EchoStar's retailer web site.

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 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 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 and from time to time in its sole and absolute discretion for any reason or no reason, change or modify Incentives, Incentive schedules, Incentive structures, Promotional Programs and 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 MODIFICATION OR CHANGE IS MATERIAL.

CONFIDENTIAL

Page 26 of 32

Confidential and Proprietary

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-026

ESI 0040
JA006513
005375

SLC_DNC_Investigation_0012064

TX 102-005775

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 OR MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE OR MODIFICATION

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

17.14 General Provisions. The exhibits 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 law or result in a breach of or default under the terms 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 facsimile transmittals which contain unsolicited advertisements. For the avoidance of doubt, such permitted facsimile transmittals from EchoStar or 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 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 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 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 and 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 or 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; 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, deletion or modifications thereto. Further, in the event that the following events occur in the following order: (1) Retailer executes this Agreement; (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, deletion or 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; (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, deletion or 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 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 and absolute discretion for any reason or no reason.

CONFIDENTIAL

PX0152-027

ESL0041
JA006514
005376

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: Amir Ahmed
Title: National VP, Sales and Distribution

RETAILER

Retailer Number: 915995

Retailer Company Name: DISH TV NOW INC

Street Address: 1930 N POPLAR ST
City, State, Zip Code: SOUTHERN PINES, NC 28387
Facsimile Number: N/A
(for notice to Retailer pursuant to Section 17.10.2)

By: _____

Signature

Print Name: DAVID HAGEN
Title: CEO

[SIGNATURE PAGE OF ECHOSTAR RETAILER AGREEMENT]

CONFIDENTIAL

Page 28 of 32

Confidential and Proprietary

L:\UDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-028

ESL0042
JA006515
005377

SLC_ DNC_Investigation_0012066

TX 102-005777

EXHIBIT A

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made and effective as of the 31st day of December 2004, 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 DISH TV NOW INC having a principal place of business at 1930 N POPLAR ST, SOUTHERN PINES, NC 28387 ("Licensee").

A. 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 ("Programming"); and

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

C. Licensee desires to be permitted to use such EchoStar trademarks, service marks and trade names set forth in Exhibit I hereto, which may be amended at any time and from time to time in ESLLC's sole and absolute discretion for any reason or no reason (the "Trademarks"), as ESLLC, in its sole and absolute discretion for any reason or no reason, may authorize, from time to time, under a non-exclusive license, to promote and solicit orders for DISH Network Programming.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. ESLLC hereby grants to Licensee a non-exclusive, non-transferable, revocable license (the "License") to use the Trademarks and such other trademarks as ESLLC may from time to time expressly in writing permit Licensee to use during the term of this Agreement, and no other term or license whatsoever, solely to promote the retail sale of ESLLC satellite television programming and the hardware necessary to receive such programming in its local advertising and promotional materials and at its business locations. Licensee expressly recognizes and agrees that Licensee shall not, in whole or in part, modify, alter, supplement, delete or otherwise change the Trademarks (whether in typewritten, stylized or any other form) as provided to Licensee by ESLLC. Licensee shall have no right to use the logos, service marks or trademarks (whether in typewritten, stylized or any other form) of any programming providers, other than the logos, service marks and trademarks of programming providers that are contained in the advertising and promotional material provided to Licensee by ESLLC. No such materials shall indicate that any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distributorship exists between Licensee and ESLLC, unless ESLLC and Licensee enter into a separate written agreement permitting Licensee to do so. Notwithstanding the above, Licensee shall provide to ESLLC, at least thirty (30) days prior to first use, an example of any advertising or promotional materials in which Licensee intends to use any Trademarks or any such other trademarks (whether in typewritten, stylized or any other form), which use has not, within the past twelve months, been approved by ESLLC in exactly the manner intended for use. ESLLC may reject and prohibit Licensee from using such materials, in its sole and absolute discretion for any reason or no reason. If Licensee is required to, but fails to provide ESLLC with proposed advertising or promotional materials at least thirty (30) days prior to first use, ESLLC shall have just cause to immediately terminate this Agreement by providing written notice to Licensee to that effect. 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 by Licensee of products or programming manufactured and/or distributed by ESLLC, shall inure to ESLLC's sole benefit. This License shall be effective until terminated by either party in accordance with the terms of this Agreement, or until termination of the Incentivized Retailer Agreement to which this Agreement is attached for any reason or no reason whatsoever.

2. The License granted by ESLLC 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, such action shall terminate this Agreement, at ESLLC's option, at any time thereafter. Licensee shall immediately cease using Trademarks in typewritten, stylized or any other form upon termination or expiration 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. If ESLLC requests destruction of advertising and promotional materials, Licensee shall promptly execute an affidavit representing at a minimum that such materials were destroyed, and the date and means of destruction.

3. Licensee expressly recognizes and acknowledges that this License, as well as any past use of the Trademarks in any manner whatsoever by Licensee (including but not limited to use on signs, business cards, or in advertisements) or in any form whatsoever by Licensee (including but not limited to typewritten or stylized form), shall not confer upon Licensee any proprietary rights or interest to any Trademarks including, but not limited to any existing or future goodwill in the Trademarks. All goodwill in the Trademarks shall inure to ESLLC's sole benefit. Further, Licensee waives any and all past, present, or future claims it has or might have to the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between ESLLC and Licensee, ESLLC has the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that ESLLC retains full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein. While Licensee has no right or authority to do so, in

the event that Licensee has previously, or in the future reserves, files, or registers any of the Trademarks of ESLLC (whether in typewritten, stylized or any other form) or registers any domain name which includes all or any portion of the Trademarks of ESLLC, Licensee agrees to notify ESLLC immediately, and immediately upon request of ESLLC, to assign any and all interest to ESLLC that is obtained through the reservation, filing, or registration of the Trademarks in the U.S. or any foreign jurisdiction or through the registration of any domain name, and hereby acknowledges that any such reservation, filing, or registration of the Trademarks or domain name which includes all or any portion of the Trademarks, whenever occurring, shall be on behalf of and for the sole benefit of ESLLC, and Licensee waives all claims or rights to any compensation whatsoever therefore. Licensee's obligations in this paragraph shall survive the expiration or termination (for any reason or no reason whatsoever) of this Agreement indefinitely.

4. Furthermore, Licensee agrees not to hold itself out as DISH Network, ESLLC or any 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. Furthermore, Licensee agrees not to register any domain name which contains either (a) the formative "DISH", in combination with the formative "NET", (b) the formative "ECHO", or (c) a misspelling of DISH Network (e.g., www.dishnetwork.com) or other ESLLC mark, and Licensee further agrees to immediately transfer to ESLLC, upon ESLLC's request, any such domain names which it has registered. Licensee's failure to comply with the provisions of this Section 4 shall constitute a material breach of this Agreement. Upon request, Licensee shall provide ESLLC with a list of domain names Licensee uses to promote or solicit orders for DISH Network Programming.

5. Nothing in this Agreement shall be construed to bar ESLLC from protecting its right to the exclusive use of its Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including 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 in defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESLLC's expense. Similarly, nothing in this Agreement shall be construed to require that ESLLC take any action to protect the Trademarks in any instance, and ESLLC shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

6. (a) This Agreement shall continue for a period of time equal to the term of the Incentivized Retailer Agreement to which this Agreement is attached, unless terminated earlier for a reason provided herein. In addition to any provisions of this Agreement that survive termination or expiration of this Agreement by their term, any provision of this Agreement which logically would be expected to survive termination for any reason or no reason whatsoever or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

(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 termination of the Incentivized Retailer Agreement to which this Agreement is attached for any reason or no reason whatsoever and upon termination of any Other Agreement (as defined in Section 1.26 of the Incentivized Retailer Agreement to which this Agreement is attached) for any reason, unless EchoStar notifies Licensee to the contrary in writing.

7. The relationship between the parties including all disputes and claims, whether arising in contract, tort, or under statute, 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 EchoStar 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 of Exhibits hereto.

Any and all disputes arising out of, or in connection with, the interpretation, performance or the nonperformance of this Agreement or any and all disputes 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 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. 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.

CONFIDENTIAL

PX0152-030

ESL0044
JA006517
005379

8. 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

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: Amir Ahmed
Title: National VP, Sales and Distribution

LICENSEE

Retailer Number: 915995

Retailer Company Name: DISH TV NOW INC

Street Address: 1930 N POPLAR ST
City, State, Zip Code: SOUTHERN PINES, NC 28387

By: _____
Signature

Print Name: DAVID HAGEN
Title: CEO

[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]

Page 31 of 32

L:\JDG\ECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

CONFIDENTIAL

Confidential and Proprietary

PX0152-031

JA006518
005380

SLC_ DNC_Investigation_0012069

TX 102-005780

EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT



CONFIDENTIAL

Confidential and Proprietary

Page 32 of 32

L:\DGECHOSTAR RETAILER AGREEMENT FINAL 110404.doc

PX0152-032

ESL0946
JA006519
005381

SLC_ DNC_Investigation_0012070

TX 102-005781

EXHIBIT 118

EXHIBIT 118

JA006520
005382

TX 102-005782

INTENTIONALLY OMITTED

JA006521
005383

TX 102-005783

EXHIBIT 119

EXHIBIT 119

JA006522
005384

TX 102-005784

VIA FACSIMILE 303-723-1699

2 pages

January 25, 2005

Ms. Katie S. Myers, Manager
Mr. Walter Eric Myers, Manager
Star Satellite LLC
1760 E. Downington Ave.
Salt Lake City, UT 84108

David K. Moskowitz
Echostar Satellite LLC
9601 S. Meridian Blvd
Englewood CO 80112

Re: Violation of Telephone Consumer Protection Act

Dear Principals of Star Satellite LLC and Echostar Satellite LLC::

I am writing to you regarding your recent prerecorded telephone solicitation to my residential telephone line encouraging me to purchase satellite TV service. This call was initiated without my express invitation or permission. (Please see attached memorandum of this call).

A federal law enacted in 1991 called the Telephone Consumer Protection Act (the "TCPA") makes it unlawful for any person within the United States to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party. 47 U.S.C. § 227(b)(1). The federal law also provides that a person who makes such a call is liable for \$500 in damages for each such call. If the court finds that the defendant acted willfully or knowingly (that is, you knew you were delivering this message without my prior express consent, regardless of whether you knew about the TCPA), the court may triple the damage award. See 47 U.S.C. § 227(b)(3).

The laws of the State of Washington also make this activity unlawful under RCW 80.36.400. This means that in addition to the damages for violation of the federal TCPA you may also be liable for \$500 in damages under state law. The Washington State Consumer Protection Act also provides that the court may triple the damage award. RCW 19.86

By making this unsolicited call, you violated both state and federal laws and are now liable to pay a statutory remedy of not less than \$500 per violation under 47 U.S.C. § 227(b)(3) plus \$500 per violation under RCW 80.36.400(3). I have reason to believe that you willfully or knowingly violated these laws, which would make you liable for up to \$3,000 per call.

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX0203

PX0203-001

FTC/ECHOSTAR000762

JA006523

005385

Dish-00004661

SLC_ DNC_ Investigation_0012411

TX 102-005785

As you can see, I am serious about enforcement of these laws. To save us both time and effort, I am willing to settle this case for a remedy of \$1,000 per violation. To do this, call me at (425) 444-8255 and I will send you a settlement agreement.

If you do not choose to settle, I can assure you that I will do my part to help enforce the laws as Congress and the Washington State Legislature intended and I will sue you for violations of the TCPA and the Washington State Consumer Practices Act and a demand for treble damages and attorneys' fees.

This offer of settlement will remain open for ten (10) days from your receipt of this letter. I look forward to your prompt response.

Very truly yours,



Dennis M. Caplan
5863 NW Lac Lemah Dr
Issaquah, WA 98027
(425) 444-8255
dennis@caplanlink.com

MEMORANDUM OF CALL:

Date: Wednesday, January 25, 2005
Time: 4:00 p.m.
Originating Number: 111-111-1111
Terminating Number: 425-644-7277

Details of Call:

Message began with "Please don't hang up," and ended by telling me to press 1 if interested. When I pressed 1 the call was connected to a screener to determine my qualification as a homeowner, then to Allan Spencer, who fully identified Star Satellite of Provo, UT as the entity responsible for the call.

PX0203-002

FTC/ECHOSTAR000763

JA006524

005386

Dish-00004662

SLC_ DNC_ Investigation_0012412

TX 102-005786

EXHIBIT 120

EXHIBIT 120

JA006525
005387

TX 102-005787

Terrence Balbierz cmts

From: Kramer, Stephanie [Stephanie.Kramer@echostar.com]
Sent: Friday, February 18, 2005 6:27 PM
To: FeedBack
Subject: FW: Authorized Dish retailers and illegal sales tactics

Importance: High

I don't know what to do with this email. Please read
Brenda

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

From: David Hyde [mailto:coronabeltdrive@sbcglobal.net]
Sent: Friday, February 18, 2005 10:13 AM
To: CEO; CEO of Dish Network; DeFranco, Jim; Schwimmer, Michael; Griffin, Beatrice; .
CoopAdvertising; CharleChat; TechForum
Subject: Authorized Dish retailers and illegal sales tactics
Importance: High

To anyone who might still care:

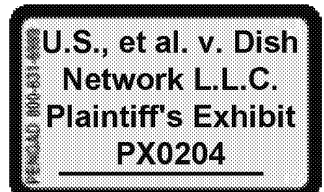
I have been having troubles with one of your authorized retailers. I have called Dish Network multiple times with no resolution. I am emailing to any address I can find to see if anyone at Dish still has any business ethics at all.

I have been receiving telephone calls with a frequency of about 2 per day on both of the phone lines in my home.

My concerns are:

1) The call is a recorded message that ends with instructions to press a key to hear more or order the product. It is my understanding that it is illegal to make unsolicited prerecorded calls.

2) The company identifies itself as Dish Network, but will disconnect your call if you ask anymore questions (such as business name, address, contact number). I believe you are required to identify yourself, at least to the extent of providing a business name and contact information.



FTC/ECHOSTAR001231

PX0204-001

JA006526

005388

Confidential-US v. Dish

Dish-00005130

SLC_ DNC_ Investigation_0012419

TX 102-005788

3) The operators will hang-up if you ask for their name, or their supervisor. One operator even challenged me to "go ahead, try to report me. Good Luck!" before she hung up.

4) The caller ID is either blocked or spoofed (caller ID shows 1-111-111-1111).

I believe Dish Network needs to be a little concerned when another company is using aggressive tactics to sell their product. In addition to the tactics being used, the company identifies itself as Dish Network!

As a Dish Network customer for the past 6 years, I have come to expect more from this company.

The retailer in question is Star Satellite, 1922 North 1120 West, Provo, UT. They use two numbers, (866) 347-4951, and (866) 504-3474. The second number will forward you directly to Dish Network if you follow the prompts to speak to an operator.

Having reached the end of my resources, the only action I can now take is to file an FCC complaint for every call I receive. I have started this by filing a complaint against Star Satellite, and another against Dish Network for each call I receive.

I am in the process of finding another source of programming.

Congratulations, I hope your sales tactics will allow you to gain more new customers than you lose in the process.

David Hyde

FTC/ECHOSTAR001232

PX0204-002

JA006527

005389

Dish-00005131

SLC_ DNC_Investigation_0012420

TX 102-005789

EXHIBIT 121

EXHIBIT 121

JA006528
005390

TX 102-005790



April 12, 2005

Ms. Sarah Schackmann
Citizen's Advocate
Consumer Protection Division
Office of the Attorney General
State of Illinois
500 South Second Street
Springfield, IL 62706

Re: Mr. Bill Morton
File No. 2005-CONSC-00119011
230394

Dear Ms. Schackmann:

On April 7, 2005, we received your correspondence regarding Mr. Bill Morton, dated March 2, 2005, filed with your office.

In his complaint, Mr. Morton expressed concern about the solicitation phone calls he has received from DISH TV Now, an independent retailer. Companies that sell DISH Network satellite hardware and programming are independent companies. They are not affiliates, business partners or franchises of DISH Network and as such set their own policies and business procedures. The relationship between DISH Network and the company is that of an independent contractor. For these reasons, we encourage you to contact the company directly.

We sincerely apologize for any inconvenience Mr. Morton may have experienced, as the satisfaction of our customers is of great importance to us. If there are further questions or concerns about this issue, please feel free to contact me at (720)514-8716.

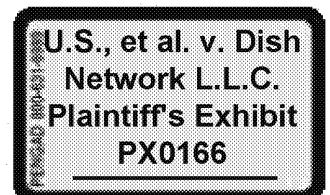
Sincerely,

Michael Gutierrez
Customer Resolution Specialist
Michael.Gutierrez@echostar.com

Cc: Bill Morton
13807 N. Wild Spruce Ln.
Chillicothe, IL 61523

Charles Jones

5701 S. Santa Fe Drive * P.O. Box 9033 * Littleton, CO 80120



PX0166-001

Confidential - U.S. v. DISH

JA006529
005391
DISH11-027482

SLC_ DNC_Investigation_0012104

TX 102-005791

EXHIBIT 122

EXHIBIT 122

JA006530
005392

TX 102-005792

Mark James
414 W Las Cruces Ave
Las Cruces, New Mexico 88005
Tel: 505-523-4058

Thursday, April 28, 2005

Echostar Communications Corp
Attn: Mr David Moskowitz, General Counsel
9601 S. Meridian Blvd.
Englewood, CO 80112
Tel: 303-723-1000
Fax: 303-723-1046

Dear Mr Moskowitz;

Today, April 28th, I received a prerecorded telephone solicitation for Dish Network services. After wading through the message, I was able to press "1" to speak to a live telemarketer. He identified himself as "Lyle" with "Dish Network". Despite repeated questioning, "Lyle" claimed to work directly for Dish Network and not a third party call center. While I doubt that is true, the fact remains that he was advertising the sale of your services and goods as defined by the FCC.

