

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

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

Appellants,

vs.

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

Respondents.

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District Court No.  
A-17-763397-B

**JOINT APPENDIX**  
**Vol. 36 of 85**  
**[JA008191-JA008440]**

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<b>Evidentiary Hearing SLC Exhibit 102<sup>2</sup></b>			

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

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

1     what was the purpose of gathering these reports on  
2     how to improve QA scores for OE retailers?

3           A. I think it was to try to improve the QA  
4     scores for OE retailers.

5           Q. And were there -- were there meetings  
6     surrounding how to execute these plans to improve QA  
7     scores?

8           A. I would assume there were.

9           Q. And was one of the purposes of this document  
10    to talk about plans to improve QA scores?

11          A. I'm sorry?

12          Q. Was one of the purposes -- was one of the  
13    purposes of this document to talk about plans and  
14    solutions for how to improve certain QA scores?

15          A. It looks like it.

16          Q. So when this italicized section says, (as  
17    read:) I would suggest that we not disclose the  
18    June 1 offers to Defender in the timeline they  
19    require unless they agree to update their scripting  
20    to comply with the QA --

21           MR. EWALD: I'm sorry, just for the record  
22    it says, until not unless.

23          Q. Sorry, I apologize. (As read:) Until they  
24    agree to update their scripting to comply with the  
25    QA.

1           what in this document, or in the scope or  
2           purpose of this document, makes you think that this  
3           was just a joke?

4           A. I know the sales person in this case, Clay  
5           Suter. And that looks like a flippant remark that  
6           he would make.

7           Q. Okay. Let's look at the paragraph above  
8           that, when he says, (as read:) I will also suggest  
9           that the account re-write their entire sales script,  
10          with my assistance, to include a more thorough  
11          detail of the sales process, including rebuttals and  
12          all mandatory details of the QA.

13          was that also a joke?

14          A. No, I think he would have been willing to do  
15          that.

16          Q. I'm gonna move on.

17          would you turn to page 4 of the same document.  
18          And take a look at the paragraph under actions taken  
19          to remedy. Sorry, the paragraph under -- or the  
20          bullets under actions taken to remedy towards the  
21          bottom of the page.

22          So in order to improve QA scores could DISH  
23          national account managers write an actual call flow  
24          sales scripts that must be followed by the OE  
25          retailer?

1           A. All of the OE retailers had their own  
2 scripts.

3           Q. Could DISH write an actual script and  
4 require the OE retailer to follow it?

5           A. We haven't.

6           Q. This national account manager appears to  
7 have done so, doesn't he?

8           A. I'm sorry, where does that say under actions  
9 taken to remedy?

10           THE COURT: There are two actions to  
11 remedy. Look at --

12           Q. The lower one.

13           A. I apologize, the lower one. I was looking  
14 at the wrong one.

15           Q. Take a few minutes to review that and I'll  
16 come back with the questions.

17           A. Okay.

18           Q. So I'll ask you again, could DISH require OE  
19 retailers to follow a sales -- sales script written  
20 by a national account manager?

21           A. So this said he wrote an actual call flow  
22 sales script, so I'm reading this it was more of a  
23 call flow than actual full sales script.

24           Q. Could you tell me what a call flow is?

25           A. Just flow of the call. I don't --

1 Q. Are you speculating or do you actually know  
2 of there being a distinction between a call flow and  
3 a call flow sales script?

4 A. Well, call flow, you know, you have an  
5 introduction, you know, fact finding.

6 Q. Do you have any basis to believe this isn't  
7 an actual sales script being referred to by this  
8 account manager?

9 A. Yeah. I don't think that this account -- or  
10 Go Dish would have used a sales script that the  
11 national account manager provided them.

12 Q. Let's move --

13 THE COURT: I'm sorry, who would not use  
14 it?

15 A. Go Dish. That's the retailer this is  
16 referring to.

17 Q. But this national account manager here seems  
18 to be under the impression that he could write an  
19 actual call flow sales script that must be followed  
20 by Go Dish; correct?

21 A. Yeah. I read that as the call flow part of  
22 that sales script, yes.

23 Q. Let's move on to the second bullet. So if  
24 OE retailers don't read disclosures as they are  
25 written by DISH employees could DISH disable

1 log-ins?

2 A. We could disable log-ins. I'm not aware of  
3 an occurrence we would have done it in this  
4 instance.

5 Q. Does this national account manager seem to  
6 be under the impression that DISH could disable  
7 log-ins if OE retailers are not reading disclosures  
8 as DISH has written?

9 A. He states that.

10 Q. Okay. Moving on to the third bullet point.  
11 Could DISH require sales representatives who work  
12 for OE retailers to come into the office when their  
13 regular working arrangement is to work from home?

14 A. I don't think he could require it.

15 Q. So does it appear that this national account  
16 manager was under the impression that DISH could  
17 require, here the sentence says, (as read:) He is  
18 now required to meet me in Orbit's sales office once  
19 a week so I can monitor calls.

20 Does this sales -- national account manager  
21 seem to be under the impression that DISH could  
22 require that?

23 A. I think he was just trying to improve QA  
24 scores. And that was one thing he wanted to do to  
25 do so.



1 Q. If you'll look at that sentence again --

2 A. Hm-mm.

3 Q. -- for me. It says (as read:) He is now  
4 required to meet me in orbits.

5 Doesn't that sound to you like this national  
6 account manager is, at the time of this document,  
7 currently requiring and meeting this person in the  
8 sales office?

9 A. Looks like he's proposing to, but you know,  
10 they're an independent business, so I don't see how  
11 he could require him.

12 Q. Let's turn to page 6 of that same document.  
13 And I'm gonna turn you to the bullets under current  
14 action items. Would you look at the fourth bullet  
15 point under current action items.

16 So for agents that are consistently failing QA  
17 can DISH require them to be removed from the phones  
18 for additional coaching? And again, these are sales  
19 representatives that work for OE retailers?

20 A. No.

21 Q. But yet this national account manager says  
22 that -- at the time of this document that agents  
23 that are consistently failing QA are being removed  
24 from the phones for additional coaching?

25 A. That would have been action that Altitude

1 Marketing would have taken.

2 Q. But could DISH require Altitude Marketing to  
3 take that action?

4 A. No.

5 Q. Does this national account manager seem to  
6 think that he could require Altitude Marketing to do  
7 so?

8 A. That's not what this say.

9 Q. Turning to the second bullet point. Sorry,  
10 not the second, the fifth bullet point. When it  
11 says that financial penalties are being imposed on  
12 agents that fail QA. Is that something that DISH  
13 could do?

14 A. No, I don't believe so.

15 Q. So what does that bullet point mean?

16 A. That looks like Altitude Marketing was  
17 taking that stance that they would provide financial  
18 penalties to their agents if they failed QA.

19 Q. And the bullet point under that, when it  
20 says (as read:) Communicated the 4/7 scripting  
21 changes and scheduled travel for the week of 4/5.

22 Is that something that Altitude Marketing was  
23 doing or the national account manager was doing?

24 A. That would likely have been disclosure  
25 updates to the scripts that were provided on these

1 dates.

2 Q. Who was providing those updates?

3 A. Providing the disclosure updates?

4 Q. Yes.

5 A. Well, disclosures would come from legal and  
6 then they would be disseminated through our group to  
7 the retailers.

8 Q. Okay. So those three bullet points that  
9 we've been focusing on, and you seemed to be under  
10 the impression that removing agents from the phone  
11 for additional coaching and levying of financial  
12 penalty are the actions of Altitude. Are they the  
13 actions of Altitude to work with DISH in order to  
14 improve it's QA scores?

15 A. Well, I think Altitude wanted to have a good  
16 customer experience. And my reading disclosures,  
17 that would lead to a good customer experience.

18 Q. These actions are in a document which  
19 describe action plans for improving QA scores. Are  
20 these actions taken for the purpose of improving a  
21 QA scores for DISH?

22 A. Yes.

23 Q. So in addition to the measures we talked  
24 about, if an OE retailer doesn't participate in the  
25 QA process, they can be terminated; correct?

1 A. Yes.

2 Q. Would you turn to Plaintiffs' Exhibit 1044.  
3 Do you recognize this document?

4 A. Yes.

5 Q. What is it?

6 A. It looks to be the documents that JSR  
7 Enterprises received when they started on the OE  
8 tool.

9 Q. All right. So DISH provided to JSR  
10 Enterprises these terms and conditions that start on  
11 page 3 of this document; is that right?

12 A. Yes.

13 Q. And this document communicated that JSR was  
14 required to read these terms and conditions to its  
15 customers?

16 A. That's correct.

17 Q. And if you'll turn to page 9 of the same  
18 document, entitled retailer business rules pre-sale  
19 disclosure and advertising requirements. Was JSR  
20 required to abide by these provisions as well?

21 A. I believe these are applicable to all  
22 retailers.

23 Q. And if you will turn to page 13 of the same  
24 document and take a look at the provision under call  
25 monitoring. So under these business rules for OE

1     retailers DISH has the right to require that JSR  
2     consent to DISH accessing, monitoring, listening to  
3     all its phone calls with its customers; correct?

4           A. I'm sorry, I'm just reading through it. Can  
5     you say the question again?

6           Q. So DISH -- according to this provision DISH  
7     had the right to monitor, record, and/or otherwise  
8     access all of JSR's phone calls with its customers;  
9     correct?

10          A. That's what this states, yes.

11          Q. And this was a requirement -- if you'll look  
12     at the time frame of these documents, this was a  
13     requirement that was outside of the QA program; is  
14     that right?

15          A. I don't see the QA program mentioned here.

16          Q. Would you look at the -- turn to page 12 of  
17     this document.

18          A. Okay.

19          Q. Up top it says effective July 1st, 2006,  
20     through September 30th, 2006.

21          A. Yes, I see that.

22          Q. Was the QA program up and running prior to  
23     September of 2006?

24          A. I'm not positive.

25          Q. Okay. So just hypothetically if the QA

1 program wasn't up and running, this would be a  
2 requirement that was independent of the QA program;  
3 correct?

4 A. It looks to be.

5 Q. would you turn to Plaintiffs' Exhibit 1139?

6 A. Okay.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. what is it?

10 A. Looks like it's the OE tool terms and  
11 conditions.

12 Q. Great. And would you take a look at the  
13 footer of this document which says retailer OE TCS  
14 and some other --

15 A. Yeah, it's a word document.

16 Q. Okay, great.

17 So this document entitled agency T&Cs contains  
18 disclosures for DISH's OE retailers to read; is that  
19 right?

20 A. It does.

21 Q. would you turn to Plaintiffs' Exhibit 188.

22 Are you familiar with DISH's Siebel system?

23 S-i-e-b-e-l.

24 A. I know what it is.

25 Q. Have you ever used it?

1           A. I used it very infrequently.

2           Q. If you will look at the column under created  
3 by. Do you see the notation Obermik, O-b-e-r-m-i-k,  
4 for the first two entries?

5           A. Yes.

6           Q. So it appears that these two entries were  
7 authored by Mike Oberbillig, doesn't it?

8           A. That would probably be true, yes.

9           Q. Does it appear that the other entries of  
10 this document were entered by other DISH employees?

11          A. Yes.

12          Q. And the entries are concerning DISH's sales  
13 employees -- sorry, and the entries concern DISH's  
14 sales activities with the -- with the specific OE  
15 retailer; correct?

16           I can ask an easier question. Does this  
17 document seem to concern official work that DISH is  
18 doing?

19          A. I mean this looks to be tracking sales  
20 person activity, yes.

21          Q. Your Honor, I'd like to admit Plaintiffs'  
22 Exhibit 188.

23           THE COURT: Any objection?

24           MR. EWALD: Yes, Your Honor. While we  
25 don't object generally to it being a business

1 record, if you take a look at the first comment that  
2 comes up on page 1, you see lots and lots of  
3 instances of hearsay, a retailer saying this, I  
4 spoke to him saying x and y, and it extends  
5 throughout the document. So on double hearsay  
6 ground I would object.

7 MR. RUNKLE: Your Honor, these are DISH's  
8 retailers. This is the issue I talked about on the  
9 first day of the trial. These are DISH's retailers  
10 who were working under DISH under the contract.  
11 There's a number of theories under which all of  
12 these comments are admissible.

13 The first is that these parties were authorized  
14 to make these statements under 802 -- it's too late  
15 in the afternoon. Whatever that rule is and I will  
16 look it up. It's that the party was authorized to  
17 make that statement.

18 The second reason that it's admissible is that  
19 these retailers were DISH's agents, which is of  
20 course, what we're proving at the trial. But I  
21 would ask that the Court take that issue under  
22 advisement and provisionally admit this type of  
23 material in lieu of a determination after the trial  
24 that these retailers were DISH's agents.

