

The Company is alleged to have violated Texas Business & Commerce Code §44.102 and P.U.C. SUBSTANTIVE RULE 26.37(d)(1), which provides that a telemarketer shall not make or cause to be made a telemarketing call to a telephone number that has been published electronically on the Texas No-Call list, unless certain exemptions apply. As discussed in further detail in the Report on Violations and Recommendations for Administrative Penalties included in this NOV as Attachment B, the Company is alleged to have made 14 prohibited calls to persons registered on the Texas No-Call List for the period March 2005 to November 2005.

Additionally, the Company is alleged to have violated P.U.C. SUBSTANTIVE RULE 26.37(d)(2) which requires telemarketers to purchase each published version of the Texas No-Call List unless certain exemptions apply. As discussed in the report included as Attachment B, the Company is alleged to have violated P.U.C. SUBSTANTIVE RULE 26.37(d)(2) by failing to purchase the March, June, and September 2005 published versions of the Texas No-Call List.

III. Statement of the Amount of the Penalty

The Executive Director recommends assessing an administrative penalty against the Company in the amount of \$16,250. See Attachment B attached hereto and incorporated herein for an explanation of the penalty amount. This recommended penalty is based upon the information available to the Commission Staff at this time. To the extent the Company can provide sufficient records to indicate that the prohibited calls were not made (i.e. outbound call logs or phone records), demonstrate that the calls met the exemptions to the Texas No-Call List requirements, or demonstrate that the calls were isolated occurrences, this notice of violation will be amended accordingly.

IV. Statement Relating to Company's Rights

Persons alleged to have committed a violation have a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. Pursuant to P.U.C. PROCEDURAL RULE 22.246, options available to resolve this matter include paying the penalty, requesting a settlement conference, and requesting a contested case hearing. If you wish to request a settlement conference or contested case hearing, you must do so within 20 days. If you choose to accept the determination and recommended penalty, you must notify the Commission's Executive Director in writing within 30 days and must take all corrective action required by the Commission.

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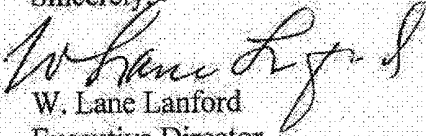
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Dish Network of Texas
Notice of Violation
Page 3 of 3

If you have any questions about the issues raised in this NOV, please contact Sean Farrell,
Staff Attorney, Legal Division, at (512) 936-7290.

Sincerely,



W. Lane Lanford
Executive Director
Public Utility Commission of Texas

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TX 102-005897

ATTACHMENT A

**PUC PROCEDURAL RULE 22.246
AND
PUC SUBSTANTIVE RULE 26.37**

PX0538-004

Confidential-US v. DISH

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DISH5-0000030889

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TX 102-005898

Subchapter M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS.

§22.246. Administrative Penalties.

- (a) **Scope.** This section is intended to address enforcement actions related to administrative penalties only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) **Executive director** — The executive director of the commission or the executive director's designee.
 - (2) **Person** — Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.
 - (3) **Violation** — Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), commission rule or commission order.
 - (4) **Continuing violation** — Except for a violation of PURA Chapter 17, 55, or 64, and commission rules or commission orders pursuant to those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.
- (c) **Amount of penalty.**
- (1) Each day a violation continues or occurs is a separate violation for which a penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.
 - (2) The penalty for each separate violation may be in an amount not to exceed \$5,000.00 per day.
 - (3) The amount of the penalty shall be based on:
 - (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
 - (B) the economic harm to property or the environment caused by the violation;
 - (C) the history of previous violations;
 - (D) the amount necessary to deter future violations;
 - (E) efforts to correct the violation; and
 - (F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.
- (d) **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director shall determine whether an investigation should be initiated.
- (e) **Report of violation or continuing violation.** If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.
- (1) **Contents of the report.** The report shall state the facts on which the determination is based and a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

§22.246--1 PX0538-005

effective date 3/15/00

reviewed by JA000637
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**Subchapter M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR
COMMISSION PROCEEDINGS.**

§22.246(e) continued

- (2) **Notice of report.** Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice must include:
- (A) a brief summary of the alleged violation or continuing violation;
 - (B) a statement of the amount of the recommended penalty;
 - (C) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty;
 - (D) a copy of the report issued to the commission pursuant to this subsection; and,
 - (E) a copy of this section, §22.246 of this title (relating to Administrative Penalties).
- (f) **Options for response to notice of violation or continuing violation.**
- (1) **Opportunity to remedy.**
- (A) This paragraph does not apply to a violation of PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters.
 - (B) Within 40 days of the date of receipt of a notice of violation set out in subsection (e)(2) of this section, the person against whom the penalty may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.
 - (C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no penalty will be assessed against the person who is alleged to have committed the violation.
 - (D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.
 - (E) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (h) of this section.
- (2) **Payment of penalty.** Within 30 days after the date the person receives the notice set out in subsection (e)(2) of this section, the person may accept the determination and recommended penalty through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended penalty.
- (3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request for a hearing on the occurrence of the violation or continuing violation, the

§22.246--2

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**Subchapter M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR
COMMISSION PROCEEDINGS.**

§22.246(f)(3) continued

amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty.

- (g) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the penalty, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.
- (1) If a settlement is reached:
- (A) the parties shall file a report with the executive director setting forth the factual basis for the settlement;
 - (B) the executive director shall issue the report of settlement to the commission; and
 - (C) the commission by written order will approve the settlement.
- (2) If a settlement is reached after the matter has been referred to SOAH, the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.
- (h) **Hearing.** If a person requests a hearing under subsection (f)(3) of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection (e)(2) of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.
- (1) The commission shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.
- (2) The hearing shall be conducted in accordance with the provisions of this chapter.
- (3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:
- (A) the occurrence of the alleged violation or continuing violation;
 - (B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters; and
 - (C) the amount of the proposed penalty.
- (4) Based on the SOAH administrative law judge's proposal for decision, the commission may:
- (A) determine that a violation or continuing violation has occurred and impose a penalty;
 - (B) determine that a violation occurred but that, pursuant to subsection (f)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no penalty will be imposed; or
 - (C) determine that no violation or continuing violation has occurred.
- (5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

§22.246-3 PX0538-007

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**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS
SERVICE PROVIDERS**

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.37. Texas No-Call List.

- (a) **Purpose.** This section implements the Texas Business & Commerce Code Annotated §44.103 (Bus. & Com. Code) relating to rules, customer information, and isolated violations of the Texas no-call list.
- (b) **Application.** This section is applicable to:
 - (1) Certificated telecommunications utilities (CTUs), as defined by §26.5 of this title (relating to Definitions), that provide local exchange telephone service to residential customers in Texas; and
 - (2) Telemarketers, as defined in subsection (c)(9) of this section including, but not limited to, retail electric providers as defined in §25.5 of this title (relating to Definitions).
- (c) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) **Consumer good or service** — For purposes of this section, consumer good or service has the same meaning as Bus. & Com. Code §44.002(3), relating to Definitions.
 - (2) **Established business relationship** — A prior or existing relationship that has not been terminated by either party, and that was formed by voluntary two-way communication between a person and a consumer regardless of whether consideration was exchanged, regarding consumer goods or services offered by the person.
 - (3) **No-call database** — Database administered by the commission or its designee that contains the names, addresses, non-business telephone numbers and dates of registration for all Texas no-call registrants. Lists or other information generated from the no-call database shall be deemed to be a part of the database for purposes of enforcing this section.
 - (4) **No-call list** — List that is published and distributed as required by subsection (f)(2) of this section.
 - (5) **No-call registrant** — A telephone customer who has registered, by application and payment of accompanying fee, for the Texas no-call list.
 - (6) **State licensee** — A person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or business.
 - (7) **Telemarketing call** — An unsolicited telephone call made to:
 - (A) solicit a sale of a consumer good or service;
 - (B) solicit an extension of credit for a consumer good or service; or
 - (C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for sale.
 - (8) **Telephone call** — A call or other transmission that is made to or received at a telephone number within an exchange in the state of Texas, including but not limited to:
 - (A) a call made by an automatic dial announcing device (ADAD); or
 - (B) a transmission to a facsimile recording device.
 - (9) **Telemarketer** — A person who makes or causes to be made a telemarketing call that is made to a telephone number in an exchange in the state of Texas.
- (d) **Requirement of telemarketers.**
 - (1) A telemarketer shall not make or cause to be made a telemarketing call to a telephone number that has been published for more than 60 calendar days on the Texas no-call list.
 - (2) A telemarketer shall purchase each published version of the no-call list unless:
 - (A) the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt pursuant to subsection (c) of this section; or

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS
SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.37(f) continued

- (3) ~~Intended use of the no-call database and no-call list.~~
- (A) The no-call database shall be used only for the intended purposes of creating a no-call list and promoting and furthering statutory mandates in accordance with the Bus. & Com. Code, Chapter 44, relating to Telemarketing. Neither the no-call database nor a published no-call list shall be transferred, exchanged or resold to a non-subscribing entity, group, or individual regardless of whether compensation is exchanged.
 - (B) The no-call database is not open to public inspection or disclosure.
 - (C) The administrator shall take all necessary steps to protect the confidentiality of the no-call database and prevent access to the no-call database by unauthorized parties.
- (4) Penalties for misuse of information. Improper use of the no-call database or a published no-call list by the administrator, telemarketers, or any other person regardless of the method of attainment, shall be subject to administrative penalties and enforcement provisions contained in §22.246 of this title (relating to Administrative Penalties).
- (g) Notice. A CTU shall provide notice of the no-call list to each of its residential customers as specified by this subsection. In addition to the required notice, the CTU may engage in other forms of customer notification.
- (1) Content of notice. A CTU shall provide notice in compliance with §26.26 of this title (relating to Foreign Language Requirements) that, at a minimum, clearly explains the following:
- (A) Beginning January 1, 2002, residential customers may add their name, address and non-business telephone number to a state-sponsored no-call list that is intended to limit the number of telemarketing calls received;
 - (B) When a customer who registers for inclusion on the no-call list can expect to stop receiving telemarketing calls;
 - (C) A customer must pay a fee to register for the no-call list;
 - (D) Registration of a non-business telephone number on the no-call list expires on the third anniversary of the date the number is first published on the list;
 - (E) Registration of a telephone number on the no-call list can be accomplished via the United States Postal Service, Internet, or telephonically;
 - (F) The customer registration fee, which cannot exceed three dollars per term, must be paid by credit card when registering online or by telephone. When registering by mail, the fee must be paid by credit card, check or money order;
 - (G) The toll-free telephone number, website address, and mailing address for registration; and
 - (H) A customer that registers for inclusion on the no-call list may continue to receive calls from groups, organizations, and persons who are exempt from compliance with this section, including a listing of the entities exempted as specified in subsection (e) of this section.
- (2) Publication of notice.
- (A) Telephone directory. A CTU that publishes, or has an affiliate that publishes, a residential telephone directory may include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may request a form for, or request to be placed on, the Texas no-call list in order to avoid unwanted telemarketing calls.
 - (B) Notice to individual customers. A CTU shall provide notice of the Texas no-call list to each of its residential customers in Texas by one or more of the methods listed in clauses (i)-(v) of this subparagraph.
 - (i) an insert in the customer's billing statement. Electronic notification is permissible for a customer who, during the notification period, is receiving billing statements from the CTU in an electronic format;
 - (ii) a bill message;