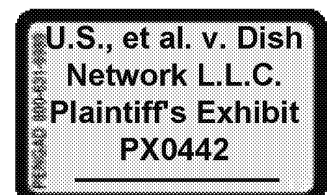
As I am sure you are aware, the use of unsolicited, prerecorded telephone solicitations to residential customers is in violation of 47 USC §227, The Telephone Consumer Protection Act. Further, the act provides for a private right of action for consumers that have received such calls. I have utilized this provision of the act on numerous occasions to stop telemarketers from calling me illegally.

In this instance, I wish to find out who called me. The caller ID simply stated "TMC" with a call back number of 206-278-9390. Clearly, I would much rather go after your agent if possible. This could be accomplished with a subpoena but would require me to file a "John Doe" case. Since I generally offer the offending company the opportunity to settle the matter prior to filing, I would rather not go that route.

It would be in both of our interests to identify the offending agent as he/she/it is obviously violating your agreement and the TCPA. Your cooperation in this matter would be greatly appreciated.

Regards


Mark James



PX0442-001

FTC/ECHOSTAR000720
JA006531
005393

Confidential-US v. Dish

Dish-00004619
SLC_ DNC_Investigation_0012867

TX 102-005793

EXHIBIT 123

EXHIBIT 123

JA006532
005394

TX 102-005794

From: Williams, Margot
Sent: Friday, May 27, 2005 05:23 PM
To: Medina, Jeff
CC: Duffy, Mark; Bangert, Russell
Subject: RE: Retail Complaint

Jeff,

I forwarded this information to Regina Thomas for further investigation. We have received a few complaints for other issues on this retailer that have also been sent to her for review and assistance.

Margot W.
Retail Analyst III
Retailer Escalations

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

From: Medina, Jeff
Sent: Wednesday, May 25, 2005 4:21 PM
To: Williams, Margot
Subject: FW: Retail Complaint

Are these your boys again...?

Jeff

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

From: Duffy, Mark
Sent: Wednesday, May 25, 2005 4:13 PM
To: Medina, Jeff
Cc: Bangert, Russell
Subject: FW: Retail Complaint

Jeff:

Will you or someone on your Team assist Russell Bangert with this issue?

Thanks for your help.

Mark Duffy

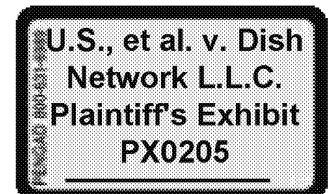
-----Original Message-----

From: Bangert, Russell
Sent: Wednesday, May 25, 2005 3:57 PM
To: Duffy, Mark
Subject: Retail Complaint

Mark,

Do you have any contacts in retail services that work on escalations?

We have a retailer... Star Satellite of Provo, Utah that is telemarketing using automated messages



PX0205-001

Confidential-US v. Dish

JA006533

005395

Dish-00001402

SLC_ DNC_Investigation_0012443

TX 102-005795

and our name instead of theirs. I have been getting some complaints about this from consumers thinking that this is us.

Any information you could provide me with would be a great help.

Thanks,

Russell

PX0205-002

Confidential-US v. Dish

JA006534

005396

Dish-00001403

SLC_DNC_Investigation_0012444

Docket 81704 Document 2021-09067

TX 102-005796

EXHIBIT 124

EXHIBIT 124

JA006535
005397

TX 102-005797



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

EchoStar Communications Corporation
9601 S. Meridian Blvd.
Englewood, Colorado 80112
Attn: Charles W. Ergen, Chairman EchoStar Communications Corporation

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☐ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

August 10, 2005 by 5:00 p.m.

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Allen Hile
600 Pennsylvania Ave., N.W.
Room 238
Washington DC 20580

5. COMMISSION COUNSEL

Russell Deitch
600 Pennsylvania Ave., N.W.
Room 238
Washington DC 20580

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX1131

DATE ISSUED

7/21/05

COMMISSIONER'S SIGNATURE

[Signature]

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance*

I/We do certify that all of the documents required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this has not been submitted, the objection to its submission and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

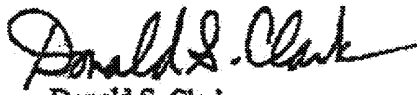
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act 15, U.S.C. § 45, as amended; and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts and other information, products or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq. and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: May 4, 2001

PX1131-003

JA006538
005400

SLC_ DNC_Investigation_0013577

TX 102-005800

**CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR PRODUCTION OF DOCUMENTARY MATERIALS**

I. DEFINITIONS

As used in this Civil Investigative Demand, the following definitions shall apply:

A. "And," as well as "or," shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. "Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any."

C. "CID" means this Civil Investigative Demand, including the following Schedule and the attached Resolution No. 0123145 "Resolution Directing Use of Compulsory Process in a Non-Public Investigation of Telemarketers, Sellers, Suppliers, or Others."

D. The "EchoStar" shall mean EchoStar Communications Corporation its wholly or partially owned subsidiaries, including but not limited to Dish Network, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, predecessors, affiliates, and all directors, retailers, officers, partners, employees, agents, consultants, franchisees, independent distributors, telemarketers, and any other person or entity, working for or on behalf of the foregoing.

E. "Document" shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, opened electronic mail, and computer material (including print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form).

F. "Each" shall be construed to include "every," and "every" shall be construed to include "each."

G. "You" and "Your" is the person or entity to whom this CID is issued and includes the "EchoStar".

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

I. "Relating to" or "Referring to" shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

J. "Telemarketing Sales Rule" means 16 C.F.R. § 310.

K. "Telemarketing" means a plan, program or campaign which is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones.

L. "Dish Network" is the satellite service provided by EchoStar.

II. DIRECTIONS

A. **Confidentiality:** This CID relates to an official, nonpublic, law enforcement investigation currently being conducted by the Federal Trade Commission ("FTC"). You are requested not to disclose the existence of this CID until you have been notified that the investigation has been completed. Premature disclosure could impede the FTC's investigation and interfere with enforcement of the law. Questions regarding the disclosure of the existence of this CID should be addressed to Russell Deitch at 202-326-2585.

B. **Applicable time period:** October 17, 2003 until the date of full and complete compliance with this CID.

C. **Claims of Privilege:** If any information called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld stating individually as to each item:

1. The type, specific subject matter, and date of the item;
2. The names, addresses, positions, and organizations of all authors and recipients of the item; and
3. The specific grounds for claiming that the item is privileged.

If only some portion of any item is privileged, all non-privileged portions must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim or privilege. 16 C.F.R. § 2.8A(b).

D. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The FTC may require the submission of additional information or documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document

destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; See also, 18 U.S.C. § 1505. If, for any specification, there are documents that would be responsive to this CID, but they were destroyed, mislaid, or transferred, describe the circumstances and date on which they were destroyed, mislaid, or transferred.

E. Petitions to Limit or Quash: Any petition to limit or quash this CID must be filed with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is fewer than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation.

F. Scope of Specifications: If you believe that the scope of any specification can be narrowed consistent with the FTC's need for information, you are encouraged to discuss such possible modifications of this request, including any modification of definitions and instructions, with Russell Deitch at 202-326-2585. All such modifications must be agreed to in writing by the FTC's staff.

G. Certification: The Company shall certify that all information required by the CID and in his or her possession, custody or control, has been produced and shall certify that the documents or information produced or identified in response to this CID are complete and accurate. This certification shall be made in the form set out on the back of the CID, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

H. Scope of Search: Each specification in this CID seeks production of all responsive information in your possession or under your actual or constructive custody or control including, but not limited to information in the possession, custody, or control of other persons acting or purporting to act on your behalf (including, without limitation, attorneys, accountants, advisors, directors, officers and employees). The scope of the search excludes any personally identifiable information concerning any subscriber within the meaning of the Cable Act, 47 USC § 551.

I. Production: Production shall be made by making all responsive information available for inspection and copying by the FTC's staff at your principal place of business. Alternatively, you may elect to send via Federal Express or other overnight courier, all responsive information to: Nicholas Mastrocinque, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room 238, Washington, DC, 20580. Notification of your intention to use this alternative method of compliance shall be given by mail or telephone to Russell Deitch at 202-326-2585 at least five days prior to production.

J. **Identification of Information:** Information that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each item submitted, each specification to which the item is responsive. If any information responsive to this CID has been previously supplied to the FTC, you may comply with this CID by identifying the information previously provided and the date of submission.

K. **Production of Copies:** Unless otherwise stated, legible photocopies may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of original documents may be submitted in lieu of originals only if they are true and correct copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any FTC proceeding or court of law; and provided further that you shall retain the original documents and produce them to FTC staff upon request.

L. **Submission of Electronic Data**

The following guidelines refer to any documents that you choose to provide in electronic form. You must confirm with the FTC that the proposed electronic data formats and media types will be acceptable to the government.

(A) **Magnetic and other electronic media types accepted**

- (1) 3.5 inch microcomputer diskettes formatted for IBM compatible computers.
- (2) CD-R CD-ROMs formatted to ISO 9660 specifications.
- (3) DVD-ROM for Windows-compatible personal computers.
- (4) IDE and EIDE hard disk drives up to 300GB per drive, formatted in Microsoft Windows-compatible, uncompressed data.

Note: Other types of tape media used for archival, backup or other purposes such as 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes, DLT or other types of media **accepted only with prior approval.**

(B) **File and record formats**

- (1) E-mail: The FTC accepts MS Outlook PST files, MS Outlook MSG files, Lotus Notes NSF files. **Any other electronic submission of email accepted only with prior approval.**

(2) Scanned Documents: Image submissions accepted with the understanding that unreadable images will be resubmitted in original, hard copy format in a timely manner. Scanned documents must adhere to the following specifications:

(a) All images must be multi-page, 300 DPI - Group IV TIFF files named for the beginning bates number.

(b) If the full text of the document is available, that should be provided as well. The text should be provided in one file for the entire document or email, named the same as the first TIFF file of the document with a *.TXT extension.

Note: Single-page, 300 DPI – Group IV TIFF files may be submitted **with prior approval** if accompanied by an acceptable load file such as a Summation or Concordance image load file which denotes the appropriate information to allow the loading of the images into a document management system with all document breaks (document delimitation) preserved. OCR accompanying single-page TIFF submissions should be located in the same folder and named the same as the corresponding TIFF page it was extracted from, with a *.TXT extension.

(3) Other PC files: The FTC accepts word processing documents in ASCII text, WordPerfect version 10 or earlier, or Microsoft Word 2002 version or earlier. Spreadsheets should be in MS Excel 2002 (*.xls) version or earlier. Database files should be in MS Access 2002 or earlier. PowerPoint presentations may be submitted in MS PowerPoint 2002 or earlier. **Other proprietary formats for PC files should not be submitted without prior approval.** Files may be submitted using the compressed ZIP format to reduce size and ease portability. Adobe Acrobat PDF (*.pdf) may be submitted where the normal business practice storage method is PDF.

Note: Database files may also be submitted **with prior approval** as delimited ASCII text files, with field names as the first record, or as fixed-length flat files with appropriate record layout. For ASCII text files, field-level documentation should also be provided and care taken so that delimiters and quote characters do not appear in the data. The FTC may require a sample of the data to be sent for testing.

(C) Security

(1) All submissions of electronic data to the FTC must be free of computer viruses. In addition, any passwords protecting documents or files must be removed or provided to the FTC.

(2) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container: "MAGNETIC MEDIA – DO NOT X-RAY, MAY BE OPENED FOR POSTAL INSPECTION."

III. SPECIFICATIONS

Subject to the limitations set forth in Paragraph II H of the directions above, produce the following documents:

1. Magnetically recorded documents sufficient to show all telemarketing calls to consumers made by EchoStar relating to the marketing of Dish Network. These documents should include the telephone numbers, and the dates of the calls;
2. The names, addresses, and telephone numbers of all corporations, partnerships, sole proprietorships or other entities who market or have marketed Dish Network, and the dates during which the entities marketed Dish Network;
3. The names, addresses, and telephone numbers of all persons EchoStar has terminated or otherwise disciplined for violating the Telemarketing Sales Rule or company policies and procedures relating to telemarketing, and the dates and the reasons for the termination or discipline;
4. Notes, minutes, and other documents of meetings relating to EchoStar's monitoring and enforcement of any person's compliance with the Telemarketing Sales Rule;
5. All consumer complaints relating to calls to consumers on a state do not call registry, calls to consumers on the National Do Not Call Registry, calls to consumers who had requested not to be called, or pre-recorded calls;
6. All emails, memorandum, notes, letters, or other documents relating to Echostar's monitoring and enforcement of any person's compliance with the Telemarketing Sales Rule, including but not limited to, warnings issued to any person marketing Dish Network, and termination notices sent to any person marketing Dish Network;

7. All EchoStar Board minutes referring to the Telemarketing Sales Rule;
8. Copies of complaints and other legal filings from all cases brought against EchoStar or another person marketing Dish Network relating to calls to consumers on a state registry or the National Do Not Call Registry, requests by consumers not to be called, or pre-recorded calls;
9. A copy of the standard contract that EchoStar enters into with a person who will be marketing Dish Network;
10. Documents sufficient to show all marketing materials, directions, and support EchoStar provides to a person who will be marketing or is marketing Dish Network;
11. Documents sufficient to show all of EchoStar's policies and procedures relating to the Telemarketing Sale Rule;
12. An organizational chart for EchoStar listing all officers and their responsibilities; and
13. If EchoStar claims that it has not violated the Telemarketing Sales Rule, provide documents sufficient to support the claim.

EXHIBIT 125

EXHIBIT 125

JA006546
005408

TX 102-005808

Eric Myers

From: Anderson, Jordan [Jordan.Anderson@echostar.com]
Sent: Thursday, July 28, 2005 1:48 PM
To: 'emyers@starsatllc.com'; 'bcs@starsatllc.com'
Subject: Call Center Training Help

Gentlemen-

I'm still working on getting the QA form for you, but I did find some scripts for outbound calling that you may be able to adapt and work with, if you want.

Opening

Hello may I speak with _____.

If lead not available, ask: Are you a member of the household? If customer response is NO then proceed with Alternative Intro.

Qualified Lead Introduction and Purpose: (Speaking to lead)

Hello, my name is _____ (first name) with Dish Network and the reason for my call is to inform you that you have been PRE SELECTED to participate in our exclusive promotion available to you in (customers' city/state). This offer includes FREE equipment, FREE installation with no startup costs!

Alternative Introduction and Purpose: (If person answering is a decision maker)

Hello, my name is _____ (first name) with Dish Network and the reason for my call is to inform you that you are eligible to participate in our exclusive promotion available to you in (customers' city/state). This offer includes FREE equipment, FREE installation with no startup costs!

Remember: Deliver quickly, given more as a statement - Sounding enthusiastic is key.

Overcoming Objections

"I AM HAPPY WITH CURRENT PROVIDER."

(Customer Name), I am glad to hear they are treating you well. What is it that you really like about them?
Proceed to Probing.

"I AM NOT INTERESTED."

(Customer Name), I would like to point out that with this offer you have the opportunity to receive more channels, better equipment and better service for less money than the competition. Let's put together a quote for you to consider and discuss with your family.
Proceed to Probing.

"I DON'T HAVE TIME."

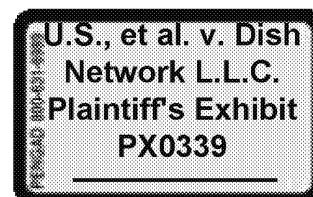
(Customer Name), I understand you're busy so I will get to the point. We have a variety of GREAT promotions all FOR A LIMITED TIME. Our prices are as low as \$19.99 a month for 3 months and we have even included FREE HBO and Showtime FREE for 3 months!! Again I know you are limited on time but I would like to put together a quote for you to consider and discuss with your family.
Proceed to Probing.

Probing Questions

- What is it you like about your current television entertainment provider?
- What type of programming do you and your family enjoy watching?
- How important is reducing programming cost to you?
- Describe to me your ideal television provider.

3/14/2006

PX0339-001



JA006547
005409

FTC016-000265

SLC_ DNC_ Investigation_0012270

TX 102-005809

Deliver the Service Points

Based on the information you've provided, you are eligible for our LIMITED TIME OFFER which will give you over _____ channels including 8 channels of HBO and 10 channels of Showtime, for only \$_____ for 3 months. Also, based on the information I have here you do qualify for your local channels out of (Available Networks) but just to confirm you are still at **confirm customer's address**.

Close

"Pricing and programming subject to change."

My first available date for installation is (date/time).

Would you prefer mornings or afternoons?

Qualification

Now to qualify you for this promotion, we just need two minimum requirements. First I will need your SSN# to run a credit score and a valid credit or debit card on which we will place a \$1.00 hold 3 days, just for verification Mr./Ms. _____. Which credit card would you like to use today?