25 Also, I believe that most of these statements



1 would fall within a business records exception.  
2 Because the retailer -- these employees were tasked  
3 with collecting this information, and so when they  
4 wrote it down it was information they collected as  
5 contained in DISH's business records.

6 THE COURT: These employees being DISH's  
7 employees?

8 MR. RUNKLE: The DISH employees are the  
9 ones with the capital letters created by. Those are  
10 DISH employees, and only DISH's employees, as I  
11 understand, could enter information into the system.  
12 These are their notes that they were required to do  
13 as a part of their job. They had performance  
14 requirements where they had to put notes in about  
15 what they were doing.

16 MR. EWALD: Your Honor, on that last point,  
17 if that were true, and that were permissible in the  
18 hearsay contest, there would be no double hearsay in  
19 business record exception. It has nothing to do  
20 with the fact that DISH employees had to record it,  
21 it has to do that it's a third party statement.

22 And on the first point about it being  
23 authorized, there's been no foundation that these  
24 statements that are throughout the document are  
25 actually authorized by DISH. And I think he's

1 overreading the scope of that --

2 MR. RUNKLE: There is actually --

3 THE COURT: The objection is overruled.  
4 Plaintiffs' 188 is admitted.

5 (Plaintiffs' Exhibit 188 admitted.)

6 THE COURT: We're going to break for the  
7 day. I'm going to make the record as to what was  
8 admitted yesterday, and feel free to correct me if  
9 I'm wrong.

10 First of all the list, which is attached,  
11 Plaintiff's Exhibits 104, 232, 336, 493, 573, 581,  
12 635 --

13 Sir, you may step down.

14 THE WITNESS: Thank you.

15 THE COURT: 1156, 1290, 352, 1066, 113,  
16 250, 344, 494, 575, 597, 682, 1096, 1216, 1344, 571,  
17 1271, 124, 252, 345, 518, 576, 599, 716, 1099, 1236.  
18 606, 1272, 132, 253, 351, 533, 577, 609, 719, 1105,  
19 1266, 1370, 1044, 141, 255, 463, 534, 578, 620, 726,  
20 1106, 1269, 1371, 1048, 226, 262, 464, 537, 579,  
21 626, 729, 1285, 1373, 227, 265, 491, 542, 580, 628,  
22 1041, 1135, 1289, 1376.

23 On 1/19, Plaintiffs' Exhibit 1051, 1052, 1055,  
24 1128, and 1346 were admitted without objection by  
25 chart. Therefore, these were admitted not 1/28.

1 All right. And then Defendant's Exhibits as  
2 follows were admitted: 72, 660, 753, 804, 824, 944,  
3 954, 79, 674, 756, 805, 827, 947, 955, 92, 676, 778,  
4 807, 859, 948, 957, 121, 737, 786, 809, 899, 949,  
5 126, 740, 793, 810, 730, 950, 913, 750, 794, 813,  
6 933, 951, 607, 751, 796, 814, 935, and 953.

7 On 1/27, Defendant's 121, 607, and 674 were  
8 admitted over objection. That same day Defendant's  
9 947 objection was withdrawn and the exhibit was  
10 admitted.

11 All right. Then 744, 123, 1294, 281, 222, 644  
12 of plaintiffs. Defendant's 973 and 975.  
13 Plaintiffs' 510, 513, 248. Defendant's 803.  
14 Defendant's 974. Defendant's 129. Plaintiffs' 256.  
15 70, 1082, and 405 were admit.

16 And I apologize if I appear neurotic about the  
17 record. I sat on the state Appellate Court for 12  
18 years and I am neurotic, but I was before I sat on  
19 the Appellate Court.

20 I said 913 as to defendant's on the chart.  
21 It's actually 213.

22 Court is adjourned.

23 MS. ECHTMAN: Your Honor, can we address a  
24 few housekeeping --

25 MS. HSIAO: We also.

1 THE COURT: Well, I have to be somewhere.  
2 How much talking do you wish to do?

3 MS. ECHTMAN: We're assuming that  
4 plaintiffs are going to wrap up on Monday. I mean  
5 on Tuesday when we reconvene. And we would like to  
6 confirm the lineup for Tuesday.

7 MS. HSIAO: Well, we actually wanted to  
8 find out what DISH was going to do. Our plan is to  
9 finish Mr. Mills, to have Mr. Goodale come, who is  
10 coming Sunday or Monday, I believe. Or Tuesday.  
11 And then Debra Green, who will be our expert.

12 I don't know that they're all gonna be done on  
13 Tuesday. You know, DISH witnesses have been taking  
14 longer than expected, so it may go over into  
15 Wednesday. But we expect, I think at the latest,  
16 that we would finish on Wednesday.

17 And then we may have some housekeeping with  
18 addition documents we may want to offer based on  
19 what's been happening.

20 And we would like to know what DISH's plans are  
21 for the remaining eight witnesses that they have  
22 identified that they might have coming live.

23 MS. ECHTMAN: So ideally we would like to  
24 be able to finish by the end of next week. I don't  
25 know if that's going to be possible, we would like

1 to do that. We will be ready to start putting on  
2 witnesses on Wednesday.

3 MS. HSIAO: Can you tell us who you are  
4 thinking of bringing?

5 MS. ECHTMAN: On Wednesday we will start  
6 with Brian Neylon and Amir Ahmed.

7 And we may also bring in some retailer related  
8 testimony from Mr. Myers, Kevin Baker is already in,  
9 and David Hagan.

10 MS. HSIAO: Okay. And then for the rest of  
11 the week are you planning on bringing the others?

12 MS. ECHTMAN: We are bringing the others.  
13 People are planning to come and we're hoping to get  
14 done at the end of week three. As I said, that's  
15 our hope. We do have witnesses and plan to put on  
16 our case.

17 MS. HSIAO: Thank you.

18 THE COURT: Okay. Court's adjourned.

19  
20  
21  
22  
23  
24  
25

EXHIBIT 248

EXHIBIT 248

JA008209  
007056

TX 102-007471

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION

UNITED STATES OF AMERICA and )	
The STATES OF CALIFORNIA, )	BENCH TRIAL
ILLINOIS, NORTH CAROLINA, and )	
OHIO, )	09-03073
PLAINTIFFS, )	
VS. )	SPRINGFIELD, ILLINOIS
DISH NETWORK, L.L.C., )	
DEFENDANT. )	VOL. 9

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SUE MYERSCOUGH  
UNITED STATES DISTRICT JUDGE

FEBRUARY 2, 2016

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USA DEPT. OF JUSTICE.

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SANG LEE  
JINSOOK OHTA  
JON WORM  
ELIZABETH BLACKSTON  
PAUL ISAAC  
PHILIP HEIMLICH  
ERIN LEAHY  
JEFF LOESER  
DAVID KIRKMAN

STATE OF CALIFORNIA:

STATE OF ILLINOIS:

STATE OF OHIO:

STATE OF NORTH CAROLINA:

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007057

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## JOINT EXHIBITS



## P R O C E E D I N G S

\* \* \* \* \*

THE COURT: So we are missing several  
attornies today. Deitch, Boyle, Mullins, Mower.

All right. Mr. Mills, you're still on the  
stand.

We are missing FTC attorneys -- none of them  
are here. And then we have missing for the defense,  
Laura Mazzuchetti, Shasha Zou, and Allegra Noonan.  
Everyone else is here.

We have a Judge with the stomach flu, so be  
kind. Apparently it's going around. I will stay in  
my sphere and try not to contaminate anything or  
anybody. I will not be touching exhibits.

We have today Mr. Mills, and then followed by  
Goodale and Debra Green.

And then DISH has Brian Neylon, Amir Ahmed,  
Myers, Baker, and Hagan.

MR. BICKS: Correct, Your Honor.

THE COURT: What about experts? Are you  
going to have experts?

MR. BICKS: Yes. Mr. Sponsler, as you  
know, Mr. Taylor, and likely Mr. Fenili, and  
possibly Mr. Abernethy.

MS. ECHTMAN: Your Honor, that disclosure

1 was not our entire case --

2 THE COURT: That's what I assumed, because  
3 we had these gentlemen here for the last two weeks.

4 All right. Please continue.

5 MR. RUNKLE: Do we have the witness  
6 binders?

7 THE COURT: I do.

8 MR. RUNKLE: You do. Great.

9 MIKE MILLS

10 called as a witness herein, having been duly sworn,  
11 was examined and testified as follows:

12 CROSS EXAMINATION

13 BY MR. RUNKLE:

14 Q. Good morning, Mr. Mills.

15 A. Good morning.

16 Q. Do you remember me?

17 A. Yes.

18 Q. I took your deposition a couple of times in  
19 the past; right?

20 A. Correct.

21 Q. Yes. So I'm Patrick Runkle, I'm an attorney  
22 with the federal government, and I'm going to be  
23 asking you some of the same questions today.

24 A. Okay.

25 Q. All right. So, Mr. Mills, you were there

1 from the beginning of the OE retailer system; is  
2 that right?

3 A. That's correct.

4 Q. And you've worked with the OE retailers  
5 since the time the OE system began until today; is  
6 that right?

7 A. I had a short break in the 2004 time frame  
8 where I took a different position for several  
9 months, but have been in the OE position since then.

10 Q. Okay. But you were also there when the OE  
11 system began in 2003; is that right?

12 A. That's correct.

13 Q. Okay. So I'd like to ask you some questions  
14 about the beginning of the OE tool up until around  
15 the 2007 time frame. Do you understand what time  
16 frame I'm talking about?

17 A. Yes.

18 Q. Okay. Now, the OE tool was essentially the  
19 same throughout that time period? The way that it  
20 functioned? Is that correct?

21 A. I believe so, yes.

22 Q. And the way the OE tool worked in the vast  
23 majority of the instances was that the OE retailer  
24 had a call center; is that right?

25 A. Yes. The OE retailers had call centers;

1 correct.

2 Q. They had call centers. Pretty much all of  
3 them had call centers; right?

4 A. Yes.

5 Q. And you went to some of those call centers?

6 A. I did.

7 Q. How many days a year do you spend on the  
8 road visiting retailers?

9 A. Are we talking about during that time frame?

10 Q. During any time frame, but let's start with  
11 that one, yeah?

12 A. I'd say probably couple weeks a month,  
13 probably three days those weeks.

14 Q. Okay. So maybe a third of the year you  
15 spend on the road?

16 A. That's probably correct.

17 Q. Okay. Now, when you went to these call  
18 centers you saw agents sitting in front of computer  
19 screens generally? Is that what you saw?

20 A. Yeah, I mean they were call centers.

21 Q. They were call centers. They had people in  
22 cubicles. Phones, computers, that kind of thing?

23 A. That's correct.

24 Q. Okay. Now -- and DISH signed contracts with  
25 these companies to sell DISH Network; is that right?

1           A. Yes. All these retailers -- all these OE  
2 retailers have the retailer agreement.

3           Q. They had retailer agreements; right.

4           And in order to sell on the OE tool these  
5 companies needed log-ins in order to log-in to the  
6 OE system; is that right?

7           A. That's correct.

8           Q. And DISH provided those log-ins?

9           A. During that time frame; yes.

10          Q. Yes. And DISH could track the information  
11 that came in through the OE system down through the  
12 log-in level; is that correct?

13          A. We had reporting that did include the  
14 log-in; that's correct.

15          Q. Okay. And a number of retailers had  
16 multiple dozens of log-ins; is that fair to say?

17          A. That's correct.

18          Q. And the intent was to provide them a log-in  
19 at the beginning? The intent was to provide each  
20 sales agent in the OE call center a log-in; is that  
21 right?

22          A. I don't know that I'd say that. Some  
23 retailers had more log-ins than others. Some I  
24 think had a couple log-ins and others had more  
25 log-ins on an agent basis.

1 Q. But there were some retailers that used  
2 those log-ins as agent log-ins essentially; is that  
3 right?

4 A. Yeah.

5 Q. Now, these OE retailers, they didn't have  
6 storefronts, did they?

7 A. Some of them did.

8 Q. But the ones that had storefronts were also  
9 probably TVRO retailers; is that right?

10 A. That's correct.

11 Q. But the call centers were generating most of  
12 their sales; is that accurate?

13 A. For the OE tool?

14 Q. Yes.

15 A. Yes.

16 Q. Now, what happened is that after the OE  
17 retailer had a consumer on the phone--and this is  
18 during that time period we talked about, 2003 to  
19 2007--the OE retailer would get a consumer on the  
20 phone; is that right?

21 A. Yes, the -- yes; correct.

22 Q. And then the call agent would walk that  
23 consumer through every step of the OE tool; is that  
24 correct?

25 A. They would walk them through the DISH sales

1 process.