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**CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS
SERVICE PROVIDERS**

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.37(g)(2)(B) continued

- (iii) separate direct mailing;
 - (iv) customer newsletter; or
 - (v) Customer Rights disclosure as provided in §26.31(a)(4) of this title (relating to Disclosures to Applicants and Customers).
 - (3) **Timing of notice.** Beginning in 2002, a CTU shall provide notice of the Texas no-call list to its residential customers using one of the methods listed in paragraph (2)(B)(i)-(v) of this subsection.
 - (A) A CTU that uses a notification method listed in paragraph (2)(B)(i)-(iv) of this subsection, shall provide the notice annually beginning in 2002. The annual notice shall be easily legible, prominently displayed, and comply with the requirements listed in paragraph (1) of this subsection.
 - (B) A CTU that elects the Customer Rights disclosure as its notification method as allowed in paragraph (2)(B)(v) of this subsection shall comply with the timing of distribution requirement in §26.31(a)(4) of this title. The no-call list information provided in the Customer Rights disclosure shall comply with paragraph (1) of this subsection.
 - (4) **Records of customer notification.** Upon commission request, a CTU shall provide a copy of records maintained under the requirements of this subsection to the commission. A CTU shall retain records maintained under the requirements of this subsection for a period of two years.
- (h) **Violations.**
- (1) **Separate occurrence.** Each telemarketing call to a telephone number on the no-call list shall be deemed a separate occurrence. Upon request from the commission or commission staff, a telemarketer shall provide, within 21 days of receipt of such a request, all information relating to the commission's investigation of complaints regarding alleged violations of the no-call list such as call logs or phone records.
 - (2) **Isolated occurrence.** A telemarketing call made to a number on the no-call list is not a violation of this section if the telemarketer complies with subsection (d)(2) and the telemarketing call is determined to be an isolated occurrence.
 - (A) An isolated occurrence is an event, action, or occurrence that arises unexpectedly and unintentionally, and is caused by something other than a failure to implement or follow reasonable procedures. An isolated occurrence may involve more than one separate occurrence, but it does not involve a pattern or practice.
 - (B) The burden to prove that the telemarketing call was made in error and was an isolated occurrence rests upon the telemarketer who made (or caused to be made) the call. In order for a telemarketer to assert as an affirmative defense that an alleged violation of this section was an isolated occurrence, the telemarketer must provide evidence of the following:
 - (i) The telemarketer has purchased the most recently published version of the Texas no-call list, unless the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt pursuant to subsection (e) of this section and the telemarketer can provide sufficient proof of such;
 - (ii) The telemarketer has adopted and implemented written procedures to ensure compliance with this section and effectively prevent telemarketing calls that are in violation of this section, including taking corrective actions when appropriate;
 - (iii) The telemarketer has trained its personnel in the established procedures; and
 - (iv) The telemarketing call that violated this section was made contrary to the policies and procedures established by the telemarketer.

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS
SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.37 continued

- (i) **Record retention; Provision of records; Presumptions.**
- (1) A telemarketer shall maintain a record of all telephone numbers it has attempted to contact for telemarketing purposes, a record of all telephone numbers it has contacted for telemarketing purposes, and the date of each, for a period of not less than 24 months from the date the telemarketing call was attempted or completed.
 - (2) Upon request from the commission or commission staff, a telemarketer shall provide, within 21 calendar days of receipt of such request, all information in its possession and upon which it relies to demonstrate compliance with this section, relating to the commission's investigation of alleged violations of the no-call list including, but not limited to, the call logs or phone records described in subsection (i)(1) of this section.
 - (3) Failure by the telemarketer to respond, or to provide all information in its possession and upon which it relies to demonstrate compliance with subsections (d) and (i) of this section within the time specified in paragraph (2) of this subsection establishes a violation of this section.
 - (4) Failure of a telemarketer to provide all telemarketing information in its possession and upon which it relies to demonstrate compliance with this section and, if applicable, to establish an affirmative defense pursuant to subsection (h)(2)(B) of this section within the time specified in paragraph (2) of this subsection establishes a violation of this section.
- (j) **Evidence.** Evidence provided by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from a customer, is admissible in a proceeding to establish a violation of this section.
- (k) **Enforcement and penalties.**
- (1) **State licensees.** A state agency that issues a license to a state licensee may receive and investigate complaints concerning violations of this section by the state licensee.
 - (2) **Telecommunications providers.** The commission has jurisdiction to investigate violations of this section made by telecommunications providers, as defined in the Public Utility Regulatory Act (PURA) §51.002.
 - (3) **Retail electric providers.** The commission has jurisdiction to investigate violations of this section made by retail electric providers (REPs) as specified in §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission).
 - (4) **Other Telemarketers.** A telemarketer, other than a state licensee or telecommunications provider, that violates this section shall be subject to administrative penalties pursuant to §22.246 of this title.

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TX 102-005905

ATTACHMENT B

**REPORT OF VIOLATIONS AND RECOMMENDATION FOR
ADMINISTRATIVE PENALTIES**

PX0538-012

Confidential-US v. DISH

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DISH5-0000030897

SLC_ DNC_Investigation_0013077

TX 102-005906

Public Utility Commission of Texas

Memorandum

To: W. Lane Lanford
Executive Director

From: Sean Farrell Janis Ervin
Attorney Senior Policy Specialist
Legal Division Infrastructure Reliability Division

Date: December 30, 2005

Re: Report of Violation and Recommendation for Administrative Penalties for
Violation by Dish Network of Texas of P.U.C. SUBST. R. §26.37, Related
to Texas No-Call List

SUMMARY

Subchapter C of Chapter 44 of the Texas Business and Commerce Code requires the Public Utility Commission of Texas (Commission) to establish and operate a database of consumers in this state who object to receiving unsolicited telemarketing or telephone calls ("Texas No-Call List"). The statute further requires that the Commission is to receive and investigate complaints relating to violations of the Texas No-Call List and provides that the Commission may assess an administrative penalty for such violations.

The Commission adopted P.U.C. SUBST. R. §26.37 to implement these requirements, which, among other things, requires telemarketers to purchase each published version of the Texas No-Call List (published quarterly), and prohibits telemarketers from making or causing to be made telemarketing calls to a telephone number that has been included on the Texas No-Call List for at least 60 days.

Because of the number of complaints filed against Dish Network of Texas ("Dish Network" or "company") alleging violations of the Texas No-Call List, Commission Staff ("Staff") issued a letter to Dish Network in February 2005 reminding the company of its obligations related to the Texas No-Call List and warning the company that additional non-compliance could lead to an enforcement action by the Commission. Since the issuance of that letter, Staff has determined that Dish Network has continued to engage in telemarketing activities and, based upon information received from customer complaints, made fourteen (14) prohibited calls during the period March 2005 to November 2005. Additionally, Dish Network failed to purchase the Texas No-Call Lists published in March, June, and September 2005.

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The purpose of this memo is to recommend that administrative penalties of \$16,250 be assessed upon Dish Network for these violations.

MAKING A PROHIBITED CALL

Business and Commerce Code § 44.102(a) and P.U.C. SUBST. R. §26.37(d)(1) prohibit a telemarketer from making or causing to be made a telemarketing call to a telephone number that has been published for more than 60 days on the Texas No-Call List, unless the call meets certain exemptions listed in P.U.C. SUBST. R. §26.37(e)¹ ("a prohibited call").

Between March 1, 2005 and November 30, 2005, the Commission received a total of fifteen (15) complaints against Dish Network alleging violations of the Texas No-Call list requirements. Staff contacted Gryphon, and determined that fourteen (14) of those complaints related to numbers that were actively registered on the Texas No-Call List at the time of the call, and that the numbers had been published on the Texas No-Call List for more than 60 days at the time of the call from Dish Network. Staff then reviewed these 14 complaints and determined that these fourteen calls do not meet any of the exemptions provided for by the rule.

Exhibit 1 to this memo provides the detail on each alleged prohibited call, including the number called, the date on which the number was first published on the Texas No-Call List, the date the telemarketing call was made by Dish Network, and the number of times the number was called. An unredacted copy of Exhibit 1 is being provided to Dish with this NOV. For privacy purposes, a redacted version of Exhibit 1 is being filed in Central Records at the Commission.

FAILURE TO PURCHASE ALL PUBLISHED VERSIONS OF THE TEXAS NO-CALL LIST

P.U.C. SUBST. R. §26.37(d) (2) requires a telemarketer to purchase each published version of the Texas No-Call list, unless the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt from the Texas No-Call list requirements (such as an existing business relationship or debt collection), or if the telemarketer has contractually arranged for a second telemarketer to make calls and comply with the Texas No-Call List requirements. Based upon a review of the customer complaints received, Staff has concluded that these two exemptions do not apply to Dish Network.

¹ PUC SUBST. R. 26.37(e) exempts calls made in connection with an existing business relationship, in connection with a business relationship that has terminated, if the call was made before the later of when the number first appeared on the no-call list, or one year, calls related to debt collection, calls made to a business, unless the business has notified the telemarketer that the business does not wish to receive calls, or certain calls made to a state licensee from the Texas No-Call List requirements.