"I DON'T WANT TO GIVE THAT INFORMATION/SECURITY CONCERN"

(Customer Name), I would like to point out that the security of your account is our priority and no one can access this information for personal gain. Since this promotion offers so much we are required to confirm your identify as well as credit status in order to provide this to you. Over 11 million have already said "YES" lets get your started. Can you verify your Social Security Number?

Promotion Details

All this for only \$_____ per month for your first three months. After three months your monthly price will be \$_____ per month which will include your local programming. Keep in mind we are the Lowest All Digital Price in America. If you choose to keep the promotional HBO and Showtime after three months, it will only cost you \$_____ per month, you can decide!

Disclosures

!!! GIVE ALL DISCLOSURES BEFORE TAKING PAYMENT !!!

DHA Disclosures

Before I process your payment for the activation fee, I would like to cover key points of this great promotion with you:

• **Minimum Programming**

If you do not maintain the minimum programming (AT60 or DISH Latino or Great Wall), or your service is cancelled or terminated, the equipment provided to you must be returned within 15 days of such cancellation or termination or an equipment charge will be assessed, which at a minimum is \$100 per receiver.

• **All Applicable Fees**

DVR Fee: There is a \$4.98 fee per month for each DVR receiver. This is a great deal since our DVR allows you to record up to 100 hours of programming, pause, rewind and replay live TV. (No charge if subscribes to AEP or AT180 annually w/all 4 premiums of DISH Latino Max w/all 4 premiums)

Equipment Rental Fee: The 1st receiver's rental fee is included in your basic programming package. There is an additional \$5 per month rental fee per receiver beyond the first.

A \$4.99 per month additional outlet programming access fee will be charged to your account for each dual-

3/14/2006

PX0339-002

JA006548

005410

FTC016-000266

SLC_ DNC_Investigation_0012271

TX 102-005810

tuner receiver, but this fee will be waived on a monthly basis for each receiver that is continuously connected to your same land-based phone line.

- 1st Bill / 2 Months / \$49.99 Credit

Your first bill will be for two months of services totaling \$_____. You will see a \$49.99 (\$69.98 with 625) promotional charge as well as a \$49.99 credit on your first bill. Your monthly rate will be \$_____. This does not include any applicable sales tax. All payments for programming are non-refundable.

Pricing and programming subject to change.

Additional Disclosures for DHA 12/24

Cancellation Fee

There will be a cancellation fee of (\$20 per remaining month in DHA 12, \$10 per month in DHA 24) if you cancel your service prior to completing the 12/24 month agreement.

DHPP

The DISH Home Protection Plan is free for the term of your agreement (12/24 months), after that it will be added to your bill monthly at \$5.99 per month.

IMPORTANT!

"Congratulations Mr. / Ms. _____! You will receive our Digital Home Advantage promotional price, which means your bill will be \$12 less per month for your first three months of service, and you will receive HBO and Showtime FREE for three months as well. Your normal monthly rate of \$_____ will be applicable with your third billing. After three months you can either keep the HBO and Showtime packages at a cost of an additional \$22.99 per month, or call in to tailor a package that suits your needs."

Do you Rent or Own your home? IF RENT: You must have written permission from your landlord to install the system when our technician arrives.

FFA Disclosures

Before I process your payment, I would like to cover key points of this great promotion with you:

- Equipment Credits

You will receive (30 months for 1 receiver / 40 months for 2 receivers) \$5 monthly credits. You must remain active with the minimum programming (AT60, DISH Latino, or Great Wall TV, currently \$31.99, \$29.99 or \$34.99 per month) to continue to receive your credits. If you disconnect, or do not have minimum programming the remaining credits will be forfeited.

- All Applicable Fees

DVR Fee: There is a \$4.98 fee per month for each DVR receiver. This is a great deal since our DVR allows you to record up to 100 hours of programming, pause, rewind, replay live TV and skip commercials. (No charge if subscribes to AEP or AT180 annually w/all 4 premiums or DISH Latino Max w/all 4 premiums)

Additional Outlet Fee: There is an additional \$4.99 per month additional outlet fee per receiver beyond the

3/14/2006

PX0339-003

JA006549

005411

FTC016-000267

SLC_ DNC_Investigation_0012272

TX 102-005811

first.

• 1st Bill / 2 Months

Your first bill will be for 2 months of services totaling \$_____. Your monthly rate will be \$_____. This does not include any applicable sales tax. All payments for programming are non-refundable.

IMPORTANT!

For customers taking the free HBO and Showtime offer:

"Congratulations Mr./ Ms. _____! You will receive HBO and Showtime FREE for your first three months of service. You will be billed \$22.99 for HBO and Showtime on your third billing. After three months you can either keep the same lineup you have, or call us to tailor a package to meet your specific needs."

"Pricing and programming subject to change."

Do you Rent or Own your home? IF RENT: You must have written permission from your landlord to install the system when our technician arrives.

If your customer has ordered a DISH Player-DVR 625:

Mr./Ms. _____ if you like, I can waive the \$19.99 lease upgrade fee for your DVR receiver. All you need to do is agree to an additional 12 months of service.

(Change promo to DHA 24 if your customer agrees)

Welcome Message

(Customer Name), I want to be the first one to welcome you to the DISH Network family. Is there anything else I can help you with?

If nothing else: (Customer Name), Thank you for choosing DISH Network and have a Great Day.

Ms. Jordan Anderson
Sales Partner Management
DNS LLC
EchoStar Communications Corporation
Office: 303.723.2424
Fax: 303.723.3572
Email: jordan.anderson@echostar.com

Get 12 Million!

3/14/2006

PX0339-004

JA006550

005412

FTC016-000268

SLC_ DNC_Investigation_0012273

TX 102-005812

EXHIBIT 126

EXHIBIT 126

JA006551
005413

TX 102-005813

STATE OF SOUTH CAROLINA)

CASE NO.: 05-SC-86-1748

COUNTY OF CHARLESTON)

JAY CONNOR,

Plaintiff,

vs.

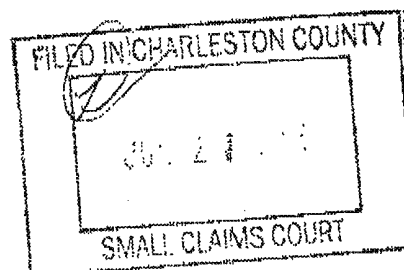
STAR SATELLITE, LLC

and

DISH NETWORK SERVICE, LLC

Defendants.

) VERIFIED COMPLAINT

**ADDRESS FOR REGISTERED AGENT OF DEFENDANT STAR SATELLITE, LLC:**

Walter E. Myers

3550 N. University Ave. Suite 300

Provo, Utah 84604

ADDRESS FOR REGISTERED AGENT OF DEFENDANT DISH NETWORK SERVICE, LLC:

David K. Moskowitz

9601 S. Meridian Blvd.

Englewood, Colorado 80112

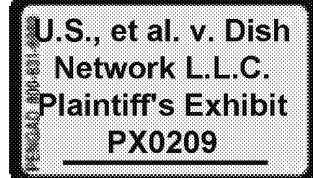
Plaintiff complaining of the Defendants alleges as follows:

TYPE OF ACTION

1. This is an action to recover statutory damages imposed by 47 U.S.C. 227, and trebled damages constituting forfeiture or other penalty.

PARTIES

2. Plaintiff is a resident of Charleston County, South Carolina, and the statutory violations and injury to Plaintiff occurred in Charleston County.
3. Defendant Star Satellite, LLC (herein after "Star Satellite") is a Limited Liability Company that conducts and transacts business in Charleston County and makes telemarketing calls to residents of Charleston County.



FTC/ECHOSTAR (TENAYA) 0000082

PX0209-001

JA006552

005414

FTC003-074424

SLC_ DNC_Investigation_0015256

TX 102-005814

4. Defendant Dish Network Services, LLC and (herein after "Dish Network") is a Limited Liability Company that conducts and transacts business in Charleston County and makes telemarketing calls to residents of Charleston County.
5. Defendant Star Satellite, LLC, (herein after "Star Satellite") is an authorized agent of Dish Network.

VENUE AND JURISDICTION

6. The Telephone Consumer Protection Act ("the TCPA or "the Act") consists of 47 U.S.C. 227 as amended and the FCC's implementing rules (see generally 47C.F.R. Part 64 Subpart 1200 and Part 318). The TCPA places conduct, record keeping, and disclosure requirements on entities engaged in telephone solicitations and facsimile transmissions, and it provides a private right of action by a consumer in State court in response to violations of the TCPA's regulations.
7. This cause of action arises out of conduct of Defendants in initiating a telephone call to Plaintiff, to his residential telephone number in Charleston County.
8. Venue and jurisdiction are proper in this Court pursuant to 47 USC § 227 and SC Code Ann § 36-2-801 and the laws of the United States and Constitution as they may apply.

ACTS OF AGENTS

9. Whenever it is alleged in this complaint that Defendants did any act, it is meant that the Defendants performed, caused to be performed, and/or participated in the act and/or that Defendants' officers, employees, contractors, assigns, successors, predecessors, affiliates, or other agent performed or participated in the act on behalf of, for the benefit of, and/or under the authority of the Defendants.

DEFENDANTS' USE OF PRERECORDED TELEPHONE MESSAGES

10. Defendants use, directly and/or by their agents, one or more devices that calls residential telephone subscribers and delivers messages using a prerecorded or artificial voice.
11. Defendants directly and/or by their agents, did initiate the telephone calls alleged herein with a device that delivered messages using a prerecorded or artificial voice.
12. Defendants directly and/or by their agents, are aware of this device's designed operation and/or have knowledge that calls were being made using an artificial or prerecorded voice to deliver messages.
13. Defendants directly and/or by their agents, can exercise control over the content of the messages delivered by the artificial or prerecorded voice.

FTC/ECHOSTAR (TENAYA) 0000083

PX0209-002

JA006553
005415

FTC003-074425

SLC_ DNC_Investigation_0015257

TX 102-005815

14. Defendants directly and/or by their agents, can exercise control over the people who make the calls that deliver messages by artificial or prerecorded voice.

TELEPHONE CALL MADE TO PLAINTIFF

15. On or about July 5, 2005 at or about 6:49 P.M. EDT, a telephone call was initiated to the Plaintiff's residential telephone number at (843) 556-7353 by or on behalf of the Defendants.
16. The purpose of the call was, among other things, to deliver a telephone message to the called party on behalf of the Defendants.
17. In the call described herein, Defendants willfully and/or knowingly intended to deliver a recorded message solicitation to the called party.
18. A true and correct transcript of the call is attached hereto, and incorporated herein by reference, as Exhibit "A".

FIRST CAUSE OF ACTION - 47 U.S.C. 227 (b) (1) (B)

Delivering an unsolicited advertisement using an artificial or prerecorded voice violating

19. Paragraphs 1 through 18 are restated as if set forth herein.
20. Defendants did make a telephone call to Plaintiff's telephone using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.

Violation of identification requirements - 47 C.F.R. 64.1200 (b) (1)

21. Paragraphs 1 through 20 are restated as if set forth herein.
22. The recorded message in the call did not fulfill the requirements of 47 C.F.R. 64.1200 (b) (1) in that during or after the message, state clearly the identity of such individual, business, or other entity making the call.

Violation of identification requirements - 47 C.F.R. 64.1200 (b) (2)

23. Paragraphs 1 through 22 are restated as if set forth herein.
24. The recorded message in the call initiated to Plaintiff's residence did not fulfill the requirements of 47 C.F.R. 64.1200 (b) (2) in that during or after the message, state the telephone number or address of such individual, business, or other entity making the call.

FTC/ECHOSTAR (TENAYA) 0000084

3
PX0209-003

JA006554
005416

FTC003-074426

SLC_DNC_Investigation_0015258

TX 102-005816

Failure to have a Do-Not-Call policy, or to make that policy available upon demand-47 C.F.R.64.1200 (d) (1).

25. Paragraphs 1 through 24 are restated as if set forth herein.
26. Defendants had no written DO-NOT-CALL policy available that fulfilled the requirements of 47 C.F.R.64.1200 (d) (1) at the time of the call.


Willful or Knowing Violations

27. Defendants' actions, as described in paragraphs 20, 22, 24 and 26 manifest FOUR knowing and/or willful actions in violation of 47 U.S.C. 227 within the meaning of the 1934 Communications Act and the Federal Communications Commission.

PRAYER FOR RELIEF

28. WHEREFORE, Plaintiff prays for the following relief, temporarily and permanently:
29. For the statutory damages of \$500 per violation, to be awarded to the Plaintiff in accordance with the TCPA, for each of the Defendants' violations of that TCPA and;
30. For trebled damages to be awarded to the Plaintiff in accordance with the TCPA, for each of Defendants' willful and/or knowing violations of that TCPA listed in paragraph 27 above; and
31. For unspecified punitive damages in an amount to be determined by this Court.
32. For such other and further relief as the Court may deem just and proper.
33. Plaintiff waives the excess of any award above the jurisdiction of the Court in effect at the time judgment is rendered.

Respectfully submitted,
this is the 20th day of July, 2005.


Jay Connor Plaintiff, Pro Se
1612 Poinsettia Road
Charleston, SC 29407
(843) 557-5724

FTC/ECHOSTAR (TENAYA) 0000085

4
PX0209-004

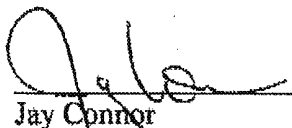
JA006555
005417

FTC003-074427
SLC_ DNC_Investigation_0015259

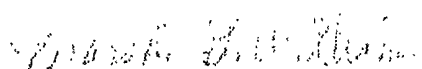
TX 102-005817

VERIFICATION

The Undersigned states and swears that all the forgoing allegations are true and correct to the best of his knowledge and belief.


Jay Connor

Subscribed and sworn to before me by Jay Connor on this the 21 day of July, 2005.



Notary Public for South Carolina

My commission expires on 9-20-2006.

FTC/ECHOSTAR (TENAYA) 0000086

6
PX0209-005

JA006556
005418

FTC003-074428
SLC_ DNC_Investigation_0015260

TX 102-005818

EXHIBIT 127

EXHIBIT 127

JA006557
005419

TX 102-005819



DANA E. STEELE, ESQ.
Direct Dial No. (303) 723-1621
Direct Fax: (303) 723-2571

August 12, 2005

VIA FACSIMILE (801) 437-6536

Daniel Myers
Star Satellite LLC
3550 N. University
Provo, UT 84606

Re: Notice of Claim; Demand for Defense and Indemnity
Jay Connor v. Star Satellite, LLC and DNSLLC
State of South Carolina, County of Charleston
Small Claims Case No.: 1005-SC-86-1746


Dear Mr. Myers:

As you may be aware, Jay Connor has filed the attached complaint against Star Satellite LLC and Dish Network Service L.L.C. ("DISH") for violation of the Telephone Consumer Protection Act for a prerecorded voice call made to Mr. Connor's residential telephone number on or about July 5, 2005.

It is our position that, pursuant to Section 7.1 of your Retailer Agreement, you are required, among other things, to use your best commercial efforts to further EchoStar's business, reputation and goodwill. Furthermore, pursuant to Section 13 of your Agreement, we are hereby requesting that Satellites and More defend and indemnify EchoStar from and against any and all costs Dish Network incurs therein.

Please contact me directly, upon receipt of this correspondence, at (303) 723-1621 so that we may discuss this matter further, as an Answer is due August 31, 2005.

Thank you for your attention to this matter. I look forward to working with you.

Sincerely,

Dana E. Steele
Corporate Counsel

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX0208

cc: Robb Origer, Retail Services (w/o encl)
Michael Spencer, Regional Director (w/o encl)

9601 S. Meridian Boulevard • Englewood, CO 80112
Tel: (303) 723-1600 • Fax: (303) 723-1699

FTC/ECHOSTAR (TENAYA) 0000080

PX0208-001

JA006558
005420

FTC003-049633
SLC_DNC_Investigation_0012452

TX 102-005820

PX0208-002

JA006559

005421

FTC003-049634

SLC_ DNC_Investigation_0012453

TX 102-005821

EXHIBIT 128

EXHIBIT 128

JA006560
005422

TX 102-005822

Mr. Russell Deitch, Esq.
September 22, 2005
Page 1 of 3



DANA E. STEELE
Direct Dial No. (303) 723-1621
Direct Fax: (303) 723-2571

September 22, 2005

Via Federal Express Delivery

Russell Deitch, Esq.
Commission Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 238
Washington, D.C. 20580

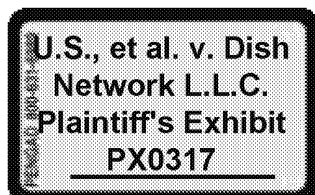
Re: *Civil Investigative Demand to EchoStar Communications Corporation*

Dear Mr. Deitch,

Per our prior conversations, please find enclosed the following in response to the CID issued by your office to EchoStar Communications Corporation ("EchoStar"), as modified during such conversations. Such items are being produced in confidence as designated below in accordance with your letter of September 15, 2005, the Federal Trade Commission Act and the Commission's Rules of Practice.