2 Q. The DISH sales process; right. And DISH  
3 provided that OE tool to that call center agent for  
4 the OE retailer; is that right?

5 A. We provided it to the OE retailer, it was a  
6 URL, and they would provide it to their agents.

7 Q. Right. So that sales process involved  
8 inputting consumer information, credit information,  
9 and selecting programming packages in part; is that  
10 right?

11 A. In part, correct.

12 Q. All right. So DISH had credit guidelines to  
13 qualify these consumers; is that correct?

14 A. We did.

15 Q. And that credit qualification was done via  
16 the credit bureau Equifax; is that right?

17 A. I'm not sure that time frame. I know that  
18 we have a couple different that we use. I believe  
19 that was the primary one though.

20 Q. That was the primary one. And DISH paid for  
21 those credit qualifications; right?

22 A. Yes.

23 Q. The retailer didn't pay for that to happen?

24 A. They did not.

25 Q. Okay. Now, on those phone calls the

1 retailer collected credit card information that also  
2 went to DISH; is that right?

3 A. That's correct.

4 Q. And when the information went to DISH, DISH  
5 charged the consumer's credit card; is that right?

6 A. Yes. That transaction was between DISH and  
7 the consumer.

8 Q. Right. The retailer and the consumer didn't  
9 need to have any transaction in order for the  
10 consumer to obtain DISH services; is that right?

11 A. The consumer had to have a transaction.

12 Q. Right. The consumer had a transaction with  
13 DISH. The consumer did not need to have a  
14 transaction with the retailer; is that right?

15 A. It would be through the retailer, but the  
16 transaction was between DISH and the consumer.

17 Q. That's right. So I'm assuming that DISH  
18 paid the fees to be able to take the credit cards?  
19 The credit card fees?

20 A. I don't -- I don't know about certain credit  
21 card fees.

22 Q. But you're familiar with the idea that a  
23 merchant needs to pay fees to American Express and  
24 Visa and MasterCard to be able to take credit cards?  
25 Do you understand what I mean by that?



1           A. Yeah, just not -- I don't know what the fees  
2 are or how that works.

3           Q. But it's not your understanding that the  
4 retailers paid fees to MasterCard and Visa to be  
5 able to take credit cards when they sold DISH?

6           A. Through the OE tool? No.

7           Q. That's -- you said no; correct?

8           A. Correct.

9           Q. Okay. So part of the OE sales process  
10 involved scheduling the consumer for an  
11 installation; is that right?

12          A. That's correct.

13          Q. Where did that installation calendar come  
14 from?

15          A. That was our DNS group, DISH Network  
16 Service. It was a part of our organization that did  
17 the installations.

18          Q. Okay. So DISH arranged for and paid for the  
19 installations; is that right?

20          A. That's correct.

21          Q. And DISH employees themselves actually  
22 performed most of those installations; is that  
23 right?

24          A. Yeah. We had three different avenues that  
25 would do the installation. So it was either DNS, it

1 was RSP, Regional Service Provider, or, you know,  
2 subcontractors that DNS worked with.

3 Q. But DISH -- DISH controlled that process?  
4 The OE retailer did not have visibility on that  
5 process; is that right?

6 A. They could only schedule. That's correct.

7 Q. They could only schedule installation, okay.

8 Now, at the end of the sales process the system  
9 displayed a terms and conditions screen that the  
10 sales agent on the phone had to read to the consumer  
11 verbatim; is that right?

12 A. They had to read it to the consumer;  
13 correct.

14 Q. I'm sorry, what did you say?

15 A. They had to read it to the consumer; yes.

16 Q. All right. They had to read that to the  
17 consumer.

18 And part of the reason they had to read it was  
19 because DISH wanted to be sure that it complied with  
20 consumer protection laws in terms of disclosing to  
21 the consumer what you were actually getting; is that  
22 right?

23 A. Yes. It's important for the consumer to  
24 understand what they're purchasing; yes.

25 Q. Right. So to the typical consumer who

1 purchased DISH from an OE retailer, the only direct  
2 interaction that they typically had with the OE  
3 retailer was when they purchased the product; is  
4 that fair to say?

5 A. Over the telephone; yes.

6 Q. Yes. And -- because no matter how that  
7 consumer was originally solicited, the consumer had  
8 to somehow end up on the phone with the OE retailer  
9 during that time period; is that right?

10 A. Correct.

11 Q. Okay. So this was essentially a telephone  
12 sales system; is that right?

13 A. Yeah, I mean it was -- it was a system that  
14 was used for, you know, customers who called in to  
15 order DISH from OE retailers.

16 Q. And the most direct way to get a consumer on  
17 the phone, you would agree with me, Mr. Mills, is to  
18 call them; don't you think?

19 A. I wouldn't agree with that.

20 Q. Okay. So the most direct way to get a  
21 consumer on the phone is to send them a mail piece  
22 and wait for them to call you?

23 A. A lot of our retailers did that.

24 Q. Right. Your retailers had different  
25 marketing methods, but one of them was outbound

1 telemarketing; is that right?

2 A. That's correct.

3 Q. So at the time that DISH set up this  
4 telephone sales system, it seemed clear that the OE  
5 system was going to cause some retailers to make  
6 some phone calls, don't you think?

7 A. Again, it was a portal. I don't think I'd  
8 refer to it as a telephone sales system. It was an  
9 order entry system.

10 Q. Well, you just agreed with me a few  
11 questions ago it was essentially a telephone sales  
12 system. The consumer had to end up on the phone  
13 with the retailer? That's right, isn't it?

14 A. Well, it's an order entry system in which  
15 the sales were made over the phone. I wouldn't  
16 consider it a telephone sales system.

17 Q. All right. This OE program, it was  
18 extraordinarily successful for DISH; right?

19 A. It has been successful over the year; yes.

20 Q. So the people who were key players in the  
21 system, like you, Mr. Ahmed, you've had successful  
22 careers at DISH; isn't that right?

23 A. I've been here 15 years, so it's been a  
24 career for me.

25 Q. Right. And I'm sure a lot of that is due to

1 your hard work, but a lot of it is due to the  
2 success of this program that you helped -- that you  
3 helped grow. Is that fair to say?

4 A. Yes.

5 Q. Okay. So let's take a look at our first  
6 exhibit, which is PX99. Does this look familiar to  
7 you, Mr. Mills?

8 A. Yes, I've seen this.

9 Q. This is part of the sort of sales reporting  
10 that probably happens at DISH all the time, this  
11 kind of spreadsheet creation. So if you could turn  
12 to page 4 of this.

13 A. Okay.

14 Q. All right. So I apologize for the small  
15 type, but this is the way -- this is the way we got  
16 this document. It appears from the gross  
17 activations chart that direct sales during this time  
18 period was -- was averaging in the 45 to 60,000  
19 activations a month range. Does that square with  
20 your recollection?

21 A. Yes, that looks correct.

22 Q. Okay. And if you could turn to page 6.  
23 This is the OE channel detail. These are the  
24 activations that the OE retailers were making at the  
25 time. And it was in the 70 to 90,000 range or

1       thereabouts. Does that square with your  
2       recollection?

3             A. Yes, that looks correct.

4             Q. And this is the 2007 time period; is that  
5       right? If you look at the first page, this is the  
6       gross sales update from August 6th, 2007?

7             A. That's correct.

8             Q. So that seems right to you?

9             A. That's correct.

10            Q. Okay. So these 80 to 90,000 OE activations  
11       that were happening a month in 2007, those were  
12       activations that simply didn't exist a few years  
13       before for DISH; isn't that right?

14            A. I don't know if I'd say that.

15            Q. But this -- this sales channel didn't exist  
16       in 2002, for example?

17            A. That's correct.

18            Q. Right. So it's not really an understatement  
19       to say that DISH grew its business substantially  
20       from 2003 to the present because of the OE system?  
21       Is that an incorrect or correct statement?

22            A. We have grown our business since then; yes.

23            Q. And the OE system is part of that; is that  
24       right?

25            A. Yes, our OE retailers are part of that.

1 Q. Okay. Do you believe that a lot of the  
2 success that DISH had in the 2000 -- from 2003 to  
3 the present is because of the OE system?

4 A. I don't know if I'd say it's because of the  
5 OE system. I would say it's a part, you know, of  
6 the OE retailers.

7 Q. Right. There's a little bit of a  
8 competition inside DISH between direct sales and  
9 indirect sales; would you agree with me about that?

10 A. I wouldn't categorize it as a competition.

11 Q. Maybe a friendly competition? I'm not  
12 trying to make it seem -- to be pejorative about it.  
13 You compare yourselves to what the direct sales are  
14 doing; is that fair so say?

15 A. I don't think I would say that. I think we  
16 work well with our direct sales folks.

17 Q. Okay. But the growth during the 2000s, did  
18 it come from direct sales, to your knowledge? Did  
19 they have a lot of growth in their monthly  
20 activations?

21 A. They did over the 2000s; yes.

22 Q. But the telco partners didn't necessarily  
23 grow, did it?

24 A. I don't know the specifics on the telco  
25 channel. I think they've -- you know what,

1       honestly, I don't know on the telco channels off the  
2       top of my head.

3           Q.   How about the national accounts channel?  
4       Did they --

5           A.   National accounts did not.

6           Q.   So OE and direct sales both experienced  
7       growth during the 2000s?

8           A.   I think the TDO channel did as well in the  
9       early 2000s as well.

10          Q.   But the OE channel is the only one of those  
11       that didn't exist prior to 2002; right?

12          A.   You know, I'm not exactly sure when our  
13       direct sales group started. You know, I think that  
14       was early on as well.

15          Q.   Okay. Let's move on.

16          So you knew that a number of OE retailers were  
17       doing outbound telemarketing; is that right,  
18       Mr. Mills?

19          A.   Yes. There were several, yes.

20          Q.   Okay. Now let's turn to PX129. Now, in  
21       this document you report back to Bruce Werner that  
22       in the 2007 time frame you believe that about 12,000  
23       activations from the OE system were coming every  
24       month from retailers that use outbound telemarketing  
25       as a primary strategy for acquiring new subscribers;



1 is that right?

2 A. I don't know if I'd say every month, but in  
3 this particular time I did say OE was about 12K.

4 Q. Right. And you guess that about 8K of the  
5 TVRO -- 8K activations were coming from the TVRO  
6 retailers from outbound telemarketing? That was  
7 your guess at the time?

8 A. That was our best guess.

9 Q. But for the OE retailers you weren't  
10 guessing. That was more of a firm number; is that  
11 right?

12 A. It was an estimate.

13 Q. But it was based on your knowledge about the  
14 telemarketing that the OE retailers were doing; is  
15 that right?

16 A. That's correct.

17 Q. Okay. Now, internally you knew that the OE  
18 channel, or people at DISH knew that the OE channel  
19 might be a source of serious problems, including  
20 telemarketing violations? Did people know that at  
21 DISH?

22 A. I mean I don't think we knew that  
23 specifically.

24 Q. DISH didn't know that specifically? Nobody  
25 ever mentioned that to you?

1 A. I mean over the years. Yes.

2 Q. So let's take a look at Exhibit 1200.

3 If you will take a look at this. So at this  
4 time there were some issues that arose with  
5 telemarketing and misinformation among the OE  
6 retailers. Do you remember some of those issues?

7 A. What time period are we talking about?

8 Q. This e-mail is from 2006. It relates to a  
9 complaint from a consumer about calls that he  
10 received from Marketing Guru in which he was given  
11 misinformation. So you know what Marketing Guru is;  
12 right, Mr. Mills?

13 A. I do.

14 Q. Marketing Guru was a very large OE retailer?

15 A. They were.

16 Q. And now it's called Savelogy; is that  
17 correct?

18 A. They changed their name again, they are  
19 Qology now.

20 Q. Okay. Qology.

21 So in this document -- I'd like to call your  
22 attention to pages 2 and 3 of this document.  
23 There's an e-mail from a DISH employee named Mark  
24 COHEN. Do you remember a guy named Mark Cohen?

25 A. I do.

1 Q. Was he a vice-president or director? Do you  
2 remember what his title was?

3 A. You know, I don't remember specifically what  
4 his title was.

5 Q. And he wrote that (as read:) This was a  
6 very common issue, misinformation on price point and  
7 package. Our data shows this issue is much worse in  
8 the sales partner channel. I would say the issue is  
9 epidemic. And the small changes sales has made has  
10 not addressed the heart of the problem. I strongly  
11 support more aggressive changes to help improve  
12 quality in the on boarding process from that  
13 specific channel. Seems that sales continues to  
14 feel the problem is not as bad as I view it.