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Staff has contacted Gryphon Networks, Inc. (Gryphon), the administrator of the Texas No-Call List, to determine if Dish Network has purchased all published versions of the Texas No-Call List since February 2005. Based upon information received from Gryphon, Dish Network failed to purchase the Texas No-Call lists published in March, June and September of 2005.

REQUEST FOR PENALTIES

Staff recommends that an administrative penalty be imposed for each instance of Dish Network's failure to comply with the requirements of P.U.C. SUBST. R. §26.37.

Staff recommends an administrative penalty be assessed on Dish Network for each instance where Dish Network made or caused to be made a prohibited call and for each quarter during which Dish Network failed to purchase the No-Call list. Texas Business and Commerce Code §44.102(b) provides that the maximum penalty that can be assessed for each violation is \$1,000. Staff recommends that an administrative penalty of the maximum of \$1,000 be assessed on Dish Network for each instance where it made or caused to be made a prohibited call and an administrative penalty of \$750 be assessed on Dish Network for each instance where it failed to purchase a published Texas No-Call List. Therefore, Staff recommends the total administrative penalty for these violations of the Business and Commerce Code §44.102(a) and P.U.C. Subst. R. 26.37 of \$16,250. Staff believes these penalties are appropriate and necessary to deter future violations as Dish Network was warned in February 2005 about its obligations related to the Texas No-Call List, but has continued to make or cause to be made prohibited telemarketing calls.

To the extent Dish Network can provide sufficient records to indicate that the prohibited calls were not made (i.e. outbound call logs or phone records), demonstrate that the calls met the exemptions to the Texas No-Call List requirements, or demonstrates that the calls were isolated occurrences, Staff will amend this recommendation accordingly.

PX0538-015

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DISH5-0000030900

SLC_ DNC_Investigation_0013080

TX 102-005909

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Exhibit 1
Violation of Texas No-Call List – Subst. R. §26. 37(d)(1)
Dish Network of Texas – December 30, 2005

Number Called	Customer's No-Call Publication Date	Date Call Received	Number of Times Called
(281) 807-1393	06/06/2001	04/04/2005	1
(281) 351-5544	04/01/2002	05/20/2005	1
(281) 255-8564	02/13/2002	06/07/2005	1
(972) 221-4261	02/08/2002	06/30/2005	1
(281) 238-9441	01/26/2002	07/08/2005	2
(281) 866-0760	01/21/2002	07/14/2005	1
(903) 592-0896	12/27/2002	07/16/2005	1
(214) 340-9570	03/25/2002	07/21/2005	1
(325) 651-1005	03/03/2002	08/24/2005	1
(972) 712-5111	10/22/2004	08/12/2005	1
(972) 231-2587	01/08/2002	09/20/2005	2
972 208-0448	06/20/2002	10/18/2005	1

EXHIBIT 140

EXHIBIT 140

JA006649
005507

TX 102-005911

EchoStar Satellite L.L.C.
"DO NOT CALL"
Internal Procedure

There are various methods wherein "Do Not Call" ("DNC") requests are added to the EchoStar Satellite, L.L.C. ("EchoStar") DNC Database maintained by the EchoStar IT Department.

1. By verbal request from the contacted party as a result of outbound calls placed to potential customers via three different types of contact:

- a. Calls made internally via the Outbound Call Center;
- b. Calls made internally and externally via Parlane; and
- c. Calls made via third party telemarketing vendors such as Centerpartner and/or Teleperformance.

EchoStar's response to the DNC request is verbal and, with regard to Parlane and Centerpartner and/or Teleperformance only, also scripted is followed by a direct entry disposition into the DNC Database.

2. By written complaint:

- a. Written complaint is detected by the Mail Sorter team;
- b. Said complaint is forwarded to the Mail Processing team;
- c. Mail Processing team performs a direct entry disposition into the DNC Database and forwards the written complaint to the Call Service Center ("CSC") CSC Escalation Team which handles highly escalated customer issues or misdirected communications from anywhere in the Company.

The DNC request is processed by a direct entry disposition into the DNC Database. EchoStar does not respond to the written complaint.

3. By email request:

- a. A DNC email request may be received in any EchoStar employee's electronic mailbox;
- b. Said email is forwarded to the CSC Escalation Team;
- c. CSC Escalation Team enter the DNC request into the DNC Database.

CSC Escalation Team provides a scripted response to the DNC email request. The DNC request is processed by a direct entry disposition into the DNC Database.

4. Inbound Call to CSC requesting removal from any Outbound Call List:

- a. CSC receives verbal request to be moved to the DNC List from contacted party;
- b. Request is followed by a direct entry disposition into the DNC Database by CSC.



CSC call recipient responds to the DNC request with a scripted response. The DNC request is processed by a direct entry disposition into the DNC Database.

5. DNC complaints directed to EchoStar regarding Retailer Calls:

- a. Complaint is directed by the internal recipient source to the Retailer.

EchoStar provides no response to the Complainant.

6. DNC Lists:

- a. Compliance Manager loads Federal and State DNC Lists as well as EchoStar's internal DNC list into the DNC Database;
- b. Compliance Manager supervises and administers all DNC Lists.

EXHIBIT 141

EXHIBIT 141

JA006652
005510

TX 102-005914

From: Carlson, Erik <Erik.Carlson@echostar.com>
Sent: Monday, March 20, 2006 5:21 PM
To: DeFranco, Jim <Jim.DeFranco@echostar.com>; Palmer, Chris <Chris.Palmer@echostar.com>; Dugan, Mike <Mike.Dugan@echostar.com>; Stingley, Tom <Tom.Stingley@echostar.com>
Cc: Galvin, Joe <Joe.Galvin@echostar.com>; Kilaru, Kranti <Kranti.Kilaru@echostar.com>; Origer, Robb <Robb.Origer@echostar.com>; Neylon, Brian <Brian.Neylon@echostar.com>
Subject: RE: Dish Network Call Center Harrasment
Attach: Fw_ Dish Network Call Center Harrasment.msg

All -

My fault on the delayed follow up. I lost track of this e-mail while on the incentive trip. There are different topics to address via the course of these e-mails.

1. The original issue involving Vijoy Pandey is unrelated to the Sterling issue (Palmer's e-mail attached). Mr. Pandey is not an existing or former subscriber and he did not (in the e-mail below) provide any information on the person calling (such as a phone number or name of the company) so there is no way for us to track the source of the call. I have discussed with Galvin and he is now looking into this so we can make sure that Mr. Pandey is removed.

2. Sterling Satellite issue – Setting up an existing subscriber (Palmer's e-mail attached)

The retailer acknowledged that they found the employee that did this and they have since terminated that employee. Sterling Satellite has a zero tolerance policy in place for this type of behavior. Our system did not "flag" this customer as existing customer when the order was placed by Sterling – Retail Services is 1) looking into how/why the order was not flagged (Origer on point) and 2) Retail Services will be auditing Sterling's account for duplicates beyond the normal duplicate audit that CMO/Retail Services routinely performs. (Origer on point) Sterling was adamant that no one in their call center would call in to DISH to disconnect an existing account. The customer referenced was not on any of Sterling's outbound lead sheets though they could not confirm whether this was an inbound or outbound lead – they are upgrading their phone system and will have this capability in the future. As it relates to International they do target some customers but have not received a list of leads from DISH.

3. Currently we do not share leads with OE Retailers. However, we did share one list of leads through Maulik/Amir in Q4 of last year. These were sent only to Marketing Guru and Guru is no longer using the list. It may make sense to utilize some inbound/outbound retailer resources. We have discussed this concept with Jody/Tom briefly and will be continuing to evaluate the feasibility.

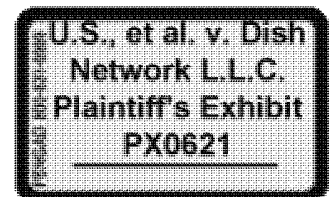
The key to following up on these types of complaints is to have the necessary information to research. When we receive complaints from prospects it is important that we get the Retailer's name (if possible) and the phone number of the customer. Ongoing, complaints like this should be worked through Robb Origer's group for resolution.

Let me know if you need additional information.

Thanks,
Erik

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

From: DeFranco, Jim
Sent: Friday, March 03, 2006 3:35 PM
To: Palmer, Chris; Dugan, Mike; Carlson, Erik; Stingley, Tom
Cc: Galvin, Joe; Kilaru, Kranti
Subject: Re: Dish Network Call Center Harrasment



Erik and Tom will coordinate and respond. It is possible that Amir made arrangements for some cold lists to be worked by a couple of retailers. If so we should review to determine if it makes sense to continue.

PX0621-001

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JA006653

005511

DISH5-0000110594

SLC_ DNC_Investigation_0012803

TX 102-005915

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

From: Palmer, Chris
To: Dugan, Mike; DeFranco, Jim; Carlson, Erik
CC: Galvin, Joe; Kilaru, Kranti
Sent: Fri Mar 03 12:22:50 2006
Subject: Fw: Dish Network Call Center Harrasment

Mike, Jim and Erik:

Please review the concern below brought forward by our Pinebrook CSC. I asked for some detail in response to a complaint forwarded by Charlie. As you can see below and from what I know about our vendors, it is not our CSC (in or out source) calling these leads. The Outbound Manager in Pinebrook, Jorge Santos, believes it may be one of two Retailers (Guru and/or Sterling). Is there a process established for investigating the allegations below?

Chris

Chris Palmer
720-514-5425

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

From: Santos, Jorge
To: Palmer, Chris
CC: Callaghan, Kieran
Sent: Fri Mar 03 10:22:58 2006
Subject: RE: Dish Network Call Center Harrasment

Chris,

We are currently not dialing any South Asian Cold lists. I brought this to Russell Bangert's attention. We've had issues like this in the past and after extensive investigation by Russell's team the customer's information was not found in any of the lists we were dialing in any of our Outbound centers, and several cases have been found to be violations committed by 3rd parties. We've been having issues with two such partners (Sterling Satellite Group, and Marketing Guru) where they are very likely committing account fraud by calling us with the pretext of being the customers, canceling the accounts and calling back as the customer to reconnect them under a new promotion for their company. There is an extremely high possibility that this is a similar case being committed by a 3rd party. I can without a shadow of a doubt say that they are not being harassed by any of our internal outbound centers. I unfortunately do not know who controls the retailer regulatory committee, if any exists to forward the information to.