1. 1 DVD with listings of all outbound telemarketing calls made on behalf of EchoStar from October 17, 2003 through December 31, 2004*
(CONFIDENTIAL);
2. Photocopy of list of retailers terminated during relevant time period to the extent such information is available (not all reasons for terminations are listed and all terminations might not be included on this spreadsheet as such documentation is not required) (CONFIDENTIAL);
3. Employee training materials and compliance documents related to telemarketing and Telemarketing Sales Rule (CONFIDENTIAL);

* A second DVD with the listing of calls from January 1, 2005 to the date of the CID request was damaged during copying and will be forwarded to you upon its completion.



PX0317-001

FTC/ECHOSTAR000001

JA006561

005423

FTC003-061743

SLC_ DNC_Investigation_0015586

TX 102-005823

4. Consumer complaints regarding telemarketing reported to our consumer escalations and telemarketing groups, including:
 - a. Hard copies of complaints (**CONFIDENTIAL**);
 - b. Copies of screen shots of customer complaints (**CONFIDENTIAL**);
 - c. Copies of printed e-mails re: complaints (**CONFIDENTIAL**); and
 - d. 1 CD-ROM with electronic copies of e-mail complaints (**CONFIDENTIAL**);
5. Copies of communications with retailers regarding telemarketing violations in our possession (per our discussion, not all correspondence of this nature was retained);
6. Copies of complaints and other legal filings regarding telemarketing in our possession (excluding small claims matters);
7. Copies of templates of standard distributor and retailer contracts (**CONFIDENTIAL**);
8. "Fax Blast" sent to authorized retailers regarding telemarketing (**CONFIDENTIAL**);
9. Co-op advertising policies (**CONFIDENTIAL**); and
10. Listing of current officers and their responsibilities as well as list reflecting officers in 2004 and 2003.

Please be advised that the following items are currently being copied and will be produced as soon as possible:

1. A second DVD with the listing of calls from January 1, 2005 to the date of the CID request (original was damaged during copying);
2. A list of authorized EchoStar retailers (list discovered to be incomplete at time of copying); and
3. Copies of one week's worth of customer complaints and correspondence per your conversation with David K. Moskowitz (complaints are currently being scanned by a third party copying service).

PX0317-002

FTC/ECHOSTAR000001A

JA006562

005424

FTC003-061744

SLC_ DNC_Investigation_0015587

TX 102-005824

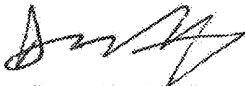
Mr. Russell Deitch, Esq.

September 22, 2005

Page 3 of 3

I look forward to answering any questions whatsoever you may have with regard to this production. Please contact me directly to discuss any questions or concerns. Thank you,

Sincerely,



Dana E. Steele
Corporate Counsel

PX0317-003

FTC/ECHOSTAR000001B

JA006563

005425

FTC003-061745

SLC_ DNC_Investigation_0015588

TX 102-005825

EXHIBIT 129

EXHIBIT 129

JA006564
005426

TX 102-005826

From: Oberbillig, Mike </O=ECHOSTAR COMMUNICATIONS
CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=MIKE OBERBILLIG>
Sent: Monday, August 14, 2006 1:40 PM
To: Oberbillig, Mike <Mike.Oberbillig@echostar.com>
Subject: FW: Dish Network Auto Dialer calls [Indiana AG] - United Satellite -11450877
Attach: voicemail.wav

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

From: Oberbillig, Mike
Sent: Friday, September 30, 2005 5:26 PM
To: Oberbillig, Mike; Ahmed, Amir; Steele, Dana; Novak, Scott; Mills, Mike
Cc: Keller, Steven; Miller, Kerry; Gowland, Jim
Subject: RE: Dish Network Auto Dialer calls [Indiana AG] - United Satellite -11450877

Team,

Instead of multiple e-mails let me itemize this out to confirm we are all on the same page & to provide an update of where we stand on this issue.

1/30/05: We called and placed an order at the 866-211-5897 number to confirm who the retailer was. The order was tracked via the account number in CSG and pointed us to United Satellite.

I talked with the entire United Satellite team (Bill King, Mike Gleason, Jacques Nenejian) this PM and covered each issue listed below, and played the attached wave file. I informed them about our concerns with telemarketing but also about call centers representing themselves as DISHNETWORK, and hiding where the calls were originating from. They stated they do use a second call center for overflow calls and web lead follow-up calls but that they do not represent themselves as Dishnetwork. I covered the details below with them and that the similarities of having a Quebec/Montreal number links the calls together and lead to United. They are calling the secondary call center and doing a full top/down procedure call with them. They want to be very open with us, and know the importance of following the law and in no way would they do anything to jeopardize the partnership we have. I informed them that any additional specific complaints we receive against them could lead to at a minimum a C&D or worse, a probation period that could lead to termination.

OUTLINE of Complaints:

1: 9/23/05 Marguerite M. Sweeney wrote a letter stating someone had called a co-worker using a dial 1 opt in service and stating they were DishNetwork but did not provide any detail info as to the number they were calling from etc. So we do not have any details if this is the same issue as below or even if it is the same company.

2: 9/26/05 Marguerite M. Sweeney wrote and provided detail of a similar complaint with the following issues:

number: 866-211-5897. I called it and they answer "Satellite Promotions". They claimed to be in Wyoming. This consumer's complaint did not specifically mention Dish Network. The consumer's caller-ID showed the same Montreal number 514-598-0000. Here is the script from the consumer's complaint. It's not the same press "1" transfer call described by my coworker. It does not specifically mention Dish Network. The commonality is that Montreal number.

The WAVE file was attached to this e-mail- At the end Billy states "thanks again for your on-line interest" This sounds like the consumer had provided info on a web site & they were calling them back. If this is a follow-up call from info the consumer provided on the web I do not believe it is a legitimate complaint.

PX0120-001

Confidential - U.S. v. DISH

JA006565

005427

DISH5-0000111197

SLC_ DNC_Investigation_0012263

TX 102-005827

3: 9/29/05 Scott Novak received a call at his home with the caller ID as Quebec. After further questions Scott determined they were in Nebraska. Stating they are DishNetwork.

Thanks

MJO

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

From: Oberbillig, Mike

Sent: Friday, September 30, 2005 11:15 AM

To: Oberbillig, Mike; Ahmed, Amir; Steele, Dana; Novak, Scott; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: RE: Dish Network Auto Dialer calls [Indiana AG] - United Satellite -11450877

Team,

I had one of my people call and sign up. The account number is 8255909485496498.

USAT085 Web DHA sale.

This is United Satellite- 11450877. Mike Mills I have called Jacques Nenejian the President and left a message. I will continue to follow-up with this account.

MJO

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

From: Oberbillig, Mike

Sent: Friday, September 30, 2005 8:43 AM

To: Ahmed, Amir; Steele, Dana; Novak, Scott; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Team,

He claims it is not him, and that any telemarketing that he does is done by the law and they have only called people who called into his center. He would like to have a call with Scott Novak so he can be very open about how they telemarket etc.

MJO

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

From: Ahmed, Amir

Sent: Friday, September 30, 2005 4:51 AM

To: Steele, Dana; Novak, Scott; Oberbillig, Mike; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

OK with me

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

From: Steele, Dana

Sent: Thursday, September 29, 2005 11:01 PM

To: Novak, Scott; Ahmed, Amir; Oberbillig, Mike; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: Re: Dish Network Auto Dialer calls [Indiana AG]

If we determine a probation period is appropriate rather than immediate termination, I recommend a probation period of one year terminable upon the first suspected offense in E*'s sole discretion. Just my 2 cents.

ATTORNEY/CLIENT AND WORK PRODUCT PRIVILEGES MAY APPLY/ DO NOT DISCLOSE WITHOUT THE PRIOR CONSENT OF GENERAL COUNSEL

Dana E. Steele

Corporate Counsel

EchoStar Satellite L.L.C.

P.O. Box 6655 (for regular mail)

PX0120-002

JA006566

005428

DISH5-0000111198

SLC_ DNC_Investigation_0012264

TX 102-005828

Englewood, Colorado 80155
9601 S. Meridian Blvd. (for FedEx/UPS)
Englewood, Colorado 80112
Phone (303) 723-1621
Fax (303) 723-2571
E-mail: dana.steele@echostar.com

Information contained in this e-mail and any attachment may be legally privileged and confidential. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by reply e-mail and permanently delete it and any attachments. You should not retain, copy, or use this e-mail or any attachments for any purpose, nor disclose all or any part of the contents to any other person.

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

From: Novak, Scott <Scott.Novak@echostar.com>
To: Ahmed, Amir <Amir.Ahmed@echostar.com>; Oberbillig, Mike
<Mike.Oberbillig@echostar.com>; Mills, Mike <Mike.Mills@echostar.com>
CC: Keller, Steven <Steven.Keller@echostar.com>; Miller, Kerry
<Kerry.Miller@echostar.com>; Steele, Dana <Dana.Steele@echostar.com>; Gowland, Jim
<Jim.Gowland@echostar.com>
Sent: Thu Sep 29 20:26:21 2005
Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Humorously enough, guess who delivered an automated, recorded message to my home tonight -- delivering caller ID information from Quebec (false, Penny told me she was in Lincoln, Nebraska) -- stating first "this is the Digital Satellite Center, and then affirmatively "we are DISH Network" -- and refusing to give me a hard address, instead directing me to www.dishnetwork.com where I could send an email

Attorney Client Privileged and Confidential

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

From: Ahmed, Amir
To: Novak, Scott; Oberbillig, Mike; Mills, Mike
Cc: Keller, Steven; Miller, Kerry; Steele, Dana; Gowland, Jim
Sent: 9/26/2005 5:21 PM
Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Scott,

I prefer to put them on 30 or 60 day probation where if these tactics happen again it would be grounds for termination. So with that said, how does the letter get written up?

Amir

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

From: Novak, Scott
Sent: Monday, September 26, 2005 1:24 PM
To: Ahmed, Amir; Oberbillig, Mike; Mills, Mike
Cc: Keller, Steven; Miller, Kerry; Steele, Dana; Gowland, Jim
Subject: RE: Dish Network Auto Dialer calls [Indiana AG]
We know that SSN is using autodialers and automessages. Terachi been warned time and again (by me, by you, by the region, by phone, in writing, in person) that these activities could violate the law. Last time, Teranchi blamed a "rogue employee," who he claimed was terminated,

PX0120-003

Confidential - U.S. v. DISH

JA006567

005429

DISH5-0000111199

SLC_ DNC_ Investigation_0012265

TX 102-005829

but the activities continue. Charter knows he's doing it, and several state AG's know he's doing it as well.

In the past, we have successfully resisted the argument that we are responsible for the conduct of independent retailers, however, SSN is a problem because we know what he is doing and have cautioned him to stop. There is risk in continuing to give warnings without a follow-through action. Eventually, someone will try to use that against us.

On the range of options, you could give him another written warning, you could put him on probation for a period of time, you could put him on hold and withhold money (presumably to cover "potential fines" running from SSN to us under some agency theory), or you could terminate him now.

I favor probation, provided that there is unanimous understanding that if EchoStar becomes aware of ANY ONE addition violation, he's terminated.

Scott Novak

Corporate Counsel

(303) 723-1616

(303) 723-3606 (fax)

Attorney Client Privileged and Confidential

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

From: Ahmed, Amir

Sent: Monday, September 26, 2005 11:43 AM

To: Oberbillig, Mike; Mills, Mike

Cc: Keller, Steven; Novak, Scott; Miller, Kerry

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Scott, FYI

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

From: Oberbillig, Mike

Sent: Monday, September 26, 2005 11:08 AM

To: Ahmed, Amir; Mills, Mike

Cc: Keller, Steven

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

We have addressed this with him many times, as recent as last week in person/LA. We stressed that he must follow the line if he wants continued support etc.

MJO

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

From: Ahmed, Amir

Sent: Monday, September 26, 2005 10:00 AM

To: Mills, Mike; Oberbillig, Mike

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Ok, apparently we could not convince Alex. Oberbillig, I'm so tired of this bullshit. I will deal with Novak and let legal handle it.

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

From: Mills, Mike

Sent: Monday, September 26, 2005 10:57 AM

To: Ahmed, Amir; Oberbillig, Mike

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

PX0120-004

Confidential - U.S. v. DISH

JA006568

005430

DISH5-0000111200

SLC_ DNC_Investigation_0012266

TX 102-005830

Yes - it is Satellite Systems.

Mike Mills

National Sales Manager

303.723.2865

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

From: Ahmed, Amir

Sent: Monday, September 26, 2005 10:53 AM

To: Oberbillig, Mike; Mills, Mike

Subject: FW: Dish Network Auto Dialer calls [Indiana AG]

Please call this number 866-211-5897 and find out if this is a OE retailer -----Original Message-----

From: Novak, Scott

Sent: Monday, September 26, 2005 10:51 AM

To: Ahmed, Amir

Cc: Miller, Kerry

Subject: FW: Dish Network Auto Dialer calls [Indiana AG]

Amir, this may be Alex Teranchi and Satellite Systems Networks again. They used "Satellite Promotions" and I recall them hosting a call center in Wyoming previously.

I'll let you know when we know for certain, but if it is SSN again, they are becoming a problem. You'll recall Charter got an injunction against SSN about six weeks ago.

Attorney Client Privileged and Confidential

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

From: Sweeney, Marguerite [mailto:MSWEENEY@atg.state.in.us]

Sent: Monday, September 26, 2005 8:40 AM

To: Novak, Scott; Conley, Amy

Cc: Hewitt, George

Subject: RE: Dish Network Auto Dialer calls

Scott & Amy,

We received a similar complaint from a consumer who provided this number: 866-211-5897. I called it and they answer "Satellite Promotions". They claimed to be in Wyoming. This consumer's complaint did not specifically mention Dish Network. The consumer's caller-ID showed the same Montreal number 514-598-0000.

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

From: Novak, Scott [mailto:Scott.Novak@echostar.com]

Sent: Friday, September 23, 2005 4:14 PM

To: Sweeney, Marguerite; Conley, Amy

Cc: Hewitt, George

Subject: RE: Dish Network Auto Dialer calls

Marguerite, this sounds like some rogue outfit masquerading as us. We will verify again that we don't use "push 1 to speak to someone live" outbound marketing. To my knowledge we never have used that methodology.

We'd like to help figure out who this is. If your colleague can provide any additional information, we'd like to get it.

Thanks.

Scott Novak

PX0120-005

Confidential - U.S. v. DISH

JA006569

005431

DISH5-0000111201

SLC_ DNC_Investigation_0012267

TX 102-005831

Corporate Counsel
(303) 723-1616
(303) 723-3606 (fax)
Attorney Client Privileged and Confidential
-----Original Message-----

From: Sweeney, Marguerite [mailto:MSWEENEY@atg.state.in.us]
Sent: Friday, September 23, 2005 1:44 PM
To: Conley, Amy; Novak, Scott
Cc: Hewitt, George
Subject: Dish Network Auto Dialer calls
Scott and Amy:
One of my co-workers writes:

I just received [an autodialer call] at the house, and pressed "1" to speak with a representative, who confirmed that Dish Network to be the caller rather than an independent dealer. After a short discussion, I asked to speak to a manager, who also confirmed Dish Network as the caller, indicating that they worked in conjunction with several telephone companies and called only unlisted numbers and those who weren't on "no call" lists. I explained that the issue wasn't a DNC issue, but rather an autodialer issue, as autodialers are illegal in Indiana. The supervisor enlightened me by informing me that Dish Network had special permission to make the calls, that it was all approved by their legal department, and that it wasn't just Indiana that was being called, but 400,000 people all around the country, and Dish Network's legal department wouldn't let them do it if it weren't ok. Does this sound like an actual Dish Network telemarketing campaign? The number was not on the Indiana do-not-call list.

Marguerite M. Sweeney
Chief Counsel - Telephone Privacy Enforcement
Office of the Attorney General
302 W. Washington St., 5th Floor
Indiana Government Center South
Indianapolis, IN 46204
Telephone 317.232.1011
Facsimile 317.232.7979 _

PX0120-006

Confidential - U.S. v. DISH

JA006570
005432
DISH5-0000111202
SLC_ DNC_Investigation_0012268
TX 102-005832

voicemail.wav

UNSUPPORTED OR EXCLUDED FILE TYPE

PX0120-007

Confidential - U.S. v. DISH

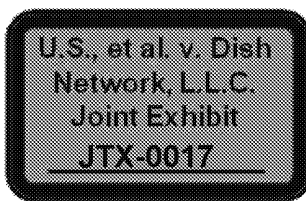
JA006571
005433
DISH5-0000111203
SLC_ DNC_Investigation_0012269
TX 102-005833

EXHIBIT 130

EXHIBIT 130

JA006572
005434

TX 102-005834



Retailer Number **13375148**

ECHOSTAR RETAILER AGREEMENT

This EchoStar Retailer Agreement (the "Agreement") is made and effective as of **10/19/2005** (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 **AMERICAN SATELLITE INC** having a principal place of business at **2667 CAMINO DEL RIO S, SAN DIEGO, CA 92108** ("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 (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 "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.

1.4 "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 such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Bulk Programming services offered and/or any restrictions applicable to such Bulk Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

1.5 "Bulk Subscriber Account" means the customer account set up and maintained by EchoStar for a Qualifying Bulk Subscriber who purchased a commercially-invoiced 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.

1.6 "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 e-mail) or through any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a "Charlie 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 and from time to time in its sole and absolute discretion for any reason or no reason, upon notice to Retailer.

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

1.8 "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.