15 I recommend severe penalties for core  
16 misinformation issues, similar to how we manage  
17 traditional retailers. Two, live QA monitoring of  
18 all partners. Three, severe penalties for  
19 telemarketing issues. Four, task force involving  
20 top ten partners to address failures in disclosure  
21 process. And five, I feel that we need to work very  
22 closely with sales to resolve this issue. I am open  
23 to meeting individually with partners to explain the  
24 issues.

25 Was this ever communicated to the OE retailer

1 management team?

2 A. So I didn't get this specifically, but Brian  
3 Neylon was communicated on it. And he was, I  
4 believe, ultimately responsible for the OE retailer  
5 team. So I would make the assumption that it was.

6 Q. So there were issues -- there was this  
7 recognition in DISH that the Sales  
8 Department--that's your department, right,  
9 Mr. Mills?

10 A. I'm in sales, yes.

11 Q. Correct, you're in sales. Didn't appreciate  
12 the scope of what Mr. Cohen called an epidemic  
13 problem. Did you appreciate that this was an  
14 epidemic problem at DISH, Mr. Mills?

15 A. I don't think I'd use the word epidemic.

16 Q. Okay. But Mr. Cohen used the word epidemic?

17 A. He did.

18 Q. Because what he was talking about was the  
19 amount of complaints they were getting; right?

20 A. He was talking about complaints they were  
21 getting; yes.

22 Q. Yes. So he saw that the on boarding process  
23 from that specific channel, that's the channel that  
24 you worked on, was -- that changes were needed to  
25 improve quality. In fact, he called them aggressive

1 changes were needed. Right?

2 A. Yes, that's what he said.

3 Q. Okay. Do you remember aggressive changes  
4 that happened during this time?

5 A. I believe shortly thereafter this we did  
6 start down the path of our QA program. That was on  
7 one of these.

8 Severe penalties for telemarketing, we would  
9 terminate retailers. That's fairly severe  
10 punishment.

11 Those are probably the two that stick out.

12 Q. Do you know when sales -- did sales ever  
13 come to the realization that this was an epidemic  
14 problem?

15 A. No, I wouldn't use that word.

16 Q. You wouldn't use that word, okay.

17 But internally you knew there was a lot of --  
18 of telemarketing going on; right?

19 A. What we just talked about, so that would  
20 have -- you know, if it was 12K over that time  
21 frame, probably ten percent of the sales or so.

22 Q. And you knew that there was some  
23 questionable telemarketing going on, don't you  
24 think, Mr. Mills?

25 A. We did have some complaints during this time

1 period; yes.

2 Q. Okay. So let's turn to Plaintiffs'  
3 Exhibit 1052.

4 So there's an e-mail here that you wrote near  
5 the bottom of the first page to Ms. Musso. (As  
6 read:) My guess is that once we said no more TCPA,  
7 they're now spoofing their caller IDs so we don't  
8 know who it is.

9 And the subject line which Ms. Musso wrote is,  
10 (as read:) Another reason I know there's a lot of  
11 telemarketing going on.

12 This was a pretty big issue, don't you think,  
13 Mr. Mills?

14 A. Certainly, yeah. There were certainly  
15 complaints, yes.

16 Q. Right. And so there was a point in time  
17 that DISH attempted to crack down on TCPA, but that  
18 just caused the retailers to change their behaviors  
19 so that DISH couldn't figure it out; is that right?

20 A. I don't think I'd categorize it like that.

21 Q. But you said "once we said no more TCPA."  
22 So there was a time at which TCPA violations were  
23 okay; right, Mr. Mills?

24 A. No.

25 Q. That's what you said in this e-mail; right?

1 A. Can you ask the question again.

2 Q. Okay. There was a time when TCPA -- taking  
3 your words here, it says (as read:) There was a  
4 time when TCPA --

5 My question is, was there a time when TCPA  
6 violations were okay?

7 A. No.

8 Q. There was never that time?

9 A. No.

10 Q. But there was a time when you told the  
11 retailers no more TCPA?

12 A. I think we sent reminders; yes.

13 Q. But there was -- there was a time when you  
14 realized that there were a number of TCPA violations  
15 going on and you said -- you told the retailers to  
16 knock it off essentially?

17 A. We had complaints and I believe there was  
18 reminders sent out to the retailers.

19 Q. Okay. So this e-mail was from 2008. In  
20 fact, later on, about a year later, DISH had  
21 internally recognized that the OE system -- the OE  
22 retailers were notorious for their illegal and shady  
23 marketing practices. Would you agree with me on  
24 that?

25 A. I don't think I would say that.

1 Q. Let's turn to Exhibit 730.

2 You're the custodian on this document,  
3 Mr. Mills. If we turn to page 2. This is a  
4 PowerPoint that somebody in DISH prepared. You were  
5 the custodian on this.

6 The third bullet point down says (as read:)  
7 Compliance and Legal is unhappy with legal issues as  
8 a result of illegal, shady marketing practices.

9 So the OE retailers were engaged in illegal,  
10 shady marketing practices and DISH knew it; isn't  
11 that right?

12 A. Yeah, we had complaints at the time.

13 Q. Right. In fact, you had had complaints from  
14 2003 until 2009? It was a long-term problem; isn't  
15 that right?

16 A. We did have complaints over that time  
17 period; yes.

18 Q. And Compliance and Legal were unhappy  
19 because there were legal issues coming up; isn't  
20 that right?

21 A. That's what it says here.

22 Q. But is that correct? Is that something that  
23 is correct, Mr. Mills?

24 A. That's what it says, yes.

25 Q. Okay. But you recall legal being unhappy



1 with the legal issues that came in through the OE  
2 channel; is that right?

3 A. I'm sure legal is unhappy with any illegal  
4 issues.

5 Q. Okay. But they were particularly unhappy  
6 with the legal issues that the OE retailers were  
7 generating? Like this case, for example?

8 A. I don't know if I'd say particularly. As I  
9 say, if it's a legal issue I'm sure legal has issues  
10 with it.

11 Q. Right. So the Sales Department drove these  
12 OE retailers to get creative with their marketing  
13 methods; is that right?

14 A. I mean really the marketing methods were up  
15 to the OE retailer.

16 Q. I'm sure they were. But that wasn't my  
17 question. The Sales Department drove these  
18 retailers to get creative with their marketing  
19 methods because DISH already had a vast direct sales  
20 operation; is that right?

21 A. I don't think I would say that.

22 Q. Let's look at page 3. One of the problems  
23 that this PowerPoint recognizes with the OE system  
24 is that driving partners to become creative with  
25 their marketing tactics and seek cheaper acquisition

1 methods lead to these three sub-bullet points here:  
2 Shot-clock marketing, internet lead gen, and voice  
3 broadcasting.

4 That's what happens, isn't it?

5 A. The bullet before that is competition in the  
6 market mediums was fierce, driving partners to  
7 become creative with their marketing.

8 Q. Right. But they had to become creative in  
9 order to make money; right?

10 A. Again, the marketing was for retailers.  
11 They had any number of different marketing mediums.

12 Q. Right. They had a lot of different market  
13 mediums, but they had to try to reduce their  
14 subscriber acquisition costs in order to be able to  
15 make money; isn't that right?

16 A. I mean, yes, subscriber acquisition costs is  
17 certainly a part of marketing.

18 Q. Right. And they had to -- they had to get  
19 creative in order to reduce that cost so that they  
20 could continue to make money; is that right?

21 A. Again, the competition, and, you know, it  
22 says in here, to become creative with their  
23 marketing tactics.

24 Q. Right. And that's one of the reasons that  
25 DISH had the OE system to begin with, because DISH

1 already had a big marketing operation; right?

2 A. We did not have a big marketing operation in  
3 '03 when it started.

4 Q. But the OE systems was designed to fill in  
5 the gaps in DISH's own marketing system; right?

6 A. No. It was really, again, to provide a  
7 solution for those who could market on a national  
8 basis and we could do installations.

9 Q. Did DISH believe that it didn't have enough  
10 marketing penetration in the country? And that's  
11 why it brought on the OE retailers?

12 A. I don't believe that's the case.

13 Q. Okay. Well -- so DISH brought them on for  
14 no -- for no reason?

15 A. Like I said, they brought it on -- these  
16 folks could market on a national basis. And this  
17 provided them a platform in order to take sales on a  
18 national basis, and you know, we could do the  
19 installation.

20 Q. But DISH could also market on a national  
21 basis; right?

22 A. We could.

23 Q. Okay. So the reason DISH didn't just expand  
24 its own marketing efforts was because there was some  
25 efficiency to bringing on these direct marketing

1 companies; isn't that right?

2 A. No. We actually did expand our marketing  
3 efforts during those years.

4 Q. Right. But the OE system had to exist for  
5 some reason. It was to allow these OE retailers to  
6 perform national marketing themselves?

7 A. That's correct.

8 Q. And that's because DISH identified that it  
9 wanted more marketing to be out there to consumers  
10 in the country; is that right?

11 A. Again, it's a situation where, you know,  
12 these folks could net market on a national basis.  
13 And you know, we could provide a platform for them  
14 to take sales and we could install for them.

15 Q. But more marketing is better for DISH than  
16 less marketing; is that right?

17 A. I would say that's correct.

18 Q. All right. So let's look at this -- a  
19 little bit more at this PowerPoint.

20 what happened here, is it correct, that  
21 Mr. Ahmed had left DISH Network for a few years and  
22 went to Marketing Guru himself? That's what  
23 happened; right?

24 A. I don't know the time frame, but yeah, he  
25 was gone for a couple of years and did work at

1 Marketing Guru.

2 Q. Did Brian Neylon go to Marketing Guru also?

3 A. He didn't.

4 Q. Did Brian leave DISH during that time frame?

5 A. He did.

6 Q. Do you know where he went?

7 A. I don't think he went anywhere.

8 Q. Okay. But they eventually came back?

9 A. Yes, they both came back.

10 Q. And does 2009 sound about right?

11 A. I don't really know the specific dates they  
12 came back.

13 Q. Okay. But there was some effort when they  
14 came back to clean up the OE channel. And that's  
15 what this PowerPoint is about. Would you agree with  
16 me about that?

17 A. Again, I don't know when they came back so I  
18 don't know if this is the specific use of that  
19 document.

20 Q. Does this document refresh your recollection  
21 about a time when the OE was cleaned up?  
22 Significant numbers of retailers were terminated and  
23 a number of issues were addressed? Do you remember  
24 that at all?

25 A. Yes. I believe during that time frame there

1 was a number of OE retailers terminated.

2 Q. Okay. So if you could turn to page 4. The  
3 way I read this is that there were a number of OE  
4 retailers that were experiencing high churn in April  
5 of 2009. Is that what red, orange, and yellow mean?

6 A. Yes, that does designate churn. Yes.

7 Q. Right. And that's the customer retention  
8 index, is that what you call it? CRI?

9 A. That's correct.

10 Q. And a retailer is assigned a color to  
11 correspond with how many of its customers are  
12 terminating their service within a short amount of  
13 time. Is that fair to say?

14 A. Yeah. I don't know when, as far as short  
15 amount of time, but yes, this would indicate churn.  
16 Yes.

17 Q. And the churn time period--you can correct  
18 me if I'm wrong--was it six months or a year around  
19 that time?

20 A. There's a few different phases of CRI. So  
21 there's CRI12, CRI24, and CRI36. So 12 months,  
22 24 months, 36 months.

23 Q. Okay. So red is not good, I'm assuming; is  
24 that right?

25 A. Red is not good; correct.

1           Q. And what that means is that a very large  
2 percentage, or a relatively large percentage, of  
3 those customers were cancelling their DISH service  
4 within a certain amount of time?

5           A. It would indicate high churn, yes.

6           Q. It would indicate high churn. And churn is  
7 bad for DISH because DISH isn't actually making a  
8 big profit off -- let me rephrase.

9           Churn is bad for DISH because DISH isn't  
10 necessarily making a profit off of that customer  
11 right away; is that right?

12          A. I mean churn is bad just -- high churn would  
13 mean we wouldn't make a profit any time.

14          Q. Right. Because the customer is -- the  
15 customer is cancelling before DISH has the  
16 opportunity to really make back the acquisition  
17 costs of that customer; is that right?

18          A. That's correct.

19          Q. Okay. And DISH frequently terminated  
20 retailers who had high churn; is that right?

21          A. We did terminate retailers for high churn,  
22 I'm not sure on the frequency.

23          Q. Right. And DISH's churn with its direct  
24 sales was used as the metric against which the OE  
25 retailers were measured; is that right?

1           A. I don't know if I'd say that's completely  
2 accurate. Probably would look at time frames. But  
3 if you look at, you know, OE retailers, compare them  
4 to direct sales, compare them to TVRO retailers. So  
5 I think there's probably comparison there with all  
6 three.