Jorge Santos

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

From: Palmer, Chris
Sent: Friday, March 03, 2006 11:45 AM
To: Santos, Jorge
Cc: Callaghan, Kieran
Subject: FW: Dish Network Call Center Harrasment

Jorge:

Kieran is going to call you about this. Please keep me posted throughout the day.

Chris

Chris Palmer
chris.palmer@echostar.com
720-514-5425

PX0621-002

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JA006654

005512

DISH5-0000110595

SLC_ DNC_Investigation_0012804

TX 102-005916

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

From: Palmer, Chris
Sent: Friday, March 03, 2006 9:37 AM
To: Callaghan, Kieran
Cc: Galvin, Joe
Subject: FW: Dish Network Call Center Harrasment

Kieran:

I need your help.

I need to know right away what Telemarketing is done by the International group in Pinebrook. We do not do any outbound in India and therefore, needing to start somewhere, I am asking you. Who controls the lists, who is monitoring progress, etc. Is there a 3rd party that may do International Acquisition dialing? If we aren't doing this, can you email the person with the complaint below, ask for a phone number, contact him and see if you can get any additional detail?

We have to understand this ASAP.

Thanks,

Chris

Chris Palmer
chris.palmer@echostar.com
720-514-5425

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

From: Kilaru, Kranti
Sent: Friday, March 03, 2006 9:28 AM
To: Palmer, Chris
Subject: FW: Dish Network Call Center Harrasment

Please get on top of this immediately...please acknowledge you received this...thanks

Kranti Kilaru
303.706.5730

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

From: Dugan, Mike
Sent: Friday, March 03, 2006 9:25 AM
To: Kilaru, Kranti
Subject: Fw: Dish Network Call Center Harrasment

Please forward to chris palmer to investigate

Thanks
Sent From My Handheld

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

From: Ergen, Charlie
To: Dugan, Mike
Sent: Fri Mar 03 09:16:53 2006

PX0621-003

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JA006655

005513

DISH5-0000110596

SLC_ DNC_Investigation_0012805

TX 102-005917

Subject: FW: Dish Network Call Center Harrasment

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

From: Vijoy Pandey [mailto:vijoy@varp.net]

Sent: Thursday, March 02, 2006 10:45 PM

To: Ergen, Charlie; CEO; ExecutiveCustomerService

Cc: Vijoy Pandey

Subject: Dish Network Call Center Harrasment

Dear Mr. Ergen and Mr. Kelly,

That's exactly what your (Dish Network's) call center in India is doing to us. How do we know that the call center is in India - because we (being Indians ourselves) recognize their accent, and the multitude of abuses that they have been throwing at us.

This particular call center has been calling us incessantly EVERY DAY, THRICE A DAY for the past 2 months!

Initially (a) we were polite and refused interest in the offer, (b) then we requested that we be taken off the call list, (b) and then we ignored the calls, but the calls kept coming in.

Now, the callers are being abusive!! All for not signing up or being interested in Dish Network?

Today (03/02/2006, 8:50pm Pacific) we are harassed to the verge of madness.

I am planning to start recording your calls and your abuses starting today, recording the time and date of each call, and plan to release it to the San Jose police department within a week (03/10/2006), unless something is done to correct this situation.

We are not the only ones with this experience. We know of at least 3 additional families who are taking the brunt of this base joke. If we start searching, I am sure we will find countless households who are being harassed by Dish Networks.

We hope that this email goes to you and not to some crazy outsourced call center.

Also, please consider this email as a written proof of letting you know that we have been facing this problem for the past 2 months. I am CC'ing a copy to the California consumer affairs too.

- Vijoy Pandey
vijoy@varp.net

PX0621-004

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JA006656

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DISH5-0000110597

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TX 102-005918

EXHIBIT 142

EXHIBIT 142

JA006657
005515

TX 102-005919

INTENTIONALLY OMITTED

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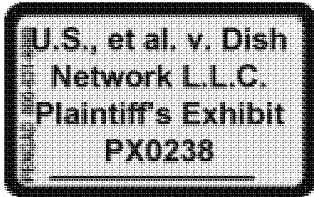
TX 102-005920

EXHIBIT 143

EXHIBIT 143

JA006659
005517

TX 102-005921



Retailer Number

ECHOSTAR RETAILER AGREEMENT

This EchoStar Retailer Agreement (the "Agreement") is made and effective as of 4/12/2006 (the "Effective Date"), by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("EchoStar"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and JERRY DEAN GRIDER DBA JSR ENTERPRISES having a principal place of business at 1740 E GARRY AVE S, SANTA ANA, CA 92705 ("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.

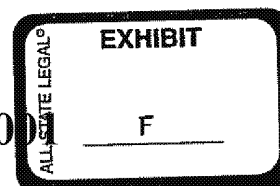
1.9 "Commercial Location" means a Public Commercial Location and/or a Private Commercial Location, as those terms are defined below in Sections 1.29 and 1.25, respectively.

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Page 1 of 32

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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

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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.

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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

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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

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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.

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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.

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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

CONFIDENTIAL

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

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 COMMERCIAL-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 COMMERCIAL-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

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 LNBs) 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.

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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.

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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.

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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

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Page 20 of 32

Confidential and Proprietary

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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 RENDERS, OR MIGHT RENDER, ECHOSTAR LIABLE TO RETAILER FOR ANY DAMAGES OR INJUNCTIVE RELIEF AS A RESULT OF ANY ALLEGED BREACH OR DEFAULT OF THIS AGREEMENT OR ANY OTHER AGREEMENT, RETAILER SHALL GIVE WRITTEN NOTICE OF SUCH OCCURRENCE AS SOON AS PRACTICABLE TO ECHOSTAR (A "NOTICE OF CLAIM"). IN NO EVENT SHALL ANY NOTICE OF CLAIM BE PROVIDED LATER THAN NINETY (90) DAYS AFTER THE DATE OF THE RELEVANT OCCURRENCE, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE) THE NOTICE OF CLAIM SHALL STATE:

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Page 21 of 32

Confidential and Proprietary

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(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 RENDERS, OR MIGHT RENDER, ECHOSTAR IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES OR INJUNCTIVE RELIEF, SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING 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

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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.

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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.

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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

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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.

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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:

Retailer Company Name: **JERRY DEAN GRIDER DBA JSR ENTERPRISES**

Street Address: **1740 E GARRY AVE S**

City, State, Zip Code: **SANTA ANA, CA 92705**

Facsimile Number: **(909) 331-2832**

(for notice to Retailer pursuant to Section 17.10.2)

By: _____

Signature

Print Name: **JERRY GRIDER**
Title: **OWNER**

[SIGNATURE PAGE OF ECHOSTAR RETAILER AGREEMENT]

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Page 28 of 32

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EXHIBIT A

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made and effective as of 4/12/2006, 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 JERRY DEAN GRIDER DBA JSR ENTERPRISES having a principal place of business at 1740 E GARRY AVE S, SANTA ANA, CA 92705 ("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

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.

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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:

Retailer Company Name: **JERRY DEAN GRIDER DBA JSR ENTERPRISES**

Street Address: **1740 E GARRY AVE S**

City, State, Zip Code: **SANTA ANA, CA 92705**

By: _____
Signature

Print Name: **JERRY GRIDER**
Title: **OWNER**

[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]

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Page 31 of 32

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EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT



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Page 32 of 32

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EXHIBIT 144

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EXHIBIT 145

EXHIBIT 145

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**STATE OF VERMONT
OFFICE OF ATTORNEY GENERAL**

IN RE ECHOSTAR SATELLITE, L.L.C.)

**CIVIL INVESTIGATIVE SUBPOENA DUCES TECUM PURSUANT TO
TITLE 9 VERMONT STATUTES ANNOTATED § 2460**

**TO: EchoStar Satellite, L.L.C.
9602 S. Meridian Boulevard
Englewood, CO 80112**

In connection with the above investigation, and pursuant to 9 V.S.A. § 2460, as amended, you are required to provide responses under oath to the following questions, and to provide the following documents, all to the Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609, all within ten days of receiving this Subpoena.

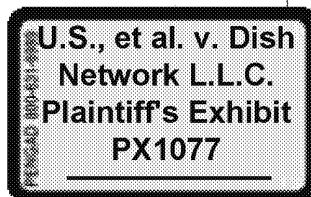
You are entitled to consult with a lawyer in connection with this Subpoena. This is a confidential proceeding, and the documents you produce may not be disclosed to anyone outside of the Office of the Attorney General without your permission or a court order, or other than to another law enforcement officer engaged in legitimate law enforcement activities.

I. BASIS FOR ISSUING SUBPOENA

The Attorney General has reason to believe that in the course of telemarketing into the State of Vermont, certain retailers associated with EchoStar Satellite, L.L.C., have made representations that are deceptive or otherwise violate the Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a).

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

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II. DEFINITIONS

As used herein:

A. **"Copy"** means either an original document or a legible photostatic copy, or, in the case of an audio or videotape, a clear copy of the tape requested.

B. **"Documents"** include, without any limitation except as noted herein, any written, printed or graphic matter, or any mechanical or electronic data transmission, or any mechanical or electronic compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, including copies if the copy bears any other marking or notation of any kind, and each such document shall include all attachments, enclosures, and material supporting or used in preparation of each such document, and other documents that relate or refer to each such document, which are in your actual or constructive possession, custody, or control.

C. **"EchoStar"** means EchoStar Satellite, L.L.C., and any parent or subsidiary of same.

D. **"Identify" (with respect to documents)**, means to state, to the extent known, the (i) type of document, (ii) general subject matter, (iii) date of the document, and (iv) author, addressee and recipient. Once a document is identified in accordance with this definition, the document may be referred to by reference to the first identification.

E. **"Relating to"** means in whole or in part constituting, containing, concerning, discussing, commenting upon, describing, analyzing, identifying, stating, pertaining to, referring to, or forming the basis of.

F. **"Retailer"** means a person or company, whether an independent contractor or not, that, with the knowledge of EchoStar, has offered or sold goods or services of or for EchoStar.