1.9 "Commercial Location" means a Public Commercial Location and/or a Private Commercial Location, as those terms are defined below in Sections 1.29 and 1.25, respectively.

JTX-0017-001

JA006573

005435

DISH5-0000013149

Confidential-US v. DISH

SLC_ DNC_ Investigation_0012072

TX 102-005835

1.10 “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 and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Commercial Programming services offered and/or any restrictions applicable to such Commercial Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

1.11 “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.

1.12 “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 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.

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

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

1.15 “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 and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.16 “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 and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.17 “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 and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.18 “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 and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.19 “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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Guest Property or is more appropriately considered another type of location.

1.20 “Incentives” mean Monthly Incentives together with any Additional Incentives, as such terms are defined in Sections 1.23 and 1.1, respectively.

1.21 “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, 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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes an Institutional/Residential Location or is more appropriately considered another type of location.

1.22 “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 from time to time, in its sole and absolute discretion for any reason or no reason, 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.

1.23 “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.

1.24 “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.

1.25 “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, 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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Private Commercial Location, or is more appropriately considered another type of location.

1.26 “Programming” means DISH Network video, audio, data and interactive programming services. EchoStar reserves the right to change the Programming and/or any restrictions applicable to the Programming at any time and from time to time in its sole and absolute discretion for any reason or no reason.

1.27 “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 program involves leasing the equipment to the consumer) and installation of such DISH DBS System.

1.28 “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, as determined by EchoStar, 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 the 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 and from time to time in its sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.29 “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, bars, restaurants, clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Public Commercial Location, or is more appropriately considered another type of location.

1.30 “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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Bulk Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.31 “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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Commercial Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.32 “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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential MDU Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.33 “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 never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.34 “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.

1.35 “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, 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 from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Residential Location or is more appropriately considered another type of location.

1.36 “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.

1.37 “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 such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Residential MDU Programming services offered and/or any restrictions applicable to such Residential MDU Programming services at any time and from time to time in its sole discretion for any reason or no reason.

1.38 “Residential MDU Subscriber Account” means the customer account set up and maintained by EchoStar for a Qualifying Residential MDU Subscriber who purchased a commercially-invoiced 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.

1.39 “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 such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Residential Programming services offered and/or any restrictions applicable to such Residential Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

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

1.41 “Retailer Account” means the bank account, including account and ABA routing numbers, designated by Retailer in the manner prescribed by EchoStar, which Retailer may change from time to time by providing at least sixty (60) days’ prior written notice to EchoStar.

1.42 “Subscriber Accounts” means Residential Subscriber Accounts, Residential MDU Subscriber Accounts, Commercial Subscriber Accounts and Bulk Subscriber Accounts, as such terms are defined in Sections 1.40, 1.38, 1.11 and 1.5, respectively.

1.43 “Term” shall have the meaning set forth in Section 10.1 below.

1.44 “Territory” shall have the meaning set forth in Section 3.2 below.

1.45 “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.

1.47 “Unit” means each separate living quarters in a non-bulk-billed MDU Property.

2. **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:

2.1 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.

2.2 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.

2.3 Retailer represents and warrants that (i) it is a valid and existing entity in compliance with all laws and regulations related to maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not violating any federal, state or local law or regulation; (iv) it has never engaged in any of the acts prohibited under Sections 3.6, 3.7, 3.8, 3.9, 6.10, 6.14, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8 or 14 below; (v) it has not engaged in any acts that would have resulted in automatic termination or be considered a default or breach under any current or former Incentivized Retailer Agreement, Commissioned Retailer Agreement, Commissioned Dealer Agreement, Non-Incentivized Retailer Agreement, Non-Commissioned Retailer Agreement, or Non-Commissioned Dealer Agreement with EchoStar or under any other current or former Other Agreement; (vi) it is not dependent upon EchoStar or 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.

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

2.5 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE 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.

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

2.7 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.

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

2.9 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.

3. **APPOINTMENT; TERRITORY.**

3.1 **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 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.

3.2 **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").

3.3. **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 the 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, and requirements contained in this Agreement and all Business Rules, and only during the Term of this Agreement.

3.4 **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 promises, representations or warranties 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 or revenue as 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, and from time to time, in the future may offer in its sole and absolute discretion for any reason or no reason, 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 DBS Systems, Promotional Certificates and other equipment, and (c) perform installation and maintenance services (directly and through subcontractors) for DISH DBS Systems, related accessories and other equipment, in each case throughout the Territory and in 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 services in whole or in part at any time, and from time to time in its sole and absolute discretion for any reason or no reason, and shall incur no liability to Retailer by virtue of any such cessation or suspension.

3.5 **Purchase of DISH DBS Systems by Retailer from EchoStar.** In the event that Retailer orders any DISH DBS Systems or Promotional Certificates from Echosphere L.L.C. or any of its Affiliates (collectively, "Echosphere" for purposes of this Section 3.5), 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 and absolute discretion for any reason or no reason 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 or Promotional Certificates back from Retailer at any time for any reason.

3.6 **Sale of DISH DBS Systems.** Retailer agrees that as a condition precedent to eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System or Promotional Certificate 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 it under a single DISH Network account 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, and connected to the same phone line (except in the case of a bulk-billed MDU Property). It shall be Retailer's responsibility to investigate and determine whether any sale by Retailer would be in violation of this Section. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate 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 an 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

Programming authorized for the 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 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 or Promotional Certificate to a person or entity who has, or allows others to have, Programming authorized for it under a single DISH Network account that at any time has Programming activated 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, and connected to the same 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, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate account. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 3.6, 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 3.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 3.6 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 (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

3.7 **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 to any person or entity who Retailer knows or reasonably should have known intends to Pre-Activate it.

3.8 **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 services 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 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 services or otherwise on behalf of the end-user of such DISH DBS System.

3.9 **Installation Services.** Retailer represents, warrants, covenants and agrees that all installation and after-sales services performed by Retailer and/or its subcontractors, agents and employees in connection with the sale, lease or other transfer of DISH DBS Systems will be performed by Retailer and/or its subcontractors, agents and employees in accordance with all applicable laws, codes and regulations, 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 and from time to time by EchoStar or any of its Affiliates (including, without limitation, DISH Network Service L.L.C.) in their sole and absolute discretion, for any reason or no reason, upon notice to Retailer.

3.10 **Prior Retailer Agreements.**

3.10.1 IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY 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 (A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE, THEN UPON THE EFFECTIVE DATE: (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 AGREEMENT SHALL BE PAYABLE BY ECHOSTAR TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) EXCEPT AS SET FORTH IN SECTION 3.10.1(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.

3.10.2 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 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 AGREE TO WAIVE ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION, WITH THE SOLE EXCEPTION OF ANY CLAIMS AND CAUSES 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 MORE THAN 90 DAYS) AFTER THE EFFECTIVE DATE. 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 3.10.2 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 TERMS 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; CASE NO. 500-CV-268, STYLED *SATELLITE DEALERS SUPPLY, INC. V. ECHOSTAR COMMUNICATIONS CORP.*, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TEXAS. 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 AFTER THE EFFECTIVE DATE, NOTWITHSTANDING PAYMENT BY ECHOSTAR OF ANY INCENTIVES, COMMISSIONS OR OTHER PAYMENTS 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.

3.11 **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 from time to time in their sole and absolute discretion for any reason or no reason. Retailer agrees to be bound by, and use its best efforts to support, all of the terms and conditions of (and all of such terms and conditions are hereby incorporated 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, from time to time in their sole and absolute discretion for any reason or no reason, 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 such Promotional Programs 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 from time to time in their sole and absolute discretion for any reason or no reason. 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 and absolute discretion for any reason or no reason concerning any issue arising from such ambiguity.

3.12 **MDU Property / Guest Properties.** Retailer shall ensure that no Guest Property or bulk-billed MDU Property engages directly or indirectly 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 and absolute discretion for any reason or no reason; or (iii) modifying, adding to, or deleting from any of the Bulk Programming. Retailer shall promptly notify EchoStar if it is aware of or suspects a change in the number of Units at any Guest Property or bulk-billed MDU Property subscribing to Bulk Programming. Retailer 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, as further described in applicable Business Rules and adjustable at any time and from time to time in EchoStar's sole and absolute discretion for any reason or no reason.

4. **PROGRAMMING.**

4.1 **Programming.** EchoStar shall determine from time to time, in its sole and absolute discretion for any reason or no reason, 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 and from time to time in its sole and absolute discretion for any reason or no reason. Any 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 from time to time in its sole and absolute discretion for any reason or no reason. 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 and from time to time in its sole and absolute discretion for any reason or no reason. 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 obtained on any other terms 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. 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 by EchoStar from time to time in accordance with Section 1.6 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 commercially-invoiced 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. 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 by EchoStar from time to time in accordance with Section 1.6 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 by EchoStar from time to time in accordance with Section 1.6 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 commercially-invoiced 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 by EchoStar from time to time in accordance with Section 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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 and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. 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 1.6 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, 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 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); (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, ADDITIONAL RESIDENTIAL MDU INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO COMMERCIALY-INVOKED 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;

(VI) 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; AND

(VII) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, ADDITIONAL BULK INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO COMMERCIALY-INVOKED 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.

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 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 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 ANY OF ITS AFFILIATES, IN CONNECTION WITH THAT 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 and from time to time in its sole and absolute discretion for any reason or no reason.

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 and from time to time in its sole and absolute discretion for any reason or no reason, 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 EchoStar Subscriber or any customer account information regarding any EchoStar 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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Residential Subscriber, but is already receiving—or previously received at any time—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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Residential MDU Subscriber, but is already receiving—or previously received at any time—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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Commercial Subscriber, but is already receiving—or previously received at any time—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 and from time to time in its sole and absolute discretion for any reason or no reason); (iv) the subscriber would otherwise be a Qualifying Bulk Subscriber, but is already receiving—or previously received at any time—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) Echosphere L.L.C. or any other 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 Echosphere L.L.C. or any other 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 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 (attached hereto as Exhibit A) 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 commercially-invoiced 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 commercially-invoiced 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 or 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 Agreements. 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 and from time to time in its sole and absolute discretion for any reason or no reason, 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 its Affiliates to EchoStar and 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 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 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 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 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 agree that at all times (including but not limited to in 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 RELATING TO ANY ALLEGED FAILURE TO PAY ANY AMOUNTS DUE AND OWING FROM ECHOSTAR AND/OR ITS AFFILIATES, ON THE ONE HAND, TO RETAILER AND/OR ITS AFFILIATES, ON THE OTHER HAND, OR RELATING TO ANY CHARGEBACKS 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 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, Affiliates or sub-agents, to fulfill its obligations hereunder without EchoStar's specific prior written consent, which consent may be withheld in EchoStar's sole and absolute discretion for any reason or no reason. In the event EchoStar does grant consent to Retailer to use persons not employed by Retailer to perform activities contemplated hereunder, Retailer shall be responsible for the acts and omissions of such persons under this Agreement 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 and absolute discretion and for any reason or no reason, 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 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 and absolute discretion for any reason or no reason.

7.3 Retailer shall comply with all Business Rules, including without limitation all Business Rules which govern or are applicable to any Promotional Program in which Retailer participates. Retailer shall disclose to each prospective DISH Network Subscriber the relevant terms of the Promotional Program in which the prospective DISH Network Subscriber is interested as well as any other terms as set forth in any applicable Business Rule. 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 the sale of DISH DBS Systems, and Retailer shall cooperate by supplying EchoStar with information relating to those actions as EchoStar reasonably requests. Failure of Retailer to adhere to any Business Rules may result in disciplinary action up to and including termination of this Agreement and/or any Other Agreement in the sole and absolute discretion of EchoStar for any reason or no reason, and the exercise by EchoStar of any other remedy provided in this Agreement, at law, in equity or otherwise.

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 from time to time, in its sole and absolute discretion for any reason or no reason, without incurring any liability to Retailer. 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 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, which agreement is hereby incorporated 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 image or goodwill in any way. Retailer shall under no circumstances take any action which could be considered disparaging to EchoStar. 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 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, and connected to the same 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 not in 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 and Programming may not currently be sold outside of the Territory. Retailer represents and warrants that it will not directly or indirectly arrange for or participate in the export or sale of DISH DBS Systems, Promotional Certificates 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 and Programming outside of the Territory by others who purchase from Retailer and who might reasonably be expected to export or sell them outside 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 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 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 other than EchoStar or any of its Affiliates (including without limitation Retailer or any of its Affiliates) 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 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, 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 MPVD. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

9.5 **Subscriber Information.** All consumers who directly or indirectly subscribe to, purchase, lease or otherwise receive and/or acquire (i) Programming, (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 anyone other than EchoStar and its Affiliates, or promote the sale, lease or other acquisition of any Hardware used in connection with services offered by any one 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 and absolute discretion for any reason or no reason; 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 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, subcontractors or 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 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) indefinitely.

9.8 **Sales and Use Tax.** Any transactions between Retailer and consumers for the purchase of DISH DBS Systems, Promotional Certificates and/or related 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 and related equipment, EchoStar does not acquire or retain title (except in connection with certain lease-based Promotional Programs) in such DISH DBS Systems and related 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 transactions between Retailer and consumers.

10. **TERM AND TERMINATION.**

10.1 **Term.** This Agreement shall commence on the Effective Date and shall continue through December 31, 2006 (the "Term"), unless earlier terminated by either party 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 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 SECTIONS 10.2, 10.3, 10.4 OR 10.5 BELOW.

10.2 **Termination by Either Party for Convenience.** Either party may, in its sole and absolute discretion for any reason or no reason, 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 (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 (Exhibit A) (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 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 federal, state or local law or regulation, 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 federal, state or local law or regulation, including without limitation any violations of 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 law 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 or Promotional Certificate 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 it using a single DISH Network account 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, and connected to the same phone line (except in the case of a bulk-billed MDU Property); (ix) Retailer makes, or attempts to make, any representation, promise or agreement on behalf of EchoStar; (x) the Trademark License Agreement (Exhibit A hereto) or any Other Agreement expires or terminates for any reason; (xi) Retailer directly or indirectly uses a single DISH Network account 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, and connected to the same 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 to a person or entity who Retailer knew or reasonably should have known intended to Pre-Activate it; (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 its obligations under Sections 3.6, 3.7, 3.8, 3.9, 6.10, 6.14, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8 or 14; (xvii) Retailer indefinitely ceases to actively market and promote DISH DBS Systems and/or Programming, as determined in EchoStar's sole and absolute discretion for any reason or no reason; (xviii) Retailer fraudulently receives, or attempts to receive, an Incentive or other payment to which it is not entitled under 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: (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 the 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 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 its Affiliates. Retailer shall prominently state its business name, address and phone number 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 in this Agreement to the contrary, Retailer (including without limitation its officers, directors, permitted subcontractors, permitted agents and employees) shall not, under any circumstances, hold itself out to the public or represent that it is an agent, employee, subcontractor or Affiliate of EchoStar or any EchoStar Affiliate. In furtherance of (and without limiting) the foregoing, in no event shall Retailer use EchoStar's name or the name of any EchoStar Affiliate in any manner which would tend to imply that Retailer is an Affiliate of EchoStar or that Retailer is an agent, subcontractor or employee of EchoStar or one of its Affiliates or that Retailer is acting or is authorized to act on behalf of EchoStar or one 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, promise or agreement or take any action on behalf of EchoStar or an EchoStar Affiliate.

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 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 TERMINATION OF THIS AGREEMENT FOR ANY REASON OR NO REASON, NO AMOUNTS SPENT IN FULFILLMENT WILL BE RECOVERABLE FROM ECHOSTAR OR ANY OF ITS AFFILIATES BY RETAILER.