7           Q. Okay. So if you turn to page 5. There's  
8 some key sales partner terminations. These are --  
9 this is a list of OE retailers; is that fair to say?

10          A. Yes.

11          Q. And these OE retailers, is it your  
12 recollection that many, if not all, of these OE  
13 retailers were engaged in voice broadcasting?

14          A. I don't know the specifics, but I believe  
15 that the bulk of this group, certainly not a couple,  
16 but the bulk did telemarketing.

17          Q. Right. They did voice broadcasting?  
18 Prerecorded messages, robo calls; right?

19          A. Again, I don't know on the specifics of each  
20 of them. But again, I know they were engaged in  
21 telemarketing.

22          Q. Okay. Do you know what I'm talking about  
23 when I says robo calls, prerecorded messages, voice  
24 broadcasting?

25          A. I do.



1 Q. And so what that means is an OE retailer  
2 buys dialers or uses internet dialers. Blasts out  
3 as many messages as it can. Most of them say press  
4 1 if you want more information. The consumer  
5 presses 1, the call comes into the call center as if  
6 it were an inbound call. You understand that's the  
7 way it works; right, Mr. Mills?

8 A. Generally, yes.

9 Q. Generally, yes. Okay.

10 So do you remember whether Vision Satellite  
11 engaged in that practice?

12 A. I believe they told us they did; yes.

13 Q. Okay. Do you remember who the principals of  
14 Vision Satellite were?

15 A. Not off the top of my head.

16 Q. Do you remember a guy named BC Smith?

17 A. I do.

18 Q. Did he work at Vision Satellite?

19 A. I've seen documents that showed that he did;  
20 yes.

21 Q. Okay. You remember LA Activations?

22 A. I do.

23 Q. Russell Barnett. Do you remember that guy?

24 A. I remember the name, yes.

25 Q. They were involved in some shady stuff;

1     isn't that right?

2           A. I believe they were involved in  
3 telemarketing. I'm not exactly sure on the  
4 specifics.

5           Q. Okay. And Pacific Concepts Group, that was  
6 another robo calling --

7           A. That one I don't remember well.

8           Q. I Satellite. Let's talk about I Satellite.  
9 Do you remember Jason Borup?

10          A. I do.

11          Q. And that was another robo dialing operation;  
12 is that right?

13          A. I believe we got complaints on I Satellite  
14 for robo dialing, yes.

15          Q. Now, these sales partners were doing a lot  
16 of activations, right? I mean you would call the  
17 total of 60,000 a lot? Would you agree with me  
18 about that?

19          A. Again, I don't know what it's comparing it  
20 to, or what the time frame was. It looks like  
21 that's an add up. You know, if this was -- again, I  
22 don't know if it was annually. If it was annually  
23 it really wouldn't be that big.

24          Q. If it was annually it wouldn't be that big,  
25 but if it were monthly it would be fairly large; is

1     that right?

2           A. Looking at the number, there's no way it  
3     could be monthly.

4           Q. There's no way to tell, okay.

5           A. No, I said there was no way it would be  
6     monthly.

7           Q. It couldn't be monthly?

8           A. No.

9           Q. So this might be yearly?

10          A. Yeah.

11          Q. But in terms of comparing the OE retailers  
12     to the TVRO retailers. So the OE retailers, there  
13     were only a few dozen of those at the time. This  
14     would still be several hundred times what a typical  
15     TVRO retailer would be able to accomplish. Is that  
16     fair to say?

17          A. I'm sorry, did you say there were several  
18     TVRO retailers?

19          Q. Last week there was a lot of discussion --  
20     and I apologize, I know you weren't here. But there  
21     was a lot of discussion about the differences  
22     between types of retailers. There's TVRO retailers,  
23     of which there are many, many of those? Thousands?

24          A. Yes.

25          Q. And those are, you know, they might be

1 storefronts, they might be businesses that sell  
2 cellphones or appliances or whatever. You agree  
3 with me; right?

4 A. Yes. There are several thousand TVRO  
5 retailers.

6 Q. And the average number of activations that a  
7 TVRO retailer does is vastly lower than the average  
8 amount of activations an OE retailer does? would  
9 you agree with me on that?

10 A. well, I mean if you use just average.  
11 Again, when you take numbers and divide them by a  
12 thousand you're gonna have much less on an average  
13 basis.

14 Q. I'm talking about averages because we're  
15 trying to give the Court an idea of what was  
16 actually going on, because it's a complicated  
17 system. I don't mean that in a bad way. DISH is  
18 just a big company; right?

19 A. Yes. We are a big company.

20 Q. Yes. So the TVRO retailers averaged, these  
21 small storefronts, would do a few activations a  
22 month. Some of the large TVRO retailers would do  
23 more. Is that right?

24 A. Yes. Substantially more; yes.

25 Q. Right. But the OE retailers, as a group,

1 did far more than that if you averaged it out; is  
2 that right?

3 A. Well again, averages. If you take a number  
4 and divide it by a thousand it's going to be a much  
5 lower average for TVRO.

6 Q. Well, I'm not sure about that. If the TVRO  
7 retailers are doing a certain number of activations  
8 and you divide it by the number of TVRO retailers,  
9 you would get the average number of activations they  
10 did.

11 And then if you took the total number of  
12 activations the OE retailers were doing and you  
13 divided it by the number of OE retailers, you would  
14 get that average. Right?

15 A. Yes.

16 Q. Right. And I'm just asking you, did the OE  
17 retailers average a lot more activations than the  
18 TVRO retailers?

19 A. If you use just average. Yes.

20 Q. Yes, okay.

21 So if -- looking at page 4, which was our April  
22 snapshot. Then we can turn to page 13. Pages 12  
23 and 13, I'm sorry. Excuse me.

24 So it looks like DISH was able to take steps to  
25 get this channel under control, wouldn't you say,

1 Mr. Mills?

2 A. So it looks like we have less -- less  
3 retailers at the end of the year than we did at the  
4 beginning of the year; yes.

5 Q. Dramatically less? You got rid of more than  
6 50 percent of them it looks like?

7 A. That's on the next page, but yes.

8 Q. Yes. And you had zero red retailers. And  
9 it looks like you had addressed the churn issues in  
10 the channel by December of 2009. Is that right?

11 A. We still had four orange retailers, so it  
12 looks like we still had some work to do.

13 Q. And if you look at page 13. You see that  
14 you had terminated or gotten rid of, in other ways,  
15 more than half of the retailers. The churn issues  
16 had been addressed. The fraud issue was now a  
17 non-issue. You had increased the number of monthly  
18 channel activations by about a third. And the QA  
19 scores were above 90 percent. Is that fair to say?

20 A. Yes. It looks like we went down from 76  
21 retailers to 32 retailers. You know, we went from  
22 71,000 activations to 100,000 activations. You  
23 know, we increased our completion rate. QA was  
24 better. Fraud was a non-issue. We lowered our  
25 churn. Yes, we made strides in 2009 it looks like.

1 Q. All right. Let's talk about the QA scores  
2 above 90 percent. What did that mean to you?

3 A. The QA scores were above 90 percent.

4 Q. Right. And the QA scores being above  
5 90 percent, that was a benchmark? You wanted to get  
6 them above 90 percent?

7 A. Well, I would say my personal was I wanted  
8 them to be a hundred.

9 Q. But 80s were not good enough?

10 A. 80s were not good enough.

11 Q. Why were the 80s not good enough?

12 A. Again, we wanted to make sure that our  
13 customers were properly informed on everything from  
14 disclosures to what they were getting. And if you  
15 were in the 80s then you were not hitting on all  
16 points.

17 Q. All right. Now, it certainly seems to me,  
18 Mr. Mills, that this document shows that DISH had  
19 the power to change its OE retailers' practices;  
20 isn't that right?

21 A. The retailers would have to buy in.

22 Q. But DISH put this plan into motion and was  
23 able to clean up the channel; right?

24 A. It looks like we did make strides in 2009;  
25 yes.

1 Q. So let's turn to PX559.

2 If I could turn your attention to the bottom of  
3 this page. It's an e-mail from Mr. Neylon to you  
4 and some others. This is from August 2009. And the  
5 results of the OE partner QA, the first results were  
6 an embarrassment; right?

7 A. Yes, they were not good.

8 Q. They were an embarrassment because the OE  
9 retailers were giving misinformation about the  
10 product, they were doing inadequate and incorrect  
11 disclaimers. Isn't that right?

12 A. It says here the things that were wrong  
13 ranged -- ranged from misinformation about our  
14 product and programs to inadequate or incorrect  
15 disclaimers.

16 Q. And you needed to get a handle on it very  
17 quickly; right, Mr. Mills?

18 A. Yes.

19 Q. Okay. And Brian Neylon, he's a  
20 vice-president; right?

21 A. At this point in time?

22 Q. Yes.

23 A. I believe he was a vice-president; yes.

24 Q. Is he an executive vice-president now?

25 A. He is.



1 Q. Okay. And Mr. Ahmed is an executive  
2 vice-president?

3 A. At this time?

4 Q. Yes.

5 A. At this time in '09?

6 Q. Yes. Was he -- I'm just asking, was he an  
7 executive vice-president or a vice-president?

8 A. I think he was a vice-president.

9 Q. He was a vice-president. So this is  
10 Mr. Neylon from management telling the OE account  
11 management team to get its act together and get  
12 these retailers in line; right?

13 A. Yes.

14 Q. Okay. And Mr. Neylon wanted each and every  
15 one of you to get 100 -- 110 percent involved in the  
16 OE accounts and drive them to compliance; isn't that  
17 right?

18 A. That's what it says; yes.

19 Q. And failure wasn't an option; right?

20 A. That's what it says; correct.

21 Q. Okay. Do you remember this circumstance?

22 A. I mean, I don't remember this specifically,  
23 but I'm sure I was deeply involved.

24 Q. Okay. Because this was sort of a new thing  
25 for you guys to be doing, is getting these QA scores

1 and making sure that the retailers would improve  
2 their scores; right?

3 That wasn't something you had done prior to  
4 this; is that right?

5 A. That's not correct. The method in which  
6 they were providing the calls, I believe, changed  
7 during this time frame. But there was other methods  
8 over the years that we would -- that we would QA  
9 calls.

10 Q. This was a more rigorous QA system than had  
11 been used before; is that -- is that fair to say?

12 A. I don't think I'd use the word rigorous.  
13 Again, it was more -- what's the right word?  
14 Systematic.

15 Q. Because what happened was that they had to  
16 upload a certain number of calls. Those scores were  
17 scored by DISH's internal people the same way that  
18 DISH direct sales operation was scored. Is that  
19 fair to say?

20 A. Yes.

21 Q. And there were a lot of metrics that were  
22 used to grade these calls. Is that fair to say?

23 A. There was a lot of QA points; yes.

24 Q. There were a lot of QA points. About the  
25 sales process that the OE retailers were using;

1 right?

2 A. Again, I don't think it was a sales process.  
3 It was more geared towards disclaimers, disclosures,  
4 correctly informing the consumer; yes.

5 Q. But it was also geared towards having a good  
6 sales experience for the consumer; is that right?

7 A. Yes.

8 Q. And some of those data points were more  
9 about right sizing the consumer; is that right?

10 A. There was a section for QA called right  
11 sizing; yes.

12 Q. Okay. Do you remember the other sections  
13 for QA?

14 A. I know the right sizing is the top section.  
15 And then, again, I think the bulk of the rest would  
16 be disclaimers about the product.

17 Q. Okay. Were the retailers graded on the --  
18 the attitude that they displayed during the call?

19 A. Certainly, again, I think -- I think there  
20 was something on there in regards to that. I can't  
21 remember exactly what -- I can't remember exactly  
22 what the question would be.

23 Q. Okay. So let's turn to Plaintiff's  
24 Exhibit 616. This is a situation that went on for  
25 several years. Because now we're in 2011, and

1     you're ripping your team again to get the scores up.  
2     Is that fair to say?

3             A. Yes, it looks like I ripped the team.

4             Q. Right. You -- you were in charge of the  
5     team that went out into the OE retailer call  
6     centers; right?

7             A. I was part of the team; yes. There was --

8             Q. But you were the director of sales; right?  
9     At this time?

10            A. Yes. We had other parts of the organization  
11     as well that supported OE retailers.

12            Q. But what you were in charge of were the --  
13     forgive me if I get the name wrong -- they were  
14     national account managers. Is that what they were  
15     called at the time?

16            A. I know that's what they are called now. I'm  
17     not specific, but I think it was something along  
18     those lines.

19            Q. Strategic account -- like SANs, was that  
20     another -- do you remember?

21            A. We change our nomenclature --

22            Q. It's essentially the same group of people  
23     and they have the same function; right?

24            A. The team that reported to me; yes.

25            Q. The team that reported to you. And you've

1 had that team since when?