G. "You," "your" and "the company" refer to EchoStar.

III. INSTRUCTIONS

A. **Form of response.** In responding to each interrogatory, please reproduce the interrogatory before the answer provided in response. In responding to requests for document production, please state which documents are responsive to which request.

B. **Documents.** You are required to produce the originals or legible photographic copies of all the documents described in this subpoena that are in your actual or constructive possession, custody or control.

C. **Claims of privilege.** If any document called for by this subpoena is withheld under any claim of privilege, you are required to furnish a list identifying each document or portion of a document for which the privilege is claimed, together with the basis on which the privilege is claimed, and the paragraph or subparagraph of this subpoena to which the withheld document would respond.

D. **Lost, removed, destroyed, or altered documents.** If any document responsive to this subpoena has been lost, removed, destroyed or altered prior to the service of this subpoena, furnish the following information with respect to each such document: (a) a description of the document to the extent known, and the last time and location that the document is known or believed to have existed; (b) the date, sender, recipient and other persons to whom copies were sent, subject matter, present location, and location of any copies; and (c) the identity of any person authorizing or participating in any removal, destruction or alteration; date of such removal, destruction or alteration; and the method and circumstances of such removal, destruction or alteration.

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GENERAL
109 State Street
Montpelier, VT
05609

E. **Certificate of Compliance.** Attached to this request is a Certificate of Compliance for you to sign, have notarized and return with your response.

F. **Time frame for response.** Unless otherwise specified, the time frame covered by this Subpoena is from **January 1, 2004, through to the present.**

IV. QUESTIONS AND REQUESTS FOR DOCUMENTS

1. State the complete corporate name, address and telephone number of EchoStar, and identify and produce a copy of its incorporation documents.

2. Identify all affiliates and d/b/a's of EchoStar, including but not limited to its parent corporation, subsidiaries and any affiliates, and state the complete corporate name, address and telephone number of each.

3. Describe all goods and services offered or sold by EchoStar, how they are marketed and sold, and the cost of each.

4. State the name, address, telephone number and position of all persons who have, since January 1, 2004, had responsibility for investigating or monitoring the business activities of EchoStar retailers.

5. With respect to each of these two retailers—United Satellite and Satellite Systems Networks:

a. State the company's complete corporate name, address and telephone number;

b. State the names and positions of your "contact people" at the company;

c. State the date on which you began doing business with the company, and, if any, the date of and reason for terminating your relationship;

d. Describe the business relationship between EchoStar and the company;

e. Identify and produce any contract or agreement with the company;

f. Identify and produce all marketing materials (including, but not limited to, telemarketing scripts, training materials, print and Internet advertising, and broadcast advertising) provided to, or received from, the company, and for each such document, state its date, describe its origin, and identify the person or persons who wrote or otherwise created it;

g. Identify and produce all communications to or from the company;

h. Describe in detail any problems that you have had with the company, and identify and produce all documents relating to such problems;

i. Describe all "due diligence" steps you have undertaken with respect to the company, including, but not limited to, investigation of the company prior to entering into a contract and oversight of its ongoing business methods. For each step taken, state the date of the step and identify the person who took it;

j. State whether the company has left recorded messages on prospective customers' answering machines, and if so, state what you know about such messages; and

k. State whether the company has offered a right to cancel to prospective customers, and if so, (i) describe the terms and conditions of that right, (ii) describe how and when the right to cancel has customarily been disclosed to prospective customers, and (iii) identify and produce all documents relating to the right, including any consumer disclosures.

6. For each Vermont resident to whom EchoStar goods or services have been sold through, or because of a solicitation by, either United Satellite and Satellite Systems Networks:

- a. Describe the goods or services sold;
- b. State the date and amount of any payment by the consumer and describe the method of payment (credit card, electronic debit from bank account, demand draft, monthly billing, etc.);
- c. State which of the two companies were responsible for the sale or solicitation;
- d. Describe any complaint by the consumer and identify and produce all documents relating to same; and
- e. If any calls to or from the consumer were recorded, identify and produce a copy of the recording, or, if not such copy is available, describe how one may access the recording, if possible.

7. Identify and produce copies of all consumer complaints received since January 1, 2005, relating to telephonic solicitations, including, but not limited to, correspondence, notes, and recordings of telephonic complaints.

8. State the name, address and telephone number of all retailers against which EchoStar has taken disciplinary action (including termination of its business relationship with the retailer) since January 1, 2004, and for each such retailer, describe the circumstances of the action and what led to it.

9. State the name, address and telephone number of all retailers that, to your knowledge, have left recorded messages on prospective customers' answering machines, and if so, state what you know about such messages.

10. State the name, address and position of all persons at EchoStar who participated in responding to this Subpoena.

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05609

V. STATUTORY PENALTIES

Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under 9 V.S.A. § 2460, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody or control of any person of any such notice, or mistakes or conceals information, shall be fined not more than \$5,000.00 pursuant to 9 V.S.A. § 2460. Failure to comply with the subpoena may result in an assessment of civil penalties and costs of enforcement.

Dated: 6/28/06

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: *Elliot Burg*
Elliot Burg
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Tel. (802) 828-2153

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GENERAL
109 State Street
Montpelier, VT
05609

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL

IN RE ECHOSTAR SATELLITE, L.L.C.)

CERTIFICATE OF COMPLIANCE

I, _____, hereby certify that I have reviewed the responses to the Civil Investigative Subpoena dated June 28, 2006, and that they are true and accurate to the best of my knowledge and belief. I further certify that all of the requested material within the possession, custody, or control of the person to whom said Subpoena is directed has been produced, except that for which a privilege has expressly been claimed.

Signature

Subscribed to and sworn to before me at _____, _____,
City State/Province
this _____ day of _____, 2006.

Notary Public

My Commission Expires: _____

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109 State Street
Montpelier, VT
05609

PX1077-008

JA006702

005560

DISH5-0000033908

SLC_ DNC_Investigation_0013341

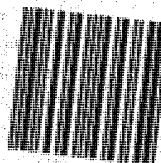
TX 102-005964

CERTIFIED MAIL™



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First Class MAIL

AG1
OFFICE OF THE ATTORNEY GENERAL
STATE OF VERMONT
109 STATE STREET
MONTPELIER, VERMONT 05609-1001

TO Dana Steele
Director and Senior Corporate Counsel
EchoStar Satellite, L.L.C.
9601 S. Meridian Boulevard
Englewood, CO 80112

FIRST • CLASS



PX1077-009

FIRST • CLASS

JA006703

005561

DISH5-0000033909

SLC_DNC_Investigation_0013342

TX 102-005965

EXHIBIT 146

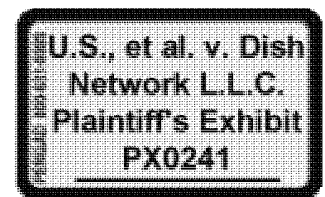
EXHIBIT 146

JA006704
005562

TX 102-005966



RETAILER ORDER ENTRY PROMOTIONAL PROGRAM
Effective: July 1, 2006 through September 30, 2006



Prior to being considered for participation in this Promotional Program and in addition to any other requirements set forth below, a retailer must have a valid EchoStar Retailer Agreement ("EchoStar Retailer Agreement") in full force and effect with EchoStar Satellite L.L.C. ("EchoStar"), (ii) otherwise be in good standing with EchoStar and Echosphere L.L.C. ("Echosphere"), (iii) purchase DISH DBS Systems directly from Echosphere, and (iv) receive these Business Rules directly from EchoStar via electronic mail. Retailers with a valid EchoStar Retailer Agreement in full force and effect with EchoStar are referred to hereinafter as "EchoStar Retailers".

The misrepresentation of the terms and conditions of this Promotional Program to consumers and/or the failure to disclose material terms and conditions of this Promotional Program to consumers may be deemed, as determined in EchoStar's sole and absolute discretion for any reason or no reason, to be fraud under your Retailer Agreement(s). Any breach or default of any of your obligations under these Business Rules may be deemed, as determined in EchoStar's sole and absolute discretion for any reason or no reason, to be a breach and/or default under your Retailer Agreement(s).

Notwithstanding anything to the contrary set forth in your Retailer Agreement(s), retailers are not required to participate in the Promotional Program described below and participation in this Promotional Program may not be available to all retailers. EchoStar shall determine retailer eligibility to participate in this Promotional Program in its sole and absolute discretion for any reason or no reason. All pricing, programming, packages, and other terms and conditions of service are subject to change without notice.

Program Overview:

This Promotional Program provides participating EchoStar Retailers with the opportunity to market, promote and solicit orders for the activation of Eligible Residential Programming for new Residential Subscriber Accounts under Qualifying Promotions (as defined below) during the Promotional Period using EchoStar's proprietary web-based DISH Network partner order entry tool (solely for the purposes of this Promotional Program, the "OE Tool"). Fulfillment of all orders solicited under this Promotional Program shall be performed solely and exclusively by EchoStar, an Affiliate of EchoStar and/or any third party authorized by EchoStar or an Affiliate of EchoStar to perform installation and/or after-sales services on its behalf, in all cases as determined by EchoStar or its Affiliate in its sole and absolute discretion for any reason or no reason.

DEFINITIONS

Qualifying Promotions:

Solely for the purposes of this Promotional Program, "Qualifying Promotions" means and shall be limited to the following consumer promotional offers, the consumer terms and conditions of which are as set forth in the Business Rules posted on the retailer care site specific to each such consumer promotional offer and all other applicable Business Rules: (i) the Digital Home Advantage Promotional Program; (ii) the Formers DHA-18 Promotional Program; (iii) the Free For All Promotional Program; (iv) the ClubDISH Referral Promotional Program; (v) all successor Promotional Program(s) (if any) to each of the foregoing; and (vi) such other Promotional Programs as may be determined by EchoStar at any time and from time to time in its sole and absolute discretion for any reason or no reason. Notwithstanding the foregoing, EchoStar reserves the right to determine at any time and from time to time, in its sole and absolute discretion for any reason or no reason, whether a consumer promotional offer constitutes a Qualifying Promotion or is more appropriately considered a promotion other than a Qualifying Promotion.