12.2 IN NO EVENT SHALL PROJECTIONS OR FORECASTS MADE BY ECHOSTAR 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 or Promotional Certificates; (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 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, statute, ordinance, governmental administrative order, rule or regulation; (vii) any claim brought by Retailer's employees, subcontractors and/or agents for compensation and/or damages arising out of 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 (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 subcontractors, employees or agents; (x) Retailer's, or any of its subcontractors, agents or employees 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 the Retailer, or any of its subcontractors, employees or 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 subcontractors, employees or agents; (xiii) Retailer directly or indirectly selling, leasing or otherwise transferring possession of a DISH DBS System or Promotional Certificate 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 it using a single DISH Network account 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 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 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, and connected to the same 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 claim 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 herein shall be in addition to and not in limitation of any other indemnity obligation set forth herein. 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 and provisions of this Agreement, the terms 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 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 applicable law, 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 of the information in advance, prior to making any disclosure, and shall seek confidential treatment of such information; (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; or (iv) to the extent necessary to permit the performance of obligations under this Agreement. 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 and absolute discretion for any reason or no reason. 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 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 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 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 or agents, as well as other equitable relief allowed by the federal and 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 RENDER, 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). THE 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 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 executiveresolution@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 RENDER, 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 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 in connection with this Agreement including, without limitation, 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 (the "Mediation") in front of a single mediator. Either party may initiate mediation by giving written notice to the other party 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 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of 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: (A) the Non-Mediating Party agrees that the other party (the "Mediating Party") shall have the right to obtain immediate relief in the form of specific performance from a court located in the State of Colorado, as delineated in Section 15.5 below; and (B) 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 located in Colorado, as delineated in Section 15.5 below. In the event that the Mediating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to clause (B) 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 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 and in 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 allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any state or federal law, which are not settled through negotiation, the claim process above, or the mediation process set forth above, shall be resolved solely and exclusively by binding 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. In the event of any conflict between the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association, the Federal Arbitration Act will control. 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. The Arbitration must be initiated within ninety (90) days from the final day of mediation, or one hundred and fifty (150) days from the Notice of Mediation in the event 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 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. In the event that either party fails to timely select an arbitrator pursuant to this Section 15.3, 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. The parties hereby agree that the arbitration panel selected pursuant to this Agreement is not authorized to: (a) conduct "class arbitration" in any form; and/or (b) arbitrate any dispute on a representative basis in any form. The parties hereby agree that the arbitration panel has 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 arbitrators shall be final and binding on the parties and any award of the arbitrators 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 arbitrators' 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 arbitrators shall be within the limitations set forth in Section 12. The parties further agree that the arbitration panel selected pursuant to this Agreement 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. The cost of any arbitration hereunder, including without limitation the cost of the record or transcripts thereof, if any, administrative fees, and all other fees involved, shall be paid by the party(ies) determined by the arbitrators to not be the prevailing party(ies), or otherwise allocated in an equitable manner as determined by the arbitrators. NEITHER PARTY HERETO NOR ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES IF IT AND/OR ITS AFFILIATES HAVE 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 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of any Other Agreement. In the event that a party (the "Non-Participating Party") fails to: (1) pay any amount to the American Arbitration Association when due; or (2) otherwise refuses or fails to participate in or attend an arbitration that has been properly initiated pursuant to this Section 15, then: (A) the Non-Participating Party agrees that the other party (the "Participating Party") shall have the right to obtain immediate relief in the form of specific performance from the arbitration panel or a court located in the State of Colorado, as delineated in Section 15.5 below; and (B) 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 located in 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 clause (B) above, 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, the 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 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of 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, or under statute, 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 a lawsuit is brought for injunctive relief pursuant to Sections 15.2, 15.3, or 15.4 above or as permitted in clause (B) of Section 15.2 or clause (B) of Section 15.3, 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. Sections 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 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 among 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 among EchoStar and/or any of its Affiliates on the one hand and the other retailer on the other hand shall not be deemed to prejudice any rights and remedies that EchoStar may have at law, in equity, under contract 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 not in 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 an Affiliate in whole or in part at any time without the consent of Retailer. Because this Agreement is made 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 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 the communication is: (i) in writing; (ii) bears a date contemporaneous with or subsequent to the date of this Agreement; and (iii) is signed by all parties to this Agreement. On the date this Agreement becomes effective as provided herein, all prior agreements (except as set forth to the contrary in Section 3.10 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 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 Law.** Retailer hereby agrees to comply with, and hereby agrees that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

17.7 **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other for failure to fulfill its obligations hereunder if such failure is caused by or arises out of an act of force majeure including acts of God, war, riot, natural disaster, technical failure (including 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 its Affiliates by EchoStar and its Affiliates; and (iii) all payments made by Retailer and its Affiliates to EchoStar and 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. 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) investigating claims against EchoStar and/or any of its Affiliates made by Retailer and/or any of its Affiliates; and (c) verifying that Incentive payments and any and all other payments made to Retailer and its Affiliates by EchoStar and 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 EchoStar 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 overpayment made together with interest thereon at the highest rate allowed by law, computed from the date of overpayment; and pay all reasonable costs and expenses, including reasonable attorney fees and accountant fees incurred by EchoStar and/or any of its Affiliates in connection with its 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 its Affiliates may have under 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 even if termination is due to a breach or default by EchoStar.

17.10 Notices.

17.10.1 Notice to EchoStar. Except as otherwise provided in Section 15, all notices to be given to EchoStar pursuant to this Agreement shall be in writing, signed by the 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 6655
Englewood, CO 80155

With a copy to: David K. Moskowitz
Executive Vice President, General Counsel and Secretary
EchoStar Satellite L.L.C.
(same address)

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 (d) 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 "Charlie 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), 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 Charlie Chats) shall constitute 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 "Charlie Chat" or posting on EchoStar's retailer web site.

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 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 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 and from time to time in its sole and absolute discretion for any reason or no reason, change or modify Incentives, Incentive schedules, Incentive structures, Promotional Programs and 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 MODIFICATION OR CHANGE 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 OR MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE OR MODIFICATION.

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

17.14 **General Provisions.** The exhibits 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 law or result in a breach of or default under the terms 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 facsimile transmittals which contain unsolicited advertisements. For the avoidance of doubt, such permitted facsimile transmittals from EchoStar or 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 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 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 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 and 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 or 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; 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, deletion or modifications thereto. Further, in the event that the following events occur in the following order: (1) Retailer executes this Agreement; (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, deletion or 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; (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, deletion or 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 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 and absolute discretion for any reason or no reason.

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: Amir Ahmed
Title: National VP, Sales and Distribution

RETAILER

Retailer Number: **13375148**
Retailer Company Name: **AMERICAN SATELLITE INC**
Street Address: **2667 CAMINO DEL RIO S**
City, State, Zip Code: **SAN DIEGO, CA 92108**
Facsimile Number: **(619) 814-5225**
(for notice to Retailer pursuant to Section 17.10.2)

By: _____
Signature

Print Name: **TIM PYLE**
Title: **VP OF OPERATIONS**

[SIGNATURE PAGE OF ECHOSTAR RETAILER AGREEMENT]

EXHIBIT A

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made and effective as of **10/19/2005**, 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 **AMERICAN SATELLITE INC** having a principal place of business at **2667 CAMINO DEL RIO S, SAN DIEGO, CA 92108** ("Licensee").

A. 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 ("Programming"); and

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

C. Licensee desires to be permitted to use such EchoStar trademarks, service marks and trade names set forth in Exhibit 1 hereto, which may be amended at any time and from time to time in ESLLC's sole and absolute discretion for any reason or no reason (the "Trademarks"), as ESLLC, in its sole and absolute discretion for any reason or no reason, may authorize, from time to time, under a non-exclusive license, to promote and solicit orders for DISH Network Programming.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. ESLLC hereby grants to Licensee a non-exclusive, non-transferable, revocable license (the "License") to use the Trademarks and such other trademarks as ESLLC may from time to time expressly in writing permit Licensee to use during the term of this Agreement, and no other term or license whatsoever, solely to promote the retail sale of ESLLC satellite television programming and the hardware necessary to receive such programming in its local advertising and promotional materials and at its business locations. Licensee expressly recognizes and agrees that Licensee shall not, in whole or in part, modify, alter, supplement, delete or otherwise change the Trademarks (whether in typewritten, stylized or any other form) as provided to Licensee by ESLLC. Licensee shall have no right to use the logos, service marks or trademarks (whether in typewritten, stylized or any other form) of any programming providers, other than the logos, service marks and trademarks of programming providers that are contained in the advertising and promotional material provided to Licensee by ESLLC. No such materials shall indicate that any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distributorship exists between Licensee and ESLLC, unless ESLLC and Licensee enter into a separate written agreement permitting Licensee to do so. Notwithstanding the above, Licensee shall provide to ESLLC, at least thirty (30) days prior to first use, an example of any advertising or promotional materials in which Licensee intends to use any Trademarks or any such other trademarks (whether in typewritten, stylized or any other form), which use has not, within the past twelve months, been approved by ESLLC in exactly the manner intended for use. ESLLC may reject and prohibit Licensee from using such materials, in its sole and absolute discretion for any reason or no reason. If Licensee is required to, but fails to provide ESLLC with proposed advertising or promotional materials at least thirty (30) days prior to first use, ESLLC shall have just cause to immediately terminate this Agreement by providing written notice to Licensee to that effect. 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 by Licensee of products or programming manufactured and/or distributed by ESLLC, shall inure to ESLLC's sole benefit. This License shall be effective until terminated by either party in accordance with the terms of this Agreement, or until termination of the Incentivized Retailer Agreement to which this Agreement is attached for any reason or no reason whatsoever.

2. The License granted by ESLLC 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, such action shall terminate this Agreement, at ESLLC's option, at any time thereafter. Licensee shall immediately cease using Trademarks in typewritten, stylized or any other form upon termination or expiration 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. If ESLLC requests destruction of advertising and promotional materials, Licensee shall promptly execute an affidavit representing at a minimum that such materials were destroyed, and the date and means of destruction.

3. Licensee expressly recognizes and acknowledges that this License, as well as any past use of the Trademarks in any manner whatsoever by Licensee (including but not limited to use on signs, business cards, or in advertisements) or in any form whatsoever by Licensee (including but not limited to typewritten or stylized form), shall not confer upon Licensee any proprietary rights or interest to any Trademarks including, but not limited to any existing or future goodwill in the Trademarks. All goodwill in the Trademarks shall inure to ESLLC's sole benefit. Further, Licensee waives any and all past, present, or future claims it has or might have to the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between ESLLC and Licensee, ESLLC has the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that ESLLC retains full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein. While Licensee has no right or authority to do so, in

JTX-0017-029

JA006601
005463

Confidential-US v. DISH

DISH5-0000013177

SLC_DNC_Investigation_0012100

TX 102-005863

the event that Licensee has previously, or in the future reserves, files, or registers any of the Trademarks of ESLLC (whether in typewritten, stylized or any other form) or registers any domain name which includes all or any portion of the Trademarks of ESLLC, Licensee agrees to notify ESLLC immediately, and immediately upon request of ESLLC, to assign any and all interest to ESLLC that is obtained through the reservation, filing, or registration of the Trademarks in the U.S. or any foreign jurisdiction or through the registration of any domain name, and hereby acknowledges that any such reservation, filing, or registration of the Trademarks or domain name which includes all or any portion of the Trademarks, whenever occurring, shall be on behalf of and for the sole benefit of ESLLC, and Licensee waives all claims or rights to any compensation whatsoever therefore. Licensee's obligations in this paragraph shall survive the expiration or termination (for any reason or no reason whatsoever) of this Agreement indefinitely.

4. Furthermore, Licensee agrees not to hold itself out as DISH Network, ESLLC or any 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. Furthermore, Licensee agrees not to register any domain name which contains either (a) the formative "DISH", in combination with the formative "NET", (b) the formative "ECHO", or (c) a misspelling of DISH Network (e.g., www.dishnetwork.com) or other ESLLC mark, and Licensee further agrees to immediately transfer to ESLLC, upon ESLLC's request, any such domain names which it has registered. Licensee's failure to comply with the provisions of this Section 4 shall constitute a material breach of this Agreement. Upon request, Licensee shall provide ESLLC with a list of domain names License uses to promote or solicit orders for DISH Network Programming.

5. Nothing in this Agreement shall be construed to bar ESLLC from protecting its right to the exclusive use of its Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including 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 in defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESLLC's expense. Similarly, nothing in this Agreement shall be construed to require that ESLLC take any action to protect the Trademarks in any instance, and ESLLC shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

6. (a) This Agreement shall continue for a period of time equal to the term of the Incentivized Retailer Agreement to which this Agreement is attached, unless terminated earlier for a reason provided herein. In addition to any provisions of this Agreement that survive termination or expiration of this Agreement by their term, any provision of this Agreement which logically would be expected to survive termination for any reason or no reason whatsoever or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

(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 termination of the Incentivized Retailer Agreement to which this Agreement is attached for any reason or no reason whatsoever and upon termination of any Other Agreement (as defined in Section 1.26 of the Incentivized Retailer Agreement to which this Agreement is attached) for any reason, unless EchoStar notifies Licensee to the contrary in writing.

7. The relationship between the parties including all disputes and claims, whether arising in contract, tort, or under statute, 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 EchoStar 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 of Exhibits hereto.

Any and all disputes arising out of, or in connection with, the interpretation, performance or the nonperformance of this Agreement or any and all disputes 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 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.

JTX-0017-030

JA006602
005464

Confidential-US v. DISH

DISH5-0000013178

SLC_DNC_Investigation_0012101

TX 102-005864

8. 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.

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: Amir Ahmed
Title: National VP, Sales and Distribution

LICENSEE

Retailer Number: **13375148**

Retailer Company Name: **AMERICAN SATELLITE INC**

Street Address: **2667 CAMINO DEL RIO S**

City, State, Zip Code: **SAN DIEGO, CA 92108**

By: _____
Signature

Print Name: **TIM PYLE**
Title: **VP OF OPERATIONS**

[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]



JTX-0017-032

Confidential-US v. DISH

JA006604
005466
DISH5-0000013180
SLC_ DNC_Investigation_0012103
TX 102-005866

EXHIBIT 131

EXHIBIT 131

JA006605
005467

TX 102-005867

Eric Myers

From: Ahmed, Amir [Amir.Ahmed@echostar.com]
Sent: Tuesday, October 25, 2005 3:44 PM
To: Eric Myers
Subject: FW: Star Satellite - The first fax is malfunctioning

From: Ahmed, Amir
Sent: Tuesday, October 25, 2005 3:43 PM
To: 'Eric Myers'
Subject: RE: Star Satellite - The first fax is malfunctioning

Eric,

I will use this fax number. I need you to become very serious about the business and the methods you are using to market the types of customers you are bringing to us. Low completion rates and high churn does not help anyone.

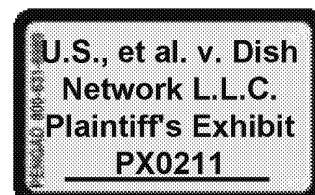
It's not all about huge sales but rather quality customers that want to be DISH Network subscribers for a long time.

Amir

From: Eric Myers [mailto:emyers@starsatllc.com]
Sent: Tuesday, October 25, 2005 3:33 PM
To: Ahmed, Amir
Subject: Star Satellite - The first fax is malfunctioning

The first fax is having trouble could you try 801-437-6537.

Eric Myers
President
Star Satellite LLC
Phone 8014376524



FTC/ECHOSTAR (TENAYA) 00000117

3/15/2006

PX0211-001

JA006606

005468

FTC003-074459

SLC_ DNC_Investigation_0012482

TX 102-005868

I'm assuming that when they were sold the system they were givrn a lowere price.....

FTC/ECHOSTAR (TENAYA) 00000118

3/15/2006

PX0211-002

JA006607

005469

FTC003-074460

SLC_ DNC_Investigation_0012483

TX 102-005869

EXHIBIT 132

EXHIBIT 132

JA006608
005470

TX 102-005870



October 26, 2005

VIA FACSIMILE ONLY (801-437-6536)

Walter "Eric" Meyers
Daniel R. Meyers
Star Satellite L.L.C.
5250 Edgewood Dr.
Ste. 150
Provo, UT 84606

Re: EchoStar Retailer Agreement, Non-Incentivized Retailer Agreement and
Telemarketing/Do-Not-Call Laws

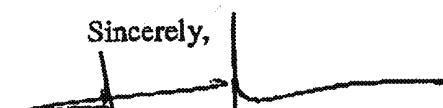
Dear Eric and Daniel:

Further to our conversation yesterday, among other issues, EchoStar Satellite L.L.C. ("EchoStar") has received an inquiry from the Offices of Congressman Fred Upton of the State of Michigan's 6th Congressional District concerning telemarketing activities apparently being conducted by your company. You have confirmed that you have halted all telemarketing activities involving persons named on the National Do-Not-Call Registry as necessary to comply with applicable telemarketing/do-not-call and other laws.

Please be advised that your EchoStar Retailer Agreement and Non-Incentivized Retailer Agreement ("collectively, the "Retailer Agreements") require, among other things, that you not engage in any activity or business transaction which could be considered unethical or damaging to EchoStar's image or goodwill in any way and that you comply with all applicable laws (Section 9.1). Failure to comply with applicable laws will result among other things in the termination of the Retailer Agreements (Section 10.4) and could result in the obligation for your company to indemnify and defend EchoStar and others if your activities result in Claims (as defined in Section 13).

EchoStar reserves all rights and remedies available to it under contract (including without limitation the Retailer Agreements), at law, in equity or otherwise.

Sincerely,


Amir Ahmed
Senior Vice President

c.c. Randy Anderson, Recreational Sports & Imports, Inc.

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX0212

FTC/ECHOSTAR (TENAYA) 0000069

PX0212-001

TOTAL P.01
JA006609
005471

FTC306-029715

SLC_DNC_Investigation_0012491

Docket 81704 Document 2021-09067X 102-005871

EXHIBIT 133

EXHIBIT 133

JA006610
005472

TX 102-005872

From: Oberbillig, Mike
Sent: Tuesday, January 30, 2007 5:44:16 PM
To: Werner, Bruce
Subject: FW: TELEMARKETING

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

From: Oberbillig, Mike
Sent: Thursday, October 27, 2005 2:36 PM
To: Ahmed, Amir; Fiedler, Leslie; Willis, Chris; Keller, Steven
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis
Subject: RE: TELEMARKETING

Team,

Verified it was SSN. Spoke with Alex directly about this situation. This customer was a past customer of SSN and had purchased DirecTV. SSN had recently started outbound calling all of their 155K past DirecTV customer sales. These customers are scrubbed against the most recent do-not-call-lists.

I informed Alex that he must STOP using message broadcasting and leaving messages even if he has followed do not call lists, and even if he has a prior relationship with that customer, and is following Federal telemarketing guidelines. I informed him he must follow DISHNETWORK guidelines and stop using this form of mining immediately.

Alex agreed and understood that we do not allow this.