2 A. I've had direct reports probably since the  
3 '05 time frame -- actually, that's not true, I had  
4 direct reports when I was a regional sales manager,  
5 so that's when I had direct reports.

6 Q. Was that 2003?

7 A. No, it was not 2003. I had no direct  
8 reports in 2003.

9 Q. But shortly after the OE tool started  
10 growing you got direct reports; is that fair to say?

11 A. You know, I'm not sure during that time, you  
12 know, probably the '04 time frame, if I had direct  
13 reports. I'm really not sure if I had direct  
14 reports prior to regional sales manager, which was a  
15 different role. When I came back as national sales  
16 manager for OE retailers I do -- I do recall having  
17 direct reports.

18 Q. Okay. And those direct reports were people  
19 who would go into the OE call centers to provide  
20 support to those OE retailers; is that right?

21 A. That's correct.

22 Q. Some of the support that they provided was  
23 trainings on products and promotions; is that right?

24 A. Yes.

25 Q. They would evaluate the sales process going

1 on at the retailer and provide feedback?

2 A. Again, I don't know specifically the sales  
3 process, but they would certainly provide feedback.

4 Q. Okay. They would provide disclosure  
5 scripts?

6 A. They did over time; yes.

7 Q. Okay. And they would evaluate the telephone  
8 scripts that were being used by the retailers; is  
9 that right?

10 A. I know they looked at scripts over time;  
11 yes.

12 Q. Yes, they did work on scripts over time.

13 Okay. So let's take a look at this  
14 Exhibit 616. These -- there's a number of retailers  
15 that are being evaluated. This one specifically I  
16 believe talks about the overall average for a number  
17 of OE partners. If you could turn to page 2 of this  
18 document there's a list of five OE partners, one of  
19 which is Satellite Systems Network; do you see that?

20 A. Yes.

21 Q. So in August of 2011, Satellite Systems  
22 Network's QA score drops from 86 to 81. Do you see  
23 that?

24 A. For this week; yes.

25 Q. For this week. As we discussed, not a

1 sterling score?

2 A. Not where we want it to be; correct.

3 Q. Not where you want it to be.

4 And so you asked for -- when this -- when this  
5 would happen you would ask for some sort of plan to  
6 get those QA scores on track; right?

7 A. I'm not sure for this specific one if I did,  
8 but I know I've asked for plans over time; yes.

9 Q. You've asked for QA plans to get those  
10 scores up, from your -- from your direct reports?

11 A. That's correct; yes.

12 Q. Okay. I would like to look at a document  
13 that Ms. Ohta asked you about on Friday, which is  
14 PX1048. And this is the kind of document that we  
15 just discussed; right?

16 A. I'm not sure of the time frame on this, but  
17 you know, this would be -- it's an OE partner QA  
18 action plan.

19 Q. Right. And these -- these are your reports  
20 here that these people -- national account manager  
21 Clay Suter, was he one of your reports?

22 A. He is not today.

23 Q. But he was -- he was in 2010?

24 A. Yes.

25 Q. Okay. And then if you turn to page 4. will

1 walker was one of your reports in 2010?

2 A. That's correct.

3 Q. Turn to page 5, Terrence Rukas, he was one  
4 of your reports in 2010?

5 A. I'm not sure if he reported to me. There  
6 was a time period where there was -- there was two  
7 directors. So I'm not positive if Terrence reported  
8 to me at the time.

9 Q. But this is the type of document that your  
10 reports would prepare in order to talk about how we  
11 can get these QA scores up; is that fair to say?

12 A. Yes.

13 Q. Okay. So I want you to turn to page 5 of  
14 this document.

15 A. Okay.

16 Q. At the top here there's a company called  
17 American Satellite, which was an OE retailer until  
18 sometime in 2010. Do you remember American  
19 Satellite?

20 A. Yes.

21 Q. And Terrence Rukas would have been the  
22 national account manager assigned to that account?

23 A. Yes.

24 Q. So he worked in California?

25 A. Yes.



1           Q. So if you could look under Actions Taken to  
2       Remedy. (As read:) We have rewritten the script  
3       and highlighted areas of emphasis, strong  
4       reinforcement on the value of disclosure and  
5       following flow.

6           So it certainly looks like Mr. Rukas is pretty  
7       deeply involved in the sales process at American  
8       Satellite, wouldn't you say?

9           A. He was account manager, he was responsible  
10      for the account.

11          Q. So he helped re-write a script and  
12      highlighted areas that they needed to emphasize in  
13      order to fulfill DISH's requirement of improving the  
14      QA score at this retailer; is that right?

15          A. That's what this says.

16          Q. Now, they implemented a new script the week  
17      of March 15th. And Mr. Rukas believes that DISH is  
18      going to see improvement in their QA scores in two  
19      weeks; is that right?

20          A. That's what it says, yes.

21          Q. Okay. So if you could turn to --

22          (A discussion was held off the record.)

23          Q. All right. Let's see, page 7. This is a  
24      list of some of the data points that the QA team  
25      collects; is that fair to say?

1 A. At this time, yes.

2 Q. Yes, that's -- that's the kind of -- that's  
3 the kind of data that DISH collected.

4 All right. So let's -- let's move on briefly.  
5 So I believe you testified at your deposition that  
6 the QA program did not have a telemarketing  
7 compliance aspect; is that accurate?

8 A. That is correct.

9 Q. Okay. Were these visits to the OE  
10 retailers, were they announced?

11 A. Again, I don't know what everybody's  
12 schedule was. Probably depended on which account.  
13 But I'm sure some were planned and some could have  
14 been unplanned.

15 Q. But DISH did not have a policy of performing  
16 unannounced inspections of the OE retailers'  
17 facilities?

18 A. No.

19 Q. No, okay. So let's shift gears a bit and  
20 talk about the first OE retailer, Dish TV Now. Do  
21 you remember them?

22 A. I do.

23 Q. And that was in late 2003; right?

24 A. That's correct.

25 Q. Okay. And what we now know is that Dish TV

1 Now was run by a convicted felon and con man; is  
2 that right?

3 A. I'm aware of that now; yes.

4 Q. Yes. And -- but DISH didn't check at the  
5 time to see whether he was a felon; is that right?

6 A. I know they -- he indicated on his  
7 application that he was not. But I'm not sure what  
8 other steps were taken.

9 Q. All right. Does it seem reasonable for you  
10 to expect a felon to tell you whether he's a felon?

11 A. I don't know, I'm not a felon.

12 Q. But I'm just saying, just as a matter of  
13 principle, does it seem reasonable to expect a con  
14 man to tell you whether he's a con man?

15 A. Again, I don't -- I don't know, I wouldn't  
16 know what to expect.

17 Q. You don't know, okay.

18 So did you know at the time that David Hagan  
19 was one of the biggest robo callers in the country?

20 A. I did not.

21 Q. You didn't know that. Did you know that  
22 David Hagan's DirectTV retailership had been sued in  
23 a class action in 2002 for sending out junk faxes?

24 A. I'm aware of it now. I don't believe I was  
25 aware of it then.

1 Q. You weren't aware of it then.

2 So, of course, what we now know is that Dish TV  
3 Now was, in fact, robo dialing prerecorded messages  
4 to sell DISH Network services; isn't that right?

5 A. We know that now.

6 Q. We know that now. But nobody told you at  
7 the time that that's what was happening?

8 A. He didn't.

9 Q. Okay. And one of the reasons maybe that  
10 your group didn't figure any of this out is that you  
11 were -- you were worried about losing the Dish TV  
12 Now account; isn't that right?

13 A. I wouldn't say that.

14 Q. Okay. Let's turn to PX154.

15 If you start on the bottom of page 1.

16 Mr. Ahmed sent an e-mail to several people saying,  
17 (as read:) I am going to lose this account. Way  
18 too many cancellations.

19 There's a subsequent e-mail January 1st, 2004,  
20 (as read:) We can't afford to lose this business.

21 Then Mr. Ahmed writes to you, who I assume was  
22 part of his team at the time, (as read:) We are in  
23 deep trouble with Dish TV Now. I am not willing to  
24 lose this account. We have to get their confidence  
25 back ASAP. Hagan has stopped all advertising and

1 will not be selling DISH Network moving forward  
2 until we get all this fixed.

3 That's what Mr. Ahmed wrote; isn't that right?

4 A. Yeah. He was concerned with the  
5 installation rate.

6 Q. He was concerned with the installation rate;  
7 right?

8 A. Correct.

9 Q. Okay. So you devoted a lot of resources to  
10 try to improve the installation rate because the OE  
11 system was a fledgling system at the time; right?

12 A. Well, I don't think I'd say that.

13 Q. Well, he was only getting 62 of his sales  
14 activated. So that means only 62 percent of the  
15 sales that he actually made were getting activated  
16 and becoming DISH customers. That's fair to say;  
17 right?

18 A. That's accurate; yes.

19 Q. And that was because of resource issues  
20 inside of DISH Network; is that right?

21 A. I don't think that's the only thing. I  
22 think it says a couple of things. It said due to  
23 many reasons, some of their fault, some of ours.

24 Q. Okay. But it was a priority at the time to  
25 get this situation resolved; is that fair to say?

1 A. Yes.

2 Q. Okay. And even though that was a priority,  
3 your testimony is that you didn't know exactly what  
4 David Hagan was doing in that call center?

5 A. I don't think I said that.

6 Q. Did you know exactly what David Hagan was  
7 doing in that call center?

8 A. Well, he indicated to us he was doing  
9 television advertising.

10 Q. Right. And you believed him?

11 A. I did at the time.

12 Q. You were in his call center; right?

13 A. Several occasions; yes.

14 Q. Enormous. Right?

15 A. It's a large center call center; yes.

16 Q. It was a former Winn-Dixie in Southern  
17 Pines, North Carolina?

18 A. I don't know the brand, but it was in a  
19 former grocery store.

20 Q. So there was a huge sales floor; right? And  
21 there were about 5 or 600 seats in that call center;  
22 is that fair to say?

23 A. Honestly, I don't know the exact amount of  
24 seats, but it was a large call center.

25 Q. Filled an old grocery store; right?

1           A. It filled part of an old grocery store.  
2 They had offices and other things in there as well,  
3 so it wasn't just a call center.

4           Q. Mr. Hagan was an interesting character,  
5 would you say that?

6           A. Yes.

7           Q. So one of the things they had in that call  
8 center was a cash grab booth; right?

9           A. I've seen that; yes.

10          Q. So it was like that old game show on TV  
11 where people in get and cash flies around, you've  
12 got to grab it and put it in the pockets?

13          A. Yes.

14          Q. Do you know how he used it?

15          A. Have I ever used one?

16          Q. Do you know how he used the cash grab booth?

17          A. Sales agent motivation.

18          Q. Right. So the top selling sales agent would  
19 get a certain number of seconds in the cash grab  
20 booth; is that what you understood was going on?

21          A. Again, I don't know all the ways they used  
22 it, so -- I don't know.

23          Q. It didn't seem like a boiler room  
24 telemarketing environment to you, Mr. Mills?

25          A. It did not.

1 Q. It didn't seem that way to you?

2 A. No.

3 Q. So do you know what happened to David Hagan  
4 after he sold DISH Network services?

5 A. I believe he's currently in federal prison.

6 Q. Right. So he was doing a pump and dump  
7 stock scam at around the same time that his DISH  
8 retailership was winding up, did you understand --

9 A. I don't know the specifics of why he was in  
10 prison.

11 Q. You never had any discussions with him about  
12 telemarketing that you remember?

13 A. Not that I recall.

14 Q. Not that you recall. All right.

15 So, Mr. Mills, did a DISH lawyer ever tell you  
16 or write to you that there was risk for DISH in  
17 allowing these OE retailers to continue committing  
18 telemarketing violations after DISH knew about them?

19 A. I don't recall specifically.

20 Q. Let's turn to PX194.

21 So the middle of this page here, this was an  
22 e-mail to you, among other people, Amir Ahmed, Mike  
23 Oberbillig, Mike Mills, Steven Keller. Let's talk  
24 about those people for a second. We already talked  
25 about Mr. Ahmed. Mike Oberbillig was somebody who



1 worked with you; is that right?

2 A. Yeah. He was the regional director, I  
3 believe at our Sacramento office at the time.

4 Q. And he worked closely with a number of OE  
5 retailers on the west coast; is that fair to say?

6 A. Yeah, he was responsible -- his  
7 responsibilities would have included the OE  
8 retailers on the west coast; yes.

9 Q. Okay. And is the same thing true of  
10 Mr. Keller?

11 A. I believe Mr. Keller was a regional sales  
12 manager, reported to Mike Oberbillig. So yes, he  
13 would -- he would have been involved as well.