Promotional Period:

Solely for the purposes of this Promotional Program, the "Promotional Period" shall commence on the "Promotion Effective Date" specified above and expire on the "Promotion End Date" specified above.

RETAILER ECONOMICS:

In consideration of a participating EchoStar Retailer's continuing efforts to market, promote and solicit orders for DISH Network programming and a participating EchoStar Retailer's continuing efforts to service DISH Network subscribers after initial activation, a participating EchoStar Retailer may be eligible to receive the Incentives set forth below. Payment of any and all Incentives described below shall be subject to the terms and conditions of your EchoStar Retailer Agreement, applicable Business Rules, the Rate Card (as defined below) and all Other Agreements.

Residential Incentives:

For each activation during the Promotional Period of a DISH DBS System for a new Residential Subscriber Account for which a participating EchoStar Retailer correctly and completely performed the order entry tasks related to the provisioning of Eligible Residential Programming under a Qualifying Promotion for such account (which programming is activated within 14 days from the date of initial activation) using the OE Tool, the participating EchoStar Retailer to whom the exact Rate Card was sent directly by EchoStar via e-mail may be eligible to receive: (i) a "Primary Activation Incentive"; and (ii) such other Residential Incentives (if any) (the "Other Residential Incentives") as may be set forth in the Rate Card attached hereto as Exhibit A and incorporated herein by reference in its entirety and which is subject to change at any time and from time to time and retailer to retailer in EchoStar's sole and absolute discretion for any reason or no reason upon notice (including without limitation via e-mail) (the "Rate Card"). The amount and certain other terms and conditions applicable to such Residential Incentives shall be as set forth in the Rate Card.

Payment Schedule:

All payments of Residential Incentives under this Promotional Program shall be made in accordance with and subject to the payment schedule set forth set forth in the Incentive Payment Structure Business Rules.

Chargebacks:

In addition to and without limitation of any and all chargeback provisions set forth in the Agreement and applicable Business Rules, all Primary Activation Incentives and Other Residential Incentives paid under this Promotional Program will be reclaimed in full in the event that the corresponding Residential Subscriber Account terminates any customer promotion agreement with DISH Network or deactivates Eligible Residential Programming, or its service is disconnected for any reason within the chargeback period specified in the Rate Card (if any) or, in the event no such chargeback period is specified, one hundred eighty (180) days from its date of initial activation, and EchoStar may, but shall have no obligation to, deduct such charged back amounts from Incentives due under your EchoStar Retailer Agreement.

ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR ECHOSTAR SUBSCRIBER AND/OR HARDWARE COMPONENT IS ELIGIBLE FOR THE PAYMENT OF THE INCENTIVES DESCRIBED ABOVE. ECHOSTAR'S CALCULATION AND PAYMENT OF SUCH INCENTIVE PAYMENTS SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY YOU PURSUANT TO SECTION 15.1 OF YOUR ECHOSTAR RETAILER AGREEMENT.

Sole Incentives:

Notwithstanding anything set forth to the contrary in any other Business Rules, in no event shall any Incentives, co-op accrual or other amounts not expressly set forth in these Business Rules (including without limitation the Rate Card) be payable in connection with any DISH DBS System or Subscriber Account activated in connection with this Promotional Program.

CALL MONITORING:

By participating in this Promotional Program, a retailer acknowledges and agrees that EchoStar shall have the right (but not the obligation) at any time and from time to time in its sole and absolute discretion for any reason or no reason to monitor, record and/or otherwise access, whether electronically or otherwise and in all cases at EchoStar's election, any and all telephone or other similar communications made between such retailer and/or any of its employees, agents, sub-agents, independent contractors or Affiliates on the one hand, and any prospective or actual consumer on the other hand, that arises from or relates in any manner to the marketing, promotion and/or solicitation of orders for Programming and/or any other Services or Hardware offered by EchoStar and/or any of its Affiliates. Promptly, upon EchoStar's request, each participating retailer shall, at its sole cost and expense, undertake any and all acts and omissions (and/or cause its employees, agents, sub-agents, independent contractors or Affiliates to undertake all acts and omissions) as may be required to provide EchoStar with such access and/or otherwise carry out the purpose or intent of any of the foregoing, in all cases in such form and manner as may be specified by EchoStar at any time and from time to time in its sole and absolute discretion for any reason or no reason.

DISH ORDER ENTRY TOOL WEBSITE ACCESS:

Your access to or use of any and all websites made available to you by EchoStar in connection with your participation in this Promotional Program shall be subject to and in accordance with the terms and conditions of service that are: (i) posted at the relevant time of determination in EchoStar's sole and absolute discretion for any reason or no reason on EchoStar's retailer care site (the "Retailer Care Site") and (ii) applicable to a retailer's access to or use of the Retailer Care Site.

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

The misrepresentation of the terms and conditions of this Promotional Program to consumers and/or the failure to disclose material terms and conditions of this Promotional Program to consumers may be deemed, as determined in EchoStar's sole and absolute discretion for any reason or no reason, to be fraud under your EchoStar Retailer Agreement. Any breach or default of your obligations under these Business Rules may be deemed, as determined in EchoStar's sole and absolute discretion for any reason or no reason, to be a breach and/or default under your EchoStar Retailer Agreement.

THESE BUSINESS RULES (INCLUDING WITHOUT LIMITATION EXHIBIT A) ARE SUBJECT TO CHANGE AND THIS PROMOTIONAL PROGRAM MAY BE TERMINATED FOR ANY REASON OR NO REASON AT ANY TIME AND FROM TIME TO TIME AT THE SOLE AND ABSOLUTE DISCRETION OF ECHOSTAR, INCLUDING WITHOUT LIMITATION DURING ANY PROMOTIONAL PERIOD SET FORTH HEREIN, UPON NOTICE TO YOU (INCLUDING WITHOUT LIMITATION VIA E-MAIL). THESE BUSINESS RULES SUPERCEDE ANY AND ALL PRIOR VERSIONS IN THEIR ENTIRETY WITH RESPECT TO ACTIVATIONS OF SUBSCRIBER ACCOUNTS THAT OCCUR ON OR AFTER THE EFFECTIVE DATE WRITTEN ABOVE, AND SUCH PRIOR VERSIONS (IF ANY) SHALL BE OF NO FORCE AND EFFECT WHATSOEVER WITH RESPECT TO SUCH ACTIVATIONS. FOR ACTIVATIONS OF SUBSCRIBER ACCOUNTS THAT OCCURRED PRIOR TO SUCH DATE, THE CORRESPONDING PRIOR VERSION (IF ANY) CONTINUES TO APPLY.

EXHIBIT A

RATE CARD

Jerry Dean Grider DBA JSR Enterprises – Retailer #14840916

Primary Activation Incentive: \$175

- (The Primary Activation Incentive is payable solely in connection with the Primary Receiver (as defined below) for the applicable Residential Subscriber Account).

Exceptions to Amount:

Free For All Promotional Program:	\$125
Club DISH Promotional Program:	\$125
DISH Family programming package:	\$100
Formers DHA 18 Promotional Program:	\$100

DHPP Enrollment Incentive: \$15

- (The DHPP Enrollment Incentive is payable solely in connection with the Primary Receiver for the applicable Residential Subscriber Account and solely in the event that such Residential Subscriber Account is eligible to enroll and actually enrolls in EchoStar's then-current DISH Home Protection Plan within 14 days of initial activation).

DVR Incentive: \$25

- (The DVR Incentive is payable solely in the event that the applicable receiver is a model designated by EchoStar at the relevant time of determination in the Incentive Payment Structure Business Rules as eligible for the payment of a DVR Incentive).

HD Incentive: \$50

- (The HD Incentive is payable solely in the event that the applicable receiver is a model designated by EchoStar at the relevant time of determination in the Incentive Payment Structure Business Rules as eligible for the payment of a DVR Incentive).

Monthly Residential Incentives: Payment Amount determined in accordance with the Incentive Payment Structure Business Rules.

- (The Monthly Residential Incentive is payable solely in connection with the Primary Receiver for the applicable Residential Subscriber Account and is subject to the Incentive Payment Structure Business Rules.)

Chargeback Period: 180 Days

* OE Tool activations will not accrue coop

* In the event that a Residential Subscriber Account is initially activated under a consumer promotional offer applicable to a Promotional Program named above and/or under any Promotional Program with any specific programming package named above, the amount of the Primary Activation Incentive payable in connection with such activation shall be equal to the lowest corresponding amount written above.

For the purposes of this Rate Card, the "Primary Receiver" shall mean the first receiver activated for a Residential Subscriber Account.

All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in your EchoStar Retailer Agreement or the Retailer Order Entry Promotional Program Business Rules to which this Rate Card is attached, as applicable.

EXHIBIT 147

EXHIBIT 147

JA006708
005566

TX 102-005970

From: Origer, Robb <Robb.Origer@echostar.com>
Sent: Wednesday, July 12, 2006 3:55 PM
To: Neylon, Brian <Brian.Neylon@echostar.com>; Carlson, Erik <Erik.Carlson@echostar.com>; Mills, Mike <Mike.Mills@echostar.com>
Cc: Werner, Bruce <Bruce.Werner@echostar.com>
Subject: Re: Calls to existing Dish Network Customers

Give Werner any minutes or email - he can attach to their files

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

From: Neylon, Brian
To: Carlson, Erik; Mills, Mike
CC: Origer, Robb
Sent: Wed Jul 12 13:17:43 2006
Subject: RE: Calls to existing Dish Network Customers

Mike,

Make sure you follow up with an e-mail documenting your conversation . We might need later.

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

From: Carlson, Erik
Sent: Wednesday, July 12, 2006 12:06 PM
To: Mills, Mike; Neylon, Brian
Cc: Origer, Robb
Subject: Re: Calls to existing Dish Network Customers

You should call these folks and let them know that we are seeing escalations from existing and potential customers regarding outbound telemarketing originating from india. Csrs are representing themselves as dish network, some have rude behavior and in some instances are flipping accounts. Let them know we are not going to tolerate and if they are offenders they need to clean up the act asap.