MJO

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

From: Ahmed, Amir
Sent: Thursday, October 27, 2005 9:53 AM
To: Oberbillig, Mike; Fiedler, Leslie; Willis, Chris; Keller, Steven
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis
Subject: RE: TELEMARKETING

Either way, both accounts are yours and I need it fixed. The sacramento office wanted United, well now I will end up terminating them and that is not good.

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

From: Oberbillig, Mike
Sent: Thursday, October 27, 2005 10:51 AM
To: Ahmed, Amir; Fiedler, Leslie; Willis, Chris; Keller, Steven
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis
Subject: Re: TELEMARKETING

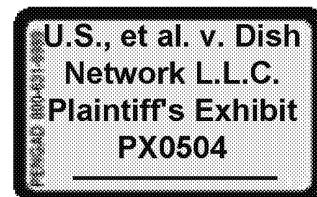
I will verify. But the last time this issue came up it was not ssn- but united. I will call both accounts and verify with all which account this is.

Thanks
MJO

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

From: Ahmed, Amir <Amir.Ahmed@echostar.com>
To: Fiedler, Leslie <Leslie.Fiedler@echostar.com>; Willis, Chris <Chris.Willis@echostar.com>; Oberbillig, Mike <Mike.Oberbillig@echostar.com>; Keller, Steven <Steven.Keller@echostar.com>
CC: Mills, Mike <Mike.Mills@echostar.com>; Jessen, Nicholas <Nicholas.Jessen@echostar.com>; Patrick, Francis <Francis.Patrick@echostar.com>
Sent: Thu Oct 27 10:38:19 2005
Subject: RE: TELEMARKETING

Mike and Steve,



PX0504-001

Confidential - U.S. v. DISH

JA006611

005473

DISH11-029661

SLC_DNC_Investigation_0012484

TX 102-005873

This is Alex's last chance. Fix it or he gets a letter and will lead to termination. It's that simple.

From: Fiedler, Leslie
Sent: Thursday, October 27, 2005 10:36 AM
To: Ahmed, Amir; Willis, Chris
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis
Subject: RE: TELEMARKETING

I called 800-375-8072. They answer the phone as "Satellite Promotions" or as "Promotions Department". They have "the best deals that you cannot get with a local retailer". Jeffery, the CSR that I spoke to, claimed that I could get a 2 DVR system for free after I paid the activation fee, but I'd have to pay over \$120 if I went with a local retailer.

I asked him if they represented any specific DISH Network retailers and he said no. When pressed, he stated that they were "the corporate offices of DISH Network". Jeffery's direct line number is 800-338-3409 x137. I am supposed to be getting approval from my boyfriend before setting up my system.

This is Satellite Systems Network. The initial message is "Thank you for calling the promotions department..." on both the number we have in the system, 800-615-0241 and the number the Jeffery gave me, 800-338-3409. Francis verified that SSN goes by Satellite Promotions with Patti, the customer service manager. This is Alex's call center.

Thanks,

Leslie Fiedler

Key Account Manager - Order Entry Retailers

Echostar Satellite LLC

(720) 514-5865

leslie.fiedler@echostar.com <mailto:leslie.fiedler@echostar.com>

The above email is for intended recipient only and may contain confidential information owned by and proprietary to EchoStar Satellite LLC. Unauthorized disclosure of or use of this information other than to employees of the EchoStar family of companies is prohibited and may violate its Conflicts of Interest Agreement.

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

From: Ahmed, Amir
Sent: Thursday, October 27, 2005 10:19 AM
To: Fiedler, Leslie; Willis, Chris
Cc: Mills, Mike; Jessen, Nicholas
Subject: FW: TELEMARKETING

Leslie,

Please look at the number below and let me know if it originated from an OE retailer.

PX0504-002

Confidential - U.S. v. DISH

JA006612

005474

DISH11-029662

SLC_DNC_Investigation_0012485

TX 102-005874

From: Carlson, Erik
Sent: Thursday, October 27, 2005 8:43 AM
To: Ahmed, Amir
Subject: FW: TELEMARKETING

Looks like we have another retailer using telemarketing and not scrubbing their list. Can you look into this.

Also, do you have a process in place for approving telemarketing activity?

Erik

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

From: jeff lichtenstein [mailto:jlichtenstein@hotmail.com]
Sent: Thursday, October 27, 2005 8:40 AM
To: Carlson, Erik
Subject: Re: TELEMARKETING

973-328-7600

PS. ANY THOUGHTS ON OUR CONVERSATION A FEW WEEKS AGO?

1-800-TECHNOSTORES
JEFF LICHTENSTEIN
85 Franklin Road Building 9B
Hamilton Business Park
Dover, New Jersey 07801
(973)328-7600
jeff@1800technostores.com

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

From: Carlson, Erik <mailto:Erik.Carlson@echostar.com>
To: jeff lichtenstein <mailto:jlichtenstein@hotmail.com>
Sent: Thursday, October 27, 2005 10:38 AM
Subject: RE: TELEMARKETING

We will look into this. What number did this company contact you at?

Erik

PX0504-003

Confidential - U.S. v. DISH

JA006613

005475

DISH11-029663

SLC_ DNC_Investigation_0012486

TX 102-005875

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

From: jeff lichtenstein [mailto:jlichtenstein@hotmail.com]
Sent: Thursday, October 27, 2005 7:32 AM
To: Carlson, Erik
Subject: TELEMARKETING

I WAS UNDER THE IMPRESSION THAT TELEMARKETING WAS PROHIBIT, ESPECIALLY RECORDED MESSAGES.

WE JUST RECEIVED A CALL TOUTING 1-800-375-8072

THEY CLAIM TO BE A SOUTHERN CALIFORNIA FIRM "SATELLITE PROMOTIONS"

MOST IMPORTANT WE ARE ON THE "DON NOT CALL" LIST AND THIS COULD EFFECT ECHOSTAR SHOULD THEY HIT SOME HOSTILE RECIPIENTS.

1-800-TECHNOSTORES
JEFF LICHTENSTEIN
85 Franklin Road Building 9B
Hamilton Business Park
Dover, New Jersey 07801
(973)328-7600
jeff@1800technostores.com

EXHIBIT 134

EXHIBIT 134

JA006615
005477

TX 102-005877

Eric Myers

From: Mills, Mike [Mike.Mills@echostar.com]
Sent: Thursday, November 03, 2005 3:59 PM
To: Eric
Cc: Willis, Chris
Subject: FW: Star Satellite Sales Script and Second Disclaimer after the OE Tool One.

Here are my comments/changes for the disclaimer. We are working on the sales script – we'll have something for you by COB tomorrow.

Mike Mills
National Sales Manager
303.723.2865

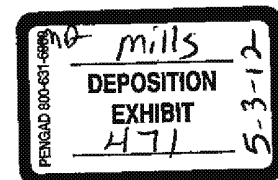
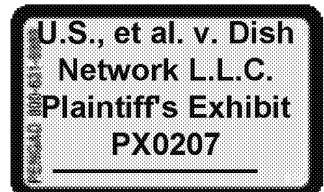
-----Original Message-----

From: Eric Myers [mailto:emyers@starsatllc.com]
Sent: Wednesday, November 02, 2005 10:55 AM
To: Mills, Mike; Willis, Chris
Subject: Star Satellite Sales Script and Second Disclaimer after the OE Tool One.

Let me know if you need me to make any changes to these scripts. Also I haven't heard back can anyone give us better info on where to go or what to do when people in the tool are scheduled 14 to 21+ days out?

Let me know.

Eric Myers
President
Star Satellite LLC
Phone 8014376524



FTC/ECHOSTAR (TENAYA) 00000210

3/14/2006

PX0207-001

JA006616

095478
PTC003-074552

SLC_DNC_Investigation_0012428

TX 102-005878

Give 100% to get 80%!

DISHclaim V 1

This script must be read word for word and is expected to last a minimum of 5 minutes.

- My name is _____. I'll be confirming your order today; this call will be recorded for quality assurance.
- Is your name _____? Is your home address _____? Is your phone # _____?

Check List

- ✓ Are there any trees, buildings, or large obstacles to the south of your residence?
- ✓ The installation address is not a business, public place, or multiple family dwelling is it?
 - If you do not own the property, you will need to present written permission from your landlord to the installer.

Now I'll read the disclaimer...

- Did the salesman explain that you have been charged a non-refundable \$49.99 on your credit card today and a \$49.99 credit will be put on your first bill?
- Do you understand that we have placed a \$1.00 hold on your credit/debit card for the credit check which will be removed within 3 to 7 business days?
- Each of your receivers must be continuously connected to your same land-based phone line. A monthly \$4.99 additional Outlet Programming Access Fee applies to the second tuner of each DISH 322, DISH Player-DVR 625 or DISH Player-DVR 942 receiver. This fee will be waived on a monthly basis for each such receiver that DISH Network confirms has been continuously connected to Customer's same land-based phone line.
- The first receiver's rental fee is included in your basic programming package price. There is an additional \$5.00 per month rental fee per receiver beyond the first.
- Did you get a DVR or HD Receiver today?
 1. DVR Receiver - There is a monthly \$4.98 DISH Network DVR Service fee for each DVR receiver. There is no charge for the DISH Network DVR Service if subscribing to America's "Everything" Pak or Latino "Everything" Pak.
 2. HD Receiver - The DISH 811 HD and DISH Player-DVR 942 HD/DVR receivers require a subscription to the DISH Network "HD Pak" which is \$9.99 per month. If you have added the \$9.99 DISH Network "HD Pak", you will receive it "free" for 6 months. After this time, you will be billed for the current rate of \$9.99/mo.
- Are you aware that there is a 90-day installation warranty and a lifetime warranty on equipment?
- Dish Network needs 24-hour advance notice if you need to reschedule your installation.
- Is it correct that you have signed up for an 18 month agreement to Digital Home Advantage which includes the Dish Home Protection Plan (over \$120 value) for the length of your agreement at no charge and if service is terminated there is a cancellation fee equal to \$13.33 multiplied by the number of months remaining in your agreement?
- All equipment remains the property of DISH Network and must be returned within fifteen days of account deactivation to DISH Network or you must pay an unreturned equipment fee which at a minimum is \$100 per receiver.
- Do you understand that you will receive 3 months of HBO, Showtime and Cinemax free for the first three months, and that you must call Dish Network in order to stop receiving these special channels?
- Please get a pen and paper to write down some information. (wait) Your monthly price will be broken down as follows:
 1. Do you have a pen? Please write this down: the name of your package is _____, which has about (Top 60, top 120, top 180, which includes local channels.) You must maintain the minimum of America's Top 60, DISH Latino, or Great Wall TV Package.
 2. Did you know that the price of your package is _____ for the first month? And that every month after that your package will be _____.
 3. First month basic programming package is free OR first three months will be discounted \$12/mo.
 4. Your first bill will be pro-rated for the current month as well as one month in advance
 5. It looks like we will be out between _____ and _____ on (Date). This means the technician will be out between those times. The whole installation process typically takes between 2-4 hours and you will be required to remain at home throughout the time of the installation. If you have any questions or concerns regarding your service... you can call our customer service at 1-800-333-DISH(3474).

Make sure they understand their pricing over the term of the contract.

- We recommend that you do not disconnect your cable service until our service is activated and working properly.
- Do you have any specific questions for me about anything? Are there any of your favorite channels you want me to confirm are on your package?
- Are you aware that we offer a \$50 referral check for anyone who refers a friend and they sign up and get installed? Do you know anyone that might take advantage of this great offer? What is their name and phone #?

SALESMAN & CONFIRMERS!!! - If a salesman deletes the screen on the computer so the Confirmer cannot read the screen, or if the salesman, not the confirmer, pushes the "order now" button, the Confirmer must immediately contact management so the salesman can receive further training.

Confirmers, if you have any questions or concerns please ask a manager.

We no longer install any more than 5 TV's (1 back feed) or international channels (except Spanish or Chinese). Any sales rep found offering these items must be reported to the shift supervisor immediately. The goal of everything we now do with DISH Network is a minimum of 80% installation rate.

FTC/ECHOSTAR (TENAYA) 00000211

PX0207-002

JA006617

005479

FTC003-074553

SLC_ DNC_Investigation_0012429

TX 102-005879

EXHIBIT 135

EXHIBIT 135

JA006618
005480

TX 102-005880

From: Oberbillig, Mike </O=ECHOSTAR COMMUNICATIONS
CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=MIKE OBERBILLIG>
Sent: Monday, August 14, 2006 1:57 PM
To: Oberbillig, Mike <Mike.Oberbillig@echostar.com>
Subject: FW: Major Telemarketing issue & AG complaint.
Attach: Document.pdf; Document.pdf

From: Oberbillig, Mike
Sent: Wednesday, November 23, 2005 1:13 PM
To: 'jacques@uniteddish.com'; 'Jacques Nenejian'; 'Bill King'
Cc: Keller, Steven; Mills, Mike
Subject: Major Telemarketing issue & AG complaint.
Importance: High
United team,

I need some immediate action items and response concerning the following issues. This is the second recent complaint stemming from your account representing themselves as DISH, and message broadcasting/opt in as a source of marketing. I understand that if you have a previous relationship with the customer that the laws concerning opt-in telemarketing are different. BUT.... To stay in the good graces of DISH and our legal team you MUST stay away from any marketing that can cause AG issues, customer complaints and push the outer borders of marketing. The issues detailed below have a chance of causing you to lose the incremental bonus for Nov & Dec that we rolled out to you last week, but more urgent is that it could lead to termination. Let's make sure that does not happen by providing me detailed action items on how this will be corrected once and for all.

Issue 1:

I just received a voice broadcast in my office from United Satellite. I pressed 1 and it took me to a Peter at 866-837-0522 extension 8064. He not only represented himself as Dish Network and I almost had to beat out of him he was sales partner and what his name is.

From what I understand is this guy has west coast call center who is giving out major incentives to sales people and with that type of marketing how can we compete? They are also Mavcomm who was terminated by DIRECTV for voice broadcasting. They are now doing the same thing in Dish clothing. This is blatant and what's worse is Florida is a nasty state to get implicated in a sales practice telemarketing suit especially using Dish Network's name. You may want to talk to Peter and find out what he's doing. PS He's an awful salesman.

Issue 2:

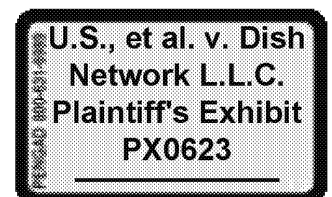
Mike,

Per my voice mail, I have two additional complaints that have come in on this telemarketer which I understand your team has identified to be associated with retailer United Satellite. One is a small claims matter that I have verified that one of the alleged violations (occurring on 9/3/2005) came from Satellite Promotions at 800-375-8209. The other attached complaint came from the State of Vermont, Office of the Attorney General. I'm not sure of the timeframe of these marketing calls.

Thanks

MJO

916-215-8099 cell



PX0623-001

Confidential - U.S. v. DISH

JA006619
005481
DISH5-0000111193
SLC_ DNC_Investigation_0012829
TX 102-005881

EXHIBIT 136

EXHIBIT 136

JA006620
005482

TX 102-005882

From: Oberbillig, Mike
Sent: Tuesday, January 30, 2007 5:46:12 PM
To: Werner, Bruce
Subject: FW: Satellite Systems illegal telemarketing

Importance: High

From: Oberbillig, Mike
Sent: Tuesday, November 29, 2005 6:06 PM
To: 'alex'; 'alex991@mac.com'
Cc: Keller, Steven
Subject: FW: Satellite Systems illegal telemarketing
Importance: High

Alex,

I need your help. I need top down support from you to get your team in line. I am out of golden parachutes to battle for you to stay on the OE program.

I need some immediate action items and response concerning the following issues. This is the second recent complaint stemming from your account representing themselves as DISH, and message broadcasting/opt in as a source of marketing. I understand that if you have a previous relationship with the customer that the laws concerning opt-in telemarketing are different. BUT....to stay in the good graces of DISH and our legal team you MUST stay away from any marketing that can cause AG issues, customer complaints and push the outer borders of marketing. The issues detailed below have a chance of causing you to be put on probation or it could lead to termination. Let's make sure that does not happen by providing me detailed action items on how this will be corrected once and for all.

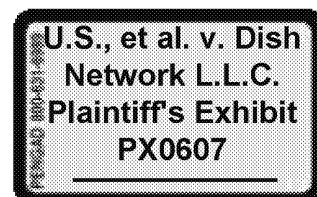
1. Your team MUST stop representing themselves as Dish Network
2. You must stop opt in telemarketing.

Steve and I will call you on Wed to discuss. I love the sales but I need quality sales and no issues.

Thanks

MJO

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



PX0607-001

Confidential-US v. DISH

JA006621
005483
DISH5-0000102805
SLC_DNC_Investigation_0013170
TX 102-005883

From: Mills, Mike
Sent: Monday, November 28, 2005 1:01 PM
To: Oberbillig, Mike
Cc: Keller, Steven
Subject: Satellite Systems
Importance: High

Here's another one (they just keep on coming) –

I just got off the phone with Regina Thomson and she got an opt in call at her home last Tuesday night. It was an auto message that said "press 1 if you are interested in DISH." That's the first bad thing. So she opted in to see what the deal was and talked with a Kevin who answered the line DISH Network and insisted throughout the call that he was with DISH Network. That's the second bad thing. Kevin refused to tell her what company he was calling with and transferred the call to a supervisor. Supervisor's name was Alexis and she continued claiming she was with DISH Network and finally admitted they were a retailer (Satellite Systems) – not DISH Network.