14 Q. Okay. And Mr. Keller -- Mr. Keller would  
15 have worked even more closely with the OE retailers;  
16 is that fair to say?

17 A. During this time frame, probably him and his  
18 sales folks.

19 Q. Are you familiar with this e-mail,  
20 Mr. Mills?

21 A. I've seen it; yes.

22 Q. So Scott Novak, he was a DISH lawyer; right?

23 A. Yes.

24 Q. And what he was telling your team was  
25 essentially that Alex Tehranchi of Satellite Systems

1 Network was violating the law by using autodialers  
2 and automessages. And he continues to do it. State  
3 AGs know he's doing it.

4 (As read:) In the past we have successfully  
5 resisted the argument that we are responsible for  
6 the conduct of independent retailers. However, SSN  
7 is a problem because we know what he is doing and  
8 have cautioned him to stop. There is risk in  
9 continuing to give warnings without a follow-through  
10 action. Eventually someone will try to use that  
11 against us.

12 So you got that e-mail; right?

13 A. Yes.

14 Q. Okay. And your team didn't -- didn't really  
15 clamp down on Satellite Systems Network, did you?

16 A. I believe in this one, Scott, you know,  
17 favored probation. It looks like Amir was of the  
18 same opinion.

19 Q. What does probation mean, Mr. Mills?

20 A. You know, in that context specifically,  
21 again, they have been warned, and again, we're  
22 looking out.

23 Q. You were looking out. But they were warned  
24 time and time again? That's what Mr. Novak said?

25 A. That's what he's said.

1 Q. It certainly sounds like you didn't pay  
2 attention to what your lawyer told you; right?

3 A. No, I don't think I would say that.

4 Q. Well, we're here today, aren't we?

5 A. Yes.

6 Q. So someone is trying to use this against  
7 you; right. So he was right?

8 A. It looks like in this case -- again,  
9 eventually someone will try to use it against us.  
10 So, in that instance, yes.

11 Q. So you wish you had paid attention to what  
12 Mr. Novak said and gotten rid of Alex Tehranchi at  
13 the time?

14 A. Again, at that time I think we had processes  
15 in place in order to, you know, manage complaints.  
16 And you know, again, I think we did what we could as  
17 a sales organization to ensure that he was on the  
18 road to providing good quality business for us in  
19 the long term.

20 Q. But you didn't really right the ship? We  
21 know that, don't we?

22 A. I don't think I would agree with that.

23 Q. Okay. We'll get there in a second.

24 Now, the problem with Satellite Systems Network  
25 and robo calls had gone on for a long time. The

1 first thing I'd like to do, before we get into more  
2 of a discussion about this, I'd like to play a  
3 little bit of your deposition. If we could play the  
4 Satellite Systems Network part.

5 MR. EWALD: Your Honor, I'm not sure what  
6 is the purpose of this? Is he being impeached? Is  
7 recollection being refreshed?

8 MR. RUNKLE: Your Honor, Mr. Mills was  
9 deposed as a 30(b)(6) witness, and his deposition is  
10 independently admissible.

11 THE COURT: For what purpose?

12 MR. RUNKLE: For what purpose? To show  
13 what he testified to. I can admit it independently  
14 and play it, so I want to show the Court what --

15 THE COURT: I'm just asking in the interest  
16 of moving the case --

17 MR. RUNKLE: These are going to be very  
18 brief. Similar to what Mr. Ewald showed --

19 MR. EWALD: He's here, Your Honor. They  
20 can ask him the questions.

21 THE COURT: The objection is overruled.

22 (The following video clip was played.)

23 "Q. We talked about another retailer called  
24 Satellite Systems Network?

25 "A. Yes.

1       "Q. Did you perform training for Satellite  
2 Systems Network?

3       "A. Yes.

4       "Q. And they're in Southern California; is that  
5 right?

6       "A. Yes.

7       "Q. Okay. You went there and did training?

8       "A. Yes.

9       "Q. Did Satellite Systems Network have a call  
10 center?

11       "A. Yes.

12       "Q. Was it a large or medium call center?

13       "A. I'd say large.

14       "Q. Do you know who Alex Tehranchi is?

15       "A. I do.

16       "Q. Okay. Is Alex Tehranchi still a DISH  
17 Network retailer today?

18       "A. Yes.

19       "Q. Okay. Did you know how Satellite Systems  
20 Network -- what marketing methods Satellite Systems  
21 Network used?

22       "A. At the time, no.

23       "Q. Okay. So at the time that they became an OE  
24 retailer, DISH Network wasn't aware of what  
25 marketing methods it used?

1 "A. So when we brought on Satellite Systems they  
2 said they did print, online, that kind of thing.

3 "Q. Okay. And at any time did you come to be  
4 aware of Satellite Systems Network using outbound  
5 telemarketing?

6 "A. Yes.

7 "Q. Okay. When did you become aware of that?

8 "A. I don't recall the exact date, exactly when.

9 "Q. What did -- what did you become aware of?

10 "A. There was a DirectTV-related lawsuit, to my  
11 recollection, that they were included in.

12 "Q. Okay. Did anybody from your department take  
13 any action about that -- on that information?

14 "A. Not that I know of."

15 (End of video clip.)

16 BY MR. RUNKLE:

17 Q. Let's take a look here at Exhibit PX80. So  
18 you didn't receive this e-mail, Mr. Mills? This is  
19 from 2002. Is that before your time at DISH?

20 A. No, I was there, but I wasn't in the OE tool  
21 role.

22 Q. But the OE tool didn't exist in March, 2002;  
23 right?

24 A. That's correct.

25 Q. So Satellite Systems Network was working as

1 a TVRO retailer at the time; is that right?

2 A. Yes.

3 Q. Okay. And they were using prerecorded  
4 messages; is that right?

5 A. I don't know specifically. Like I said, I  
6 wasn't involved in the account at that time.

7 Q. Right. But certainly seems from this  
8 e-mail -- if I could direct your attention to the  
9 first page here, this is -- this is an e-mail from  
10 Nick Myers. Do you know who he is?

11 A. Yeah. I believe Nick Myers was a director  
12 in our Denver office at the time.

13 Q. Okay. And what he's talking about here is  
14 solicitation voice mails, and an affiliate named  
15 Vector Marketing that's placing prerecorded calls  
16 for a number of retailers, including--if you look  
17 down near the bottom of the page--Satellite Systems  
18 Network. And what Mr. Myers says is (as read:)  
19 This type of voice broadcasting has caused a few  
20 concerning calls, but seems to be greatly outweighed  
21 by the results.

22 So DISH did know at the time that it brought  
23 Satellite Systems Network on board the OE tool that  
24 Satellite Systems Network used voice broadcasting;  
25 is that fair to say?

1           A. I don't know if it's the same Satellite  
2 Systems Network.

3           Q. Well, Satellite Systems Network is located  
4 in or around Dana Point, California?

5           A. I believe they're in Southern California, I  
6 don't --

7           Q. Right, they're in Southern California. And  
8 they were brought on to the OE tool after this  
9 e-mail; is that right?

10          A. This says Satellite Systems Colorado out of  
11 Fort Collins, Colorado, so I'm confused.

12          Q. Right. But you're only aware of one  
13 Satellite Systems Network?

14          A. We've had thousands of retailers over the  
15 years. I have no idea.

16          Q. But this is a call center for Satellite  
17 Systems Network in Southern California. And it  
18 certainly seems to be a -- similar to the Satellite  
19 Systems Network we're talking about now in that they  
20 used prerecorded messages; right?

21          A. This says Satellite Sales Network out of  
22 Fort Collins, Colorado.

23          Q. Satellite Systems Network; right?

24          A. That's what I said. Yes.

25          Q. All right. Let's take a look then at PX503.



1           This e-mail is from 2004. And here Mr. Ahmed  
2           tells you (as read:) I'm hearing a lot of  
3           complaints on Satellite Systems, which is --

4           You would agree this e-mail is about Satellite  
5           Systems Network; right?

6           A. Yes.

7           Q. This is about Alex Tehranchi?

8           A. Yes.

9           Q. (As read:) I'm hearing a lot of complaints  
10          on Satellite Systems on telemarketing calls to  
11          customers.

12          Right? So there were telemarketing issues with  
13          Satellite Systems Network; right?

14          A. That's what it says; yes.

15          Q. And this kept going on even after Scott  
16          Novak told you that there was risk in continuing to  
17          allow Alex to engage in these types of activities.

18          So if you could turn to PX504. Mr. Oberbillig  
19          wrote to, among other people, you and Mr. Ahmed, and  
20          said (as read:) Team verified it was SSN. Spoke to  
21          Alex directly about this situation. This customer  
22          was a past customer of SSN and had purchased  
23          DirectTV. SSN had recently started outbound calling  
24          all of their 155,000 past DirectTV customer sales.  
25          These customers were scrubbed against the most

1 recent do not call list. I informed Alex that he  
2 must stop using message broadcasting and leaving  
3 messages even if he has followed do not call lists.

4 That's what happened; right?

5 A. That's what Mike Oberbillig states he did.

6 Q. Right. So SSN was a voice broadcaster?

7 A. Again, I know I've seen a few complaints  
8 over time that said that.

9 Q. So let's look back at the PX194.

10 And PX914 you talked about putting Satellite  
11 Systems Network on probation in September -- on  
12 September 26, 2005?

13 A. That's correct.

14 Q. Right. So that probation was meaningless;  
15 right?

16 A. It says here 30 or 60 days probation. And  
17 the exhibit we were just looking at was early in  
18 2007. So almost --

19 Q. No, it's not. If you could take a look at  
20 it again. The actual e-mail is from October 27th,  
21 2005, which would have been -- September, that's  
22 30 days, so that would have been 31 days after Scott  
23 Novak's e-mail.

24 A. I'm sorry, which --

25 Q. 504, Satellite Systems Network.

1           A. I'm sorry. I was looking at the top date on  
2 the document.

3           Q. All right. So 31 days after Scott Novak  
4 told you that there was risk in allowing Alex  
5 Tehranchi to do this, and 31 days after there was  
6 some internal discussion about putting Satellite  
7 Systems Network on probation, it certainly seems  
8 likes Satellite Systems Network was discovered again  
9 engaging in this activity and nothing happened;  
10 isn't that right, Mr. Mills?

11          A. It does not look like there was any action  
12 taken; no.

13          Q. Okay. So if we could look down at the  
14 second e-mail in this chain on 504. It says --  
15 Mr. Ahmed wrote back to Mike Oberbillig and said (as  
16 read:) Either way, both accounts are yours. And I  
17 need it fixed. The Sacramento office wanted United.  
18 Now I will end up terminating them and that is not  
19 good.

20          Do you remember United Satellite?

21          A. Yes.

22          Q. That was another robo dialing system; right?

23          A. I believe they were involved in  
24 telemarketing.

25          Q. I'm talking about robo dialing specifically?

1 Do you remember that?

2 A. I know they had some complaints; yes.

3 Q. We'll get back to United Satellite in a  
4 moment.

5 So in 2006 there was a QA program that started  
6 listening to Alex Tehranchi's outbound calls at  
7 Satellite Systems Network; is that right?

8 A. I believe they were listening to calls; yes.

9 Q. Okay. So you were listening to calls. That  
10 would be Exhibit 1234. Looks like you were  
11 monitoring inbound and outbound phone calls from  
12 Alex Tehranchi's call center. That's what this  
13 document says; right?

14 A. Yes, that's what it says. Yes.

15 Q. Okay. So, Mr. Mills, do you know who Thomas  
16 Krakauer is?

17 A. I've heard the name.

18 Q. He's the son of Holocaust survivors. He was  
19 here last week telling an interesting story about  
20 how he received a bunch of illegal calls from  
21 Satellite Systems Network in 2009, 2010, and 2011.  
22 Did you know about that?

23 A. I believe there's a separate case involving  
24 that.

25 Q. Yes. So DISH knew that Mr. Krakauer got

1     called by Satellite Systems Network in 2009? Did  
2     you know that?

3           A. I'd have to see the specifics on the name  
4     during that time frame.

5           Q. Okay. So if we could look at Exhibit -- do  
6     we have 282?

7           THE COURT: Is this a good time for a  
8     break?

9           All right. We'll take a ten minute recess.

10          (A break was taken.)

11          THE COURT: Please be seated. Court is  
12     reconvened.

13          MR. EWALD: Your Honor, Mr. Mills is in the  
14     restroom.

15          THE COURT: That's all right. I came back  
16     early.

17          Sorry. Mr. Mills, I reconvened early.

18          THE WITNESS: Sorry I'm late.

19          THE COURT: You're not late.

20          Please continue.

21     BY MR. RUNKLE:

22           Q. All right. So I think we were looking at  
23     PX282. And this is a complaint that was received by  
24     a man named Thomas Krakauer. And DISH traced this  
25     complaint to Satellite Systems Network. Was this

1 complaint ever transmitted to you?