Thanks
Erik

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

From: Mills, Mike
To: Carlson, Erik; Neylon, Brian
CC: Origer, Robb
Sent: Wed Jul 12 12:02:17 2006
Subject: Re: Calls to existing Dish Network Customers

Brandvein - outsourcing India call Center
Dish Pronto - owns part of the India call center
Cyberworks - wholly owns the India call center

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

From: Carlson, Erik
To: Neylon, Brian
To: Mills, Mike
Cc: Origer, Robb
Sent: Jul 12, 2006 10:58 AM



JA006709
005567

PX0109-001

DISH5-0000110669
TX 102-005971

Subject: FW: Calls to existing Dish Network Customers

Do we know which OE folks are using india for outsourcing?

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

From: Shah, Shefali

Sent: Wednesday, July 12, 2006 9:21 AM

To: Carlson, Erik; Gotto, Mark; Origer, Robb

Cc: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom; Gonzalez, Melissa

Subject: RE: Calls to existing Dish Network Customers

Hi Everyone,

Melissa had asked me to get the phone number from which I received the call. I looked up the number yesterday and the number is - 1-210-745-0568. Moreover, my husband also received a call again yesterday. However, there is no number on the call, it simply says 'Out of Area'. Most of the times, when we do get calls, the number always shows up as 'Out of Area'. Moreover, since I am from India, I can make out if the person on the other end of the line is of Indian origin from their accent. I just want to let you all know that all the calls are coming from people who are from India. So I am assuming that the calls are originating from there.

Please let me know what you find out.

Thanks,
Shefali

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

From: Carlson, Erik

Sent: Tuesday, July 11, 2006 6:34 PM

To: Gotto, Mark; Shah, Shefali; Origer, Robb

Cc: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom

Subject: Re: Calls to existing Dish Network Customers

Please involve robb. These types of complaints can go to vendorinquiries@echostar.com

Erik

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

From: Gotto, Mark

To: Shah, Shefali

CC: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom; Carlson, Erik

Sent: Tue Jul 11 18:29:50 2006

Subject: FW: Calls to existing Dish Network Customers

Hi Shefali,

We will track this down. Myself or Jesse Braglone will contact you tomorrow and get the required information.

We do need more information before we can track this too much further. We are on it...

PX0109-002

JA006710
005568

DISH5-0000110670
TX 102-005972

Mark

From: Sultan, Leanna
Sent: Tuesday, July 11, 2006 3:46 PM
To: Sullivan, James
Cc: Klein, Phil; Gotto, Mark; Stingley, Tom; Carlson, Erik
Subject: RE: Calls to existing Dish Network Customers

James – there should be no way that a dish network csr is making acquisition calls to existing customers. Mark, please confirm that our processes would preclude this.

Note: Sterling Satellite is an aggressive OTM retailer with Indian call centers. They call me frequently – and I've gotten them to admit that they aren't DISH Network.

Please circle back with Phil. We've received some direction on how to handle these requests. I've also asked Tom and Erik for the process on how they want to funnel these complaints go forward.

Thanks.

Leanna

From: Sullivan, James
Sent: Tuesday, July 11, 2006 3:40 PM
To: Shah, Shafali; Sultan, Leanna
Subject: RE: Calls to existing Dish Network Customers

Hey Shafali, just want to confirm that it was a DISH Network CSR and not a retailer or Sales Partner, correct? Sorry for the inconvenience, I hope that I can help out in this scenario.

PX0109-003

JA006711
005569

DISH5-0000110671
TX 102-005973

J

From: Shah, Shefali
Sent: Tuesday, July 11, 2006 1:20 PM
To: Sullivan, James; Sultan, Leanna
Subject: Calls to existing Dish Network Customers

James/Leanna,

I want to bring an important issue to your notice.

I am a Dish Network customer since Nov, 2005. However, every two weeks I receive a call from Dish Network asking me whether I have subscribed to a cable service or whether I have dish network. They call to offer me a Dish Network connection. What I fail to understand here is why the existing dish network customers are being targeted. Shouldn't the person who is calling in be aware whether the other person is an existing customer or not?

I want to escalate this issue because I have received two calls in the last two days. I just discussed this issue with my team yesterday and got a call again yesterday evening. This time I told that guy that I was already an existing customer and that I was also working at Echostar. He apologized and he said that he was not aware that I was an existing customer. He further added that he did not have a list of existing customers and so he was calling all the numbers that he was asked to call. I think that all these calls are being made from Hyderabad, India since we have a CSC center there. I have also talked to a few of my friends about it and they have also received similar calls. On one hand, we always talk about improving the customer experience and on the other the existing customers are being harassed by such calls. Please take a look at this issue and ensure that the existing customers do not receive such calls.

Thanks,

Shefali Shah

Echostar

720-514-5108

PX0109-004

JA006712
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DISH5-0000110672
TX 102-005974

EXHIBIT 148

EXHIBIT 148

JA006713
005571

TX 102-005975

INTENTIONALLY OMITTED

JA006714
005572

TX 102-005976

EXHIBIT 149

EXHIBIT 149

JA006715
005573

TX 102-005977

From: Mills, Mike <Mike.Mills@echostar.com>
Sent: Tuesday, July 18, 2006 7:42 PM
To: Carlson, Erik <Erik.Carlson@echostar.com>; Neylon, Brian <Brian.Neylon@echostar.com>
Cc: Origer, Robb <Robb.Origer@echostar.com>; Werner, Bruce <Bruce.Werner@echostar.com>
Subject: RE: Calls to existing Dish Network Customers

I have contacted the following retailers that either have call center resources or affiliates in India or of Indian decent:

- * Brandvein - Allan Brandvein (Owner)
- * DISH Pronto - Mike Trimarco (Owner)
- * Cyberworks - Ryan Garrow (Sales Manager)
- * VMC - Charlie Proffit (General Manager) - Affiliates not call center resources
- * AllSat - Ben Solberg (Owner) - Affiliates not call center resources

The communication to each of the retailers was that we have seen escalations of existing customers calling in to file a complaint that they were contacted by a retailer of Indian decent trying to sign them up as a new subscriber. They all understand the seriousness and they have controls in place to mitigate this behavior. All have committed to working with us and providing any relevant information to ensure that this practice does not continue.

Mike Mills
National Sales Manager
303.723.2865
mike.mills@echostar.com

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

From: Carlson, Erik
Sent: Wednesday, July 12, 2006 12:06 PM
To: Mills, Mike; Neylon, Brian
Cc: Origer, Robb
Subject: Re: Calls to existing Dish Network Customers

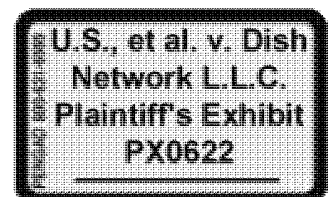
You should call these folks and let them know that we are seeing escalations from existing and potential customers regarding outbound telemarketing originating from india. Csrs are representing themselves as dish network, some have rude behavior and in some instances are flipping accounts. Let them know we are not going to tolerate and if they are offenders they need to clean up the act asap.

Thanks
Erik

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

From: Mills, Mike
To: Carlson, Erik; Neylon, Brian
CC: Origer, Robb
Sent: Wed Jul 12 12:02:17 2006
Subject: Re: Calls to existing Dish Network Customers

Brandvein - outsourcing India call Center
Dish Pronto - owns part of the India call center
Cyberworks - wholly owns the India call center



PX0622-001

Confidential - U.S. v. DISH

JA006716
005574
DISH5-0000110698
SLC_DNC_Investigation_0012997
TX 102-005978

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

From: Carlson, Erik
To: Neylon, Brian
To: Mills, Mike
Cc: Origer, Robb
Sent: Jul 12, 2006 10:58 AM
Subject: FW: Calls to existing Dish Network Customers

Do we know which OE folks are using india for outsourcing?

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

From: Shah, Shefali
Sent: Wednesday, July 12, 2006 9:21 AM
To: Carlson, Erik; Gotto, Mark; Origer, Robb
Cc: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom; Gonzalez, Melissa
Subject: RE: Calls to existing Dish Network Customers

Hi Everyone,

Melissa had asked me to get the phone number from which I received the call. I looked up the number yesterday and the number is - 1-210-745-0568. Moreover, my husband also received a call again yesterday. However, there is no number on the call, it simply says 'Out of Area'. Most of the times, when we do get calls, the number always shows up as 'Out of Area'. Moreover, since I am from India, I can make out if the person on the other end of the line is of Indian origin from their accent. I just want to let you all know that all the calls are coming from people who are from India. So I am assuming that the calls are originating from there.

Please let me know what you find out.

Thanks,
Shefali

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

From: Carlson, Erik
Sent: Tuesday, July 11, 2006 6:34 PM
To: Gotto, Mark; Shah, Shefali; Origer, Robb
Cc: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom
Subject: Re: Calls to existing Dish Network Customers

Please involve robb. These types of complaints can go to vendorinquiries@echostar.com

Erik

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

From: Gotto, Mark
To: Shah, Shefali
CC: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom; Carlson, Erik
Sent: Tue Jul 11 18:29:50 2006
Subject: FW: Calls to existing Dish Network Customers

Hi Shefali,

We will track this down. Myself or Jesse Braglone will contact you tomorrow and get the required information.

PX0622-002

Confidential - U.S. v. DISH

JA006717

005575

DISH5-0000110699

SLC_ DNC_Investigation_0012998

TX 102-005979

We do need more information before we can track this too much further. We are on it...

Mark

From: Sultan, Leanna
Sent: Tuesday, July 11, 2006 3:46 PM
To: Sullivan, James
Cc: Klein, Phil; Gotto, Mark; Stingley, Tom; Carlson, Erik
Subject: RE: Calls to existing Dish Network Customers

James – there should be no way that a dish network csr is making acquisition calls to existing customers. Mark, please confirm that our processes would preclude this.

Note: Sterling Satellite is an aggressive OTM retailer with Indian call centers. They call me frequently – and I've gotten them to admit that they aren't DISH Network.

Please circle back with Phil. We've received some direction on how to handle these requests. I've also asked Tom and Erik for the process on how they want to funnel these complaints go forward.

Thanks.

Leanna

From: Sullivan, James
Sent: Tuesday, July 11, 2006 3:40 PM
To: Shah, Shefali; Sultan, Leanna
Subject: RE: Calls to existing Dish Network Customers

PX0622-003

Confidential - U.S. v. DISH

JA006718
005576
DISH5-0000110700
SLC_ DNC_Investigation_0012999
TX 102-005980

Hey Shafali, just want to confirm that it was a DISH Network CSR and not a retailer or Sales Partner, correct? Sorry for the inconvenience, I hope that I can help out in this scenario.