Call back number given by Kevin was 866.211.6770.

This has got to stop - it's killing me and I know it's killing you.

Mike Mills

National Sales Manager

303.723.2865

PX0607-002

Confidential-US v. DISH

JA006622
005484
DISH5-0000102806
SLC_ DNC_Investigation_0013171
TX 102-005884

EXHIBIT 137

EXHIBIT 137

JA006623
005485

TX 102-005885



Retailer Audit Notification & Summary

Date: December 20, 2005 **OE#** 915995 ✓ **AP#** 153867 *334496*
Retailer Name: DISH TV NOW INC
Street Address: 1930 N POPLAR ST
City, State, Zip: SOUTHERN PINES, NC 28387
Phone/FAX: (800) 535-1929 FAX UNK
Primary Contact: DAVID HAGEN
E-mail Address: D.HAGEN@DISHTVNOW.COM;a.hagen@gatelinx.com
Region / Distributor: ATLANTA
Became a dealer in: June 18, 2001
Retailer Hold Status: On Hold 12/12/05 **Hold Amount:**
Hold Reason: Failure to Promote
Prior Violations / Audits:
Source of Information: NATIONAL ACCOUNTS

Primary Activations	2002	2003	2004	2005
	485	2765	78,339	41,688
	9/05	10/05	11/05	12/05
Primary Activations	3473	2854	1806	683
Churn DISH	1.59%	1.66%	1.57%	
Churn DISH TV Now	3.03%	2.99%	2.83%	
% Higher than DISH	191%	180%	180%	

CRP (Current Period Only) Yellow

Profile Summary (CMO):

- Bill Suppression % N/A
- Returned Mail Count N/A
- Bill To (Y/N) N/A
- Duplicate House (Y/N) N/A
- First Pay Default (Count) N/A
- Minimum Programming % N/A

Infraction Summary: 1) Failure to Promote 2) Excessive Churn Rate

Chargeback: N/A

Recommendations: Termination – DeActivate 10303953 GFT Acct)

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX1144

Retail Services Review:

GM Review:

Bruce W. [Signature] Date

Director Review:

[Signature] Date 1/19/06

Legal Review & Approval:

SVP Review & Approval:

[Signature] Date 1/19/06

PX1144-001

JA006624
005486

Confidential- U.S. v. DISH

DISH-Paper-023243
SLC_ DNC_Investigation_0013544

TX 102-005886

Auditor:

Audit started:

Audit finished:

Hours to complete:

Total accounts/claims audited:

Suspected fraud accounts/claims identified:

Promo Summary:

- DHA
- CDDHA
- BDE
- FFA
- CDFFA
- FD
- CDFD
- AK/PR
- OTHER
- NO PROMO
- EXPIRED

Sequence of Events (Date & Event):

Dec 20, 2005 **No Audit was conducted. Based on a discussion with Mike Mills / National Accounts, termination was requested. Documentation includes guidance from Jim Gowland and Amir Ahmed.**

	<u>9/05</u>	<u>10/05</u>	<u>11/05</u>	<u>12/05</u>
Primary Activations	3473	2854	1806	683
Churn DISH 1.59%	1.66%		1.57%	
Churn DISH TV Now	3.03%		2.99%	2.83%

PX1144-002

Confidential- U.S. v. DISH

JA006625
005487
DISH-Paper-023244
SLC_ DNC_Investigation_0013545
TX 102-005887

EXHIBIT 138

EXHIBIT 138

JA006626
005488

TX 102-005888

Mills, Mike

From: Mills, Mike
Sent: Thursday, December 22, 2005 4:54 PM
To: Ahmed, Amir
Subject: DISH TV Now Summary

Take a look – I included a very brief summary of the legal matter which I cut and paste from Dana Steele's explanation. That's about the best info I have to explain the legal part.

Sales
 December Sales
 5 – Through 12/18

Account is on AR/AP hold for the following:

- Chargebacks are outnumbering activations on a weekly basis
- DISH TV Now failed to retain legal representation (as promised) for a legal matter in which Echostar and DISH TV Now are named. Litigation overview - We were sued along with Dish TV Now ("DTVN") at the beginning of this year for allegations of multiple OH TCPA violations. DTVN agreed to indemnify 100% (to the tune of \$30k+), and was pursuing settlement, but apparently the settlement negotiations broke down, so litigation is continuing. The attorney retained by DTVN to defend both Dish and DTVN withdrew himself as counsel due to non payment by DTVN so Echostar is having to seek our own counsel.
- Due to the AP hold, their residual in the amount of 89,635.50 for December was withheld and has not paid.

Communications with DISH TV Now (attached)

- Email was sent to David Hagen from Mike Mills on 12/12 for a response to why their sales people are not pitching DISH Network and only pitching DirecTV. We had several secret shops to DISH TV Now that proved that they were only pitching DirecTV. NO RESPONSE
- Email was sent to David Hagen from Mike Mills on 12/16 for a response to why their sales people are not pitching DISH Network and only pitching DirecTV. NO RESPONSE

Termination provisions

Jim Gowland in legal identified four areas of the retailer agreement that can be utilized by Echostar to terminate the retailer relationship between Echostar and DISH TV Now. They are the following:

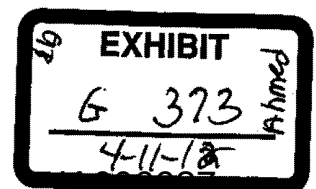
- if they cease to actively market our services for 20 consecutive days
- if they "indefinitely" cease to actively market our services
- Both parties have the right to terminate for convenience on 60 days notice
- If their churn rate is equal to or greater than 125% of our churn rate for subs generally

Though they are not "actively" marketing DISH Network with only 5 sales in December, the churn provision seems to be the best course of action. In the months of September, October and November, DISH TV Now's churn in comparison to DISH subs generally is:

	Sep-05	Oct-05	Nov-05
DISH	1.59%	1.66%	1.57%
DISH TV Now	3.03%	2.99%	2.83%
% higher DISH TV Now is Compared to DISH	191%	180%	180%

1/16/2006

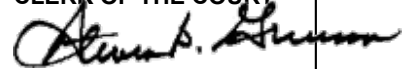
Confidential U.S. v. DISH



005489
 DISH-Paper-023288

SLC_DNC_Investigation_0006028

TX 102-005889



1 **APEN**

2 J. Stephen Peek, Esq. (1758)
3 Robert J. Cassity, Esq. (9779)
4 HOLLAND & HART LLP
5 9555 Hillwood Drive, 2nd Floor
6 Las Vegas, Nevada 89134
7 Tel: (702) 669-4600
8 Fax: (702) 669-4650
9 speak@hollandhart.com
10 bcassity@hollandhart.com

11 C. Barr Flinn (*Admitted pro hac vice*)
12 Emily V. Burton (*Admitted pro hac vice*)
13 YOUNG CONAWAY STARGATT & TAYLOR, LLP
14 Rodney Square, 1000 North King Street
15 Wilmington, DE 19801
16 Tel: (302) 571-6600
17 Fax: (302) 571-1253

18 *Attorneys for Special Litigation Committee of*
19 *Nominal Defendant DISH Network*
20 *Corporation*

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

23 PLUMBERS LOCAL UNION NO. 519 PENSION
24 TRUST FUND and CITY OF STERLING
25 HEIGHTS POLICE AND FIRE RETIREMENT
26 SYSTEM, derivatively on behalf of nominal
27 defendant DISH NETWORK CORPORATION,

28 Plaintiffs,

v.

CHARLES W. ERGEN; JAMES DEFRANCO;
CANTEY M. ERGEN; STEVEN R.
GOODBARN; DAVID MOSKOWITZ; TOM A.
ORTOLF; CARL E. VOGEL; GEORGE R.
BROKAW; JOSEPH P. CLAYTON; and GARY
S. HOWARD,

Defendants,

DISH NETWORK CORPORATION, a Nevada
corporation,

Nominal Defendant

CASE NO.: A-17-763397-B
DEPT. NO.: XI

**VOLUME 7 OF APPENDIX TO
THE REPORT OF THE SPECIAL
LITIGATION COMMITTEE OF
DISH NETWORK CORPORATION**

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 222-2500 ♦ Fax: (702) 669-4650

01:23902280.1

HOLLAND & HART LLP

9555 Hillwood Drive, 2nd Floor

Las Vegas, NV 89134

Phone: (702) 222-2500 ♦ Fax: (702) 669-4650

<u>Ex.</u>	<u>Date</u>	<u>Description</u>	<u>Page No.</u>
139	01/03/2006	Letter from W. Lanford to Dish Network	5490
140	01/23/2006	EchoStar Satellite L.L.C. "DO NOT CALL" Internal Procedure	5507
141	03/20/2006	Email from E. Carlson to J. DeFranco, et al.	5510
142		Intentionally Omitted	5515
143	04/12/2006	EchoStar Retailer Agreement with Jerry Dean Grider dba JSR Enterprises	5517
144		Intentionally Omitted	5550
145	06/28/2006	Civil Investigation Subpoena Duces Tecum Pursuant to Title 9 Vermont Statutes Annotated § 2460, <i>In re EchoStar Satellite, L.L.C.</i>	5552
146	07/01/2006	Retailer Order Entry Promotional Program	5562
147	07/12/2006	Email from R. Origer to B. Neylon, et al.	5566
148		Intentionally Omitted	5571
149	07/18/2006	Email from M. Mills to E. Carlson, et al.	5573
150	07/19/2006	Email from R. Origer to M. Metzger	5578
151	07/19/2006	Email from T. Stingley to M. Metzger, et al.	5584
152	07/27/2006	Letter from D. Steele to E. Burg	5597
153	08/01/2006	Master Services Agreement between EchoStar Satellite L.L.C. and eCreek Services, Inc.	5605
154	08/07/2006	Email from J. DeFranco to M. Metzger, et al.	5624
155	08/10/2006	Email from B. Neylon to R. Origer, et al.	5628
156	08/29/2006	EchoStar Satellite L.L.C. Legal TCPA Meeting Notes	5635
157	09/05/2006	EchoStar Satellite L.L.C. Risk Summary	5637
158	09/08/2006	Email from H. Klein to B. Neylon, et al.	5640
159	09/12/2006	Risk Summary – TCPA/Disclosures	5645
160	09/28/2006	Email from R. Goodale to D. Steele	5648
161	09/28/2006	Email from D. Steele to H. Klein	5650
162	10/02/2006	Email from L. Gardner to J. Greaney	5669
163	10/06/2006	Letter from R. Origer to J. Grider	5671
164		Intentionally Omitted	5674
165	10/31/2006	Letter from R. Origer to R. Goodale	5676
166	11/01/2006	Do Not Call Investigation Form	5679
167	11/09/2006	Letter from State of North Carolina Department of Justice to D. Steele	5682
168	11/16/2006	National Satellite Systems' Proposal presented to EchoStar Communications	5684
169	11/17/2006	Letter from R. Origer to B. Colin	5754
170	11/21/2006	Letter from R. Origer to A. Earl, et al.	5759
171	12/20/2006	Email from R. Musso to JSR Satellite	5761
172	12/21/2006	Email from R. Musso to M. Mills, et al.	5763
173	12/21/2006	Email from R. Musso to B. Neylon, et al. 9:24 PM)	5766
174	12/21/2006	Email from R. Musso to B. Neylon, et al. (9:09 PM)	5769

175	12/22/2006	Email from R. Origer to R. Musso, et al.	5772
176	2006 - 2007	Chart of Retailer Disciplinary Actions	5776
177	2006 - 2007	Chart of Complaints Regarding JSR Enterprises	5778
178	1/12/2007	TCPA Retailer Activity – Internal Stings	5780
179	01/17/2007	Letter from R. Origer to A. Tehranchi	5792
180	01/17/2007	Letter from R. Origer to R. Goodale	5795
181	01/17/2007	Email from R. Musso to R. Goodale	5798
182		Intentionally Omitted	5800
183	02/2007	Quality Assurance Presentation	5802
184	02/04/2007	Email from R. Musso to T. Pyle, et al.	5829
185	02/08/2007	Email from R. Origer to B. Neylon, et al.	5832
186	02/09/2007	Email from R. Musso to B. Neylon, et al.	5835
187	02/12/2007	Letter from R. Origer to T. DiRoberto, et al.	5837
188	02/13/2007	Letter from R. Origer to J. Grider	5839
189	02/14/2007	Retailer Audit Notification & Summary - Jerry Dean Grider dba JSR Enterprises	5842
190	02/14/2007	EchoStar Takes Action Upon Do-Not-Call Violators	5845
191	02/20/2007	Email from T. Pyle to R. Musso, et al.	5847
192	06/08/2007	Email from R. Musso to R. Origer, et al.	5850
193	06/27/2007	Retailer Audit Notification & Summary – Satellite Systems Network	5854
194	07/18/2007	Email from D. Lindsey to E. Carlson, et al.	5858
195	08/16/2007	Letter from R. Origer to A. Brandevin	5861
196	08/18/2007	Acknowledgement Form: Do Not Call (DNC) Sting Procedures	5864
197	08/23/2007	Email from D. Mason to B. Werner, et. al.	5867
198	09/18/2007	Email from C. Voorhies to D. Mason, et. al.	5873
199	09/18/2007	Email from L. Kalani to R. Menjivar (FTC Investigator)	5880
200	09/28/2007	Letter from R. Origer to W. Martin	5882

DATED this 27th day of November 2018.

By /s/ Robert J. Cassity
J. Stephen Peek, Esq. (1758)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

C. Barr Flinn (*Admitted pro hac vice*)
Emily V. Burton (*Admitted pro hac vice*)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square, 1000 North King Street
Wilmington, DE 19801

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

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November 2018, a true and correct copy of the foregoing **VOLUME 7 OF APPENDIX TO THE REPORT OF THE SPECIAL LITIGATION COMMITTEE OF DISH NETWORK CORPORATION** was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

David C. O'Mara, Esq.
THE O'MARA LAW FIRM, PC.
311 East Liberty Street
Reno, NV 89501

Mark E. Ferrario, Esq.
Chris Miltenberger, Esq.
GREENBERG TRAURIG LLP
10845 Griffith Peak Drive, Ste 600
Las Vegas, NV 89135
*Attorneys for Nominal Defendants DISH
Network Corporation*

Travis E. Downs, III, Esq.
Benny C. Goodman III, Esq.
Erik W. Luedeke, Esq.
Timothy Z. Lacombe, Esq.
ROBBINS GELLER RUDMAN & DOWD, LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498

J. Randall Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Pkwy, 17th Floor
Las Vegas, NV 89169

Howard S. Susskind, Esq.
SUGARMAN & SUSSKIND
100 Miracle Mile, Suite 300
Coral Gables, FL 33134
*Attorneys for Plaintiff Plumbers Local Union
No. 519 Pension Trust Fund*

Brian T. Frawley, Esq.
Maya Krugman, Esq.
Yevgeniy Zilberman, Esq.
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004

Attorneys for Defendants

By: /s/ Valerie Larsen
An Employee of Holland & Hart, LLP

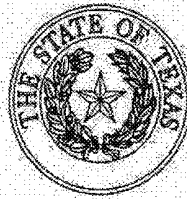
EXHIBIT 139

EXHIBIT 139

JA006632
005490

TX 102-005894

Paul Hudson
Chairman
Julie Caruthers Parsley
Commissioner
Barry T. Smitherman
Commissioner
W. Lane Lanford
Executive Director



Public Utility Commission of Texas

RECEIVED
2006 JAN -4 PM 1:07
PUBLIC UTILITY COMMISSION
FILING CLERK

January 3, 2006

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Dish Network
9601 South Meridian Blvd.
Englewood, CO 80112

Re: P.U.C. Docket No. 32233; Notice of Violation by Dish Network of Texas
Business & Commerce Code § 44.102 and P.U.C. SUBST. R. 26.37, relating to the
Texas No-Call List and Report to Commission.

Dear Sir or Madam:

The purpose of this Notice of Violation ("NOV") is to notify you pursuant to P.U.C. PROCEDURAL RULE 22.246¹ that the Executive Director of the Public Utility Commission of Texas ("Executive Director") is recommending assessment of administrative penalties in the amount of \$16,250 against Dish Network of Texas ("Company") for violations of Texas state law and Public Utility Commission rules that prohibit telemarketing calls to persons who have registered on the state's "Texas No Call List" and that require telemarketers to purchase each published version of the Texas No-Call List, unless certain exemptions apply.

A copy of P.U.C. PROCEDURAL RULE 22.246, which outlines your rights related to this matter, is enclosed with this NOV as Attachment A. A copy of P.U.C. SUBSTANTIVE RULE 26.37, relating to Texas No-Call List is also enclosed.

I. Introduction

The Public Utility Commission of Texas (Commission) may impose an administrative penalty against a telemarketer who violates Texas Business and Commerce Code §44.102 and P.U.C. SUBSTANTIVE RULE 26.37, relating to Texas No-Call List. The penalty for a violation may be in an amount not to exceed \$1,000.00 for each violation.

II. Summary of the Alleged Violations

¹ A complete set of the Commission's procedural and substantive rules can be found at <http://www.puc.state.tx.us/rules/index.cfm>