J

From: Shah, Shefali
Sent: Tuesday, July 11, 2006 1:20 PM
To: Sullivan, James; Sultan, Leanna
Subject: Calls to existing Dish Network Customers

James/Leanna,

I want to bring an important issue to your notice.

I am a Dish Network customer since Nov, 2005. However, every two weeks I receive a call from Dish Network asking me whether I have subscribed to a cable service or whether I have dish network. They call to offer me a Dish Network connection. What I fail to understand here is why the existing dish network customers are being targeted. Shouldn't the person who is calling in be aware whether the other person is an existing customer or not?

I want to escalate this issue because I have received two calls in the last two days. I just discussed this issue with my team yesterday and got a call again yesterday evening. This time I told that guy that I was already an existing customer and that I was also working at Echostar. He apologized and he said that he was not aware that I was an existing customer. He further added that he did not have a list of existing customers and so he was calling all the numbers that he was asked to call. I think that all these calls are being made from Hyderabad, India since we have a CSC center there. I have also talked to a few of my friends about it and they have also received similar calls. On one hand, we always talk about improving the customer experience and on the other the existing customers are being harassed by such calls. Please take a look at this issue and ensure that the existing customers do not receive such calls.

Thanks,

Shefali Shah

Echostar

720-514-5108

PX0622-004

Confidential - U.S. v. DISH

JA006719
005577
DISH5-0000110701
SLC_ DNC_Investigation_0013000
TX 102-005981

EXHIBIT 150

EXHIBIT 150

JA006720
005578

TX 102-005982

From: Origer, Robb
Sent: Wednesday, July 19, 2006 2:00:54 PM
To: Metzger, Marciedes
Subject: RE: Calls to existing Dish Network Customers

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

From: Metzger, Marciedes
Sent: Wednesday, July 19, 2006 10:06 AM
To: Sullivan, James; Origer, Robb
Cc: Bangert, Russell; Bragalone, Jesse; Sparks, Scott; Cohen, Mark
Subject: RE: Calls to existing Dish Network Customers

We need to keep in mind that ERT is a phone team and are working with a queue. we need these complaints to come in as calls transferred to ERT. I do not have the resources to field emails from all over the company. I can't pull agents from the phone to call these consumers back.

Also the process does not work as currently designed.

A big problem that I see is that once we identify that it is not Dish calling and forward what ever information we have to vender inquires and they are unable to identify a retailer, the process stops there. There are no additional efforts to investigate even when we have identified the name of the 3rd party vendor as was the case last week.

We need more aggressive investigative efforts. I think we need to meet again and determine whose responsibility that is, what tools are available and how we manage this going forward.

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

From: Sullivan, James
Sent: Wednesday, July 19, 2006 10:01
To: Origer, Robb; Metzger, Marciedes
Cc: Bangert, Russell; Bragalone, Jesse; Sparks, Scott
Subject: RE: Calls to existing Dish Network Customers

Do we know what happened after this as stated by Vendor Inquires....

"I have forwarded this onto the CSC / ERT Department. All TCPA complaints should originate there to verify if Dish actually made those calls."

Robb, Marcy, can you help out?

J

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

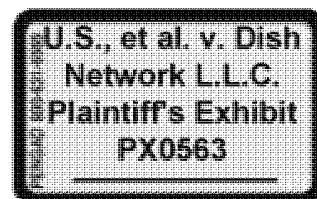
From: Bragalone, Jesse
Sent: Monday, July 17, 2006 10:13 AM
To: Sullivan, James
Cc: Sparks, Scott; Bangert, Russell
Subject: RE: Calls to existing Dish Network Customers

We actually have a fairly robust process when it comes to Outbound dialing from our owned and operated centers (including Orange). The majority of these complaints(that I have handled and tracked in the past) are caused by our retailers and other vendors contacting consumers on "our behalf."

Who can we reach out to in retail services to review the process and accountability for the vendors to follow the process?

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

From: Sullivan, James
Sent: Monday, July 17, 2006 10:05 AM
To: Bragalone, Jesse
Cc: Sparks, Scott
Subject: FW: Calls to existing Dish Network Customers



PX0563-001

Confidential-US v. DISH

JA006721
005579
DISH5-0000076321
SLC_ DNC_Investigation_0013102
TX 102-005983

It appears that this is a bigger issue than expected. Scott was recently with the ERT team and he heard this frequently. Has a formalized process been established yet?

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

From: Shah, Shefali
Sent: Thursday, July 13, 2006 8:47 AM
To: Vendor Inquiries; Origer, Robb; Werner, Bruce
Cc: Metzger, Marciedes; Holcomb, Elizabeth; Gotto, Mark; Sultan, Leanna; Gonzalez, Melissa; Bragalone, Jesse; Sullivan, James; Carlson, Erik; Klein, Phil; Stingley, Tom
Subject: RE: Calls to existing Dish Network Customers

Hi Everyone,

I have an update for everyone - I received a call again yesterday. The number was not being displayed, it was just saying 'Out of Area'. This time I asked the guy where he was calling from. He said that he was calling from 'Synergy Cyber Care' in Philippines. He said that they were a third party and the calls were being made from Internet. I told him that I was an existing Dish Network customer and that he should remove my number from his calling list.

Thanks,
Shefali

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

From: Vendor Inquiries
Sent: Thursday, July 13, 2006 7:27 AM
To: Origer, Robb; Vendor Inquiries; Werner, Bruce
Cc: Shah, Shefali; Metzger, Marciedes; Holcomb, Elizabeth
Subject: RE: Calls to existing Dish Network Customers

Thank you for your email to Vendor Inquiries.

I have forwarded this onto the CSC / ERT Department. All TCPA complaints should originate there to verify if Dish actually made those calls.

Based on the number provided, we are unable to locate a retailer with the information provided. We have tracked your information and will continue to research. The phone number is registered out of Austin, TX.

Thank you,
Lisa Vallejos
DISH Network

The contents of this electronic message and any attachments are intended only for the addressee and may contain confidential and privileged information. If you are not the addressee, you are notified that any transmission, distribution, downloading, printing or photocopying of the contents is strictly prohibited. If you have received this message in error, please notify the sender by return e-mail immediately and destroy all copies of the message and any attachments.

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

From: Origer, Robb
Sent: Wednesday, July 12, 2006 9:24 AM
To: Vendor Inquiries; Werner, Bruce
Subject: Fw: Calls to existing Dish Network Customers

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

From: Shah, Shefali
To: Carlson, Erik; Gotto, Mark; Origer, Robb
CC: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom; Gonzalez, Melissa
Sent: Wed Jul 12 09:20:37 2006
Subject: RE: Calls to existing Dish Network Customers

PX0563-002

Confidential-US v. DISH

JA006722

005580

DISH5-0000076322

SLC_ DNC_Investigation_0013103

TX 102-005984

Hi Everyone,

Melissa had asked me to get the phone number from which I received the call. I looked up the number yesterday and the number is - 1-210-745-0568. Moreover, my husband also received a call again yesterday. However, there is no number on the call, it simply says 'Out of Area'. Most of the times, when we do get calls, the number always shows up as 'Out of Area'. Moreover, since I am from India, I can make out if the person on the other end of the line is of Indian origin from their accent. I just want to let you all know that all the calls are coming from people who are from India. So I am assuming that the calls are originating from there.

Please let me know what you find out.

Thanks,
Shefali

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

From: Carlson, Erik
Sent: Tuesday, July 11, 2006 6:34 PM
To: Gotto, Mark; Shah, Shefali; Origer, Robb
Cc: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom
Subject: Re: Calls to existing Dish Network Customers

Please involve robb. These types of complaints can go to vendorinquiries@echostar.com

Erik

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

From: Gotto, Mark
To: Shah, Shefali
CC: Sultan, Leanna; Sullivan, James; Klein, Phil; Stingley, Tom; Carlson, Erik
Sent: Tue Jul 11 18:29:50 2006
Subject: FW: Calls to existing Dish Network Customers

Hi Shefali,

We will track this down. Myself or Jesse Bragione will contact you tomorrow and get the required information.

We do need more information before we can track this too much further. We are on it...

Mark

From: Sultan, Leanna
Sent: Tuesday, July 11, 2006 3:46 PM
To: Sullivan, James
Cc: Klein, Phil; Gotto, Mark; Stingley, Tom; Carlson, Erik
Subject: RE: Calls to existing Dish Network Customers

James -- there should be no way that a dish network csr is making acquisition calls to existing customers. Mark, please confirm that our processes would preclude this.

PX0563-003

Confidential-US v. DISH

JA006723

005581

DISH5-0000076323

SLC_ DNC_Investigation_0013104

TX 102-005985

Note: Sterling Satellite is an aggressive OTM retailer with Indian call centers. They call me frequently – and I've gotten them to admit that they aren't DISH Network.

Please circle back with Phil. We've received some direction on how to handle these requests. I've also asked Tom and Erik for the process on how they want to funnel these complaints go forward.

Thanks.

Leanna

From: Sullivan, James
Sent: Tuesday, July 11, 2006 3:40 PM
To: Shah, Shefali; Sultan, Leanna
Subject: RE: Calls to existing Dish Network Customers

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PX0563-004

Confidential-US v. DISH

JA006724
005582
DISH5-0000076324
SLC_ DNC_Investigation_0013105
TX 102-005986

and that I was also working at Echostar. He apologized and he said that he was not aware that I was an existing customer. He further added that he did not have a list of existing customers and so he was calling all the numbers that he was asked to call. I think that all these calls are being made from Hyderabad, India since we have a CSC center there. I have also talked to a few of my friends about it and they have also received similar calls. On one hand, we always talk about improving the customer experience and on the other the existing customers are being harassed by such calls. Please take a look at this issue and ensure that the existing customers do not receive such calls.

Thanks,

Shefali Shah

Echostar

720-514-5108

PX0563-005

Confidential-US v. DISH

JA006725
005583
DISH5-0000076325
SLC_ DNC_Investigation_0013106
TX 102-005987