2 A. I'm sorry, can you ask the question again?

3 Q. Okay. Was this complaint ever transmitted  
4 to you to your recollection?

5 A. I would say it probably was.

6 Q. Probably was, but you don't remember?

7 A. My name's not on it, but -- looks like  
8 there's a Josh Slater, and he reported to me at the  
9 time, so --

10 Q. Okay. So this was sent to the sales  
11 organization?

12 A. Looks like it, yes.

13 Q. Okay. And did you also know, Mr. Mills,  
14 that in November of 2009, this Court made a ruling  
15 that DISH could be liable for its retailers'  
16 telemarketing violations under the Telemarketing  
17 Sales Rule? Did you know that?

18 A. I'm not specifically familiar with that.

19 Q. Nobody ever told you that?

20 A. I'm not sure at the time.

21 Q. Okay. So if we fast forward to 2011, your  
22 employees are still in Satellite Systems Network's  
23 call center scoring their sales calls; right?

24 A. I'd have to look at the dates.

25 Q. Okay. So let's look at PX1239.

1 A. Okay.

2 Q. Sir, certainly seems to me -- Holly Taber is  
3 one of your employees; right?

4 A. That's correct.

5 Q. So it seems like Ms. Taber is talking about  
6 Satellite Systems Network QA scores. And developing  
7 action plans to get those QA scores up; right?

8 A. Yes.

9 Q. Isn't that right? That's in July of 2011?

10 A. Yes, that's in July of 2011.

11 Q. Okay. And that's after this Court told DISH  
12 it could be liable for Satellite Systems Network  
13 calls? That's after the Thomas Krakauer complaint  
14 we just looked at? Isn't that right?

15 A. I'm getting a little confused on time frames  
16 here.

17 Q. Well, this is 2011; right?

18 A. Yes, it is.

19 Q. And that's after the Thomas Krakauer  
20 complaint we just looked at, which was 2009; right?

21 A. Where was that one again?

22 Q. 282.

23 A. Yes, 2011 is after 2009.

24 Q. That's right. So DISH knew about issues  
25 with Satellite Systems Network telemarketing from at

1     least 2004, if not 2002. Here we are in 2011  
2     developing action plans to increase their QA scores.  
3     About it certainly seems like those telemarketing  
4     problems persisted. Doesn't it seem that way,  
5     Mr. Mills?

6           A. I know they had some complaints early on in  
7     the time frame we were looking at, before the 2006  
8     time frame. Looks like they have a complaint in May  
9     of 2009. So again, they had one complaint during  
10    this time frame.

11          Q. Right. But what we now know is they called  
12    over 380,000 people on the Do Not Call Registry  
13    from -- in 2010 and 2011. And there were no  
14    defenses to those calls, so DISH is liable for those  
15    calls. You know that now; right?

16          A. So I know that they were signed up with  
17    PossibleNow during the 2009, '10, '11 time frame.  
18    So I know they had a do not call solution in place.

19          Q. Right. It didn't do any good, did it?

20          A. Looks like this was one complaint that we  
21    were aware of.

22          Q. Right. Because they have been breaking the  
23    law since 2004; right?

24          A. There were some complaints early on.

25          Q. That's right. And you guys knew they were



1 breaking the law since 2004?

2 A. Well again, if you look at this, this is a  
3 do not call complaint. I think you had said earlier  
4 that complaints back in the '3, '4, '5 time frame  
5 were more along the lines of robo calls.

6 Q. Right, but robo calls are illegal  
7 telemarketing, just like calling people on the  
8 Registry is illegal telemarketing. You understand  
9 that, don't you, Mr. Mills?

10 A. I'm not a legal expert on robo calls.

11 Q. Well, certainly seemed like robo calls was  
12 something that DISH didn't wanted to happen; right?

13 A. It was not a form of marketing that we  
14 wanted.

15 Q. That's right.

16 So if you had listened to Scott Novak in 2005,  
17 when he said, "We can't just keep doing this when we  
18 know a retailer is doing this, we can't let them  
19 keep selling." If we had listened to Scott Novak  
20 those calls to Thomas Krakauer would never had  
21 happened; right?

22 A. I look back and I think we took appropriate  
23 action.

24 Q. You didn't take any action. That's what you  
25 said?

1           A. Well, I mean, Amir yelled at the sales  
2 staff, I know that Oberbillig yelled at the sales  
3 staff as well.

4           Q. So yelling at the sales staff and a  
5 meaningless probation period, that's the action that  
6 you took; right? That's your testimony today?

7           A. I'm saying that we did take action.

8           Q. Now let's look at PX13 -- I'm sorry, 1328.

9           If you could look at page 2 of this document.  
10 This looks like you're providing additional support  
11 to Satellite Systems Network. Per attached Mike  
12 Mills' approval you're going to send them a check  
13 for \$2500 for more marketing support in June, 2011;  
14 right?

15          A. Yes. This was marketing support for an  
16 inbound marketing campaign; correct.

17          Q. Right. But we now know they were breaking  
18 the law all along; isn't that right?

19          A. I know they had complaints over the years.

20          Q. And you guys just couldn't quit Alex  
21 Tehranchi and Satellite Systems Network, could you?

22          A. This was for an inbound marketing campaign.

23          Q. But over time, you just -- you couldn't  
24 bring yourself to get rid of this marketing  
25 operation that was breaking the law?

1 A. I wouldn't characterize it like that.

2 Q. So you know that Alex Tehranchi's TSPA  
3 compliance was a joke in your Legal Department? Did  
4 you know that?

5 A. No.

6 Q. Let's look at PX199. Do you know who  
7 Kimberly Berridge is?

8 A. I believe she is in our Legal Department.

9 Q. Right. So this is an e-mail that DISH got  
10 served with a complaint about Satellite Systems  
11 Network. And Ms. Berridge wrote to Mr. Kitei--who's  
12 in the courtroom today--said, (as read:) Oh, this  
13 is a TCPA frequent flier wanting money. He got a  
14 call from Satellite Systems Network he alleges is a  
15 violation. I will draft our standard go after SSN  
16 letter for you to review.

17 Do you see that?

18 A. Yes.

19 Q. The standard go after SSN letter, because  
20 they had so many problems over so many years with  
21 telemarketing, and DISH didn't do anything about it;  
22 isn't that right?

23 A. I don't read it as that.

24 Q. Do you feel bad about the calls that  
25 Satellite Systems Network made, Mr. Mills?

1 A. I don't feel good about the complaints; no.

2 Q. This picture doesn't look very good, does  
3 it?

4 A. I don't read this document like that.

5 Q. I'm not talking about the document, I'm  
6 talking about the picture of DISH's long-term  
7 relationship with a known telemarketing violator.  
8 It doesn't look very good, does it?

9 A. Again, they had some complaints over time.  
10 Followed the process with the sales organization,  
11 legal group --

12 Q. But it was an ineffective process? Didn't  
13 work; correct?

14 A. I think it did work.

15 Q. Okay. So 380,000 violations, that's the  
16 sign of a working process to you?

17 A. Again, at the time they were PossibleNow do  
18 not call solution. We believed that they were  
19 taking the necessary steps to not have telemarketing  
20 violations.

21 Q. All right. So let's talk a little bit about  
22 Star Satellite, Tenaya Marketing. Do you remember  
23 those guys?

24 A. I do remember Star Satellite.

25 Q. So that was Walter Eric Myers. You remember

1 him?

2 A. Yes.

3 Q. They were out of Utah?

4 A. That's correct.

5 Q. So let's look at PX205.

6 So I know you didn't get this e-mail,  
7 Mr. Mills, but it certainly seems like a man named  
8 Russell Bangert, who is a DISH employee, knew  
9 exactly what was going on with Star Satellite in May  
10 of 2005; isn't that right?

11 He says here at the bottom of the page, (as  
12 read:) we have a retailer, Star Satellite, Provo,  
13 Utah, who is telemarketing using automated messages  
14 and our name instead of theirs. I've been getting  
15 complaints from some consumers thinking this is us.

16 And that gets forwarded around the company to  
17 somebody named Jeff Medina. Do you know who he is?

18 A. I believe he was in Retail Services.

19 Q. Was in Retail Services.

20 And he wrote to other people, a woman named  
21 Margot Williams, and he says, (as read:) Are these  
22 your boys again?

23 Certainly seems like DISH had enough knowledge  
24 about this situation to know what was going on,  
25 don't you think?

1 A. I don't think I'd characterize it like that.

2 Q. Okay. Even though Mr. Bangert -- he doesn't  
3 say he disbelieves that this was going on. In fact,  
4 he flat out states, (as read:) They are using  
5 prerecorded messages and our name instead of theirs.  
6 That's what he says of Star Satellite from Provo,  
7 Utah?

8 A. He does indicate that he is getting some  
9 complaints.

10 Q. Let's hear -- let's listen to one of the  
11 prerecorded messages possibly that Star Satellite  
12 was using at the time. If we could play PX767.

13 I believe this is admitted into evidence.

14 It's not gonna play for us. We will hold off  
15 on that.

16 Did you know that BC Smith was recording  
17 prerecorded messages for Star Satellite? Did you  
18 know that?

19 A. I did not.

20 Q. But you knew that BC Smith worked there;  
21 right?

22 A. I knew BC Smith worked at Star Satellite.

23 Q. He was a sales manager or something like  
24 that at the company?

25 A. I don't remember what his role was.

1 Q. Okay. And you guys provided support to Star  
2 Satellite during the summer of 2005; is that right?

3 A. So we provided them, you know, the same  
4 support we provide any other OE retailer.

5 Q. Okay. So let's turn to PX207. This is an  
6 e-mail from you editing Star Satellite's disclaimer  
7 script, and then you say, (as read:) We are working  
8 on the sales script. We'll have something for you  
9 by close of business tomorrow. Right?

10 A. That's what I said; yes.

11 Q. That's what happened; right?

12 A. Pardon me?

13 Q. You worked on their scripts; right,  
14 Mr. Mills?

15 A. Looks like provided changes on disclaimer.  
16 I'm not exactly sure, based on this communication,  
17 what work I was doing on the sales script, but it  
18 looks like I was at least looking at it.

19 Q. Okay. And this was -- this was a  
20 telemarketing sales script; right?

21 A. It was a sales script.

22 Q. Right. And so whether it was an inbound or  
23 outbound sales script, it was a sales script that  
24 they used to do telemarketing; is that right?

25 A. I don't know specifically.

1           Q. Okay. But you have no reason to doubt that  
2 that's what you did; isn't that right?

3           A. I provided changes on disclaimer on this  
4 script.

5           Q. Okay. So at some point, maybe about a year  
6 after this, did you learn that -- that Star  
7 Satellite had activated pretty much all of its  
8 customers through illegal prerecorded message  
9 telemarketing?

10          A. I believe there was an e-mail to that  
11 effect.

12          Q. Okay. So let's look at PX386.

13                So there's a principal at some retailer or  
14 marketing agency called Stampede Group. And he says  
15 that he had been working with BC Smith. And that  
16 (as read:) while an OE dealer for DISH, Star  
17 Satellite sold approximately 30,000 accounts through  
18 illegal telemarketer channel autodialing. In  
19 February of this year, the FTC began an  
20 investigation into Star and four other dealers.  
21 Since talking to BC, and I'm -- an ellipsis there.  
22 Since talking to BC it appears the FTC has prepared  
23 a case against these dealers, as well as DISH  
24 Network.

25                Then the final paragraph, (as read:) I have



1 spoken with BC, and he is willing to talk about this  
2 from a first-hand prospective if you need, or you  
3 can call me as well. Hope all is well with DISH and  
4 you.

5 So you got that e-mail; right?

6 A. I was copied on that e-mail.

7 Q. Yes. Did you talk to BC for a first-hand  
8 prospective about this?

9 A. I don't believe I did.

10 Q. You don't believe you did. Did you pick up  
11 the phone and call the federal government and tell  
12 them that you had this information?

13 A. It looks like it was sent to Brian Neylon.  
14 And that's where I see it went to.

15 Q. But first it was sent to you; right?

16 A. I was copied on it, yes.

17 Q. Right. But you didn't call the federal  
18 government and say, "Hey, these guys admitted to  
19 doing this." You didn't do that?

20 A. I did not call the federal government.

21 Q. And Brian Neylon didn't do that?

22 A. I can't speak specifically for Brian.

23 Q. You don't know whether he did.

24 So after you did this you also -- did you  
25 contact these 30,000 accounts and tell them they

1 were sold through an illegal marketing method?

2 A. Again, I don't -- I did not.

3 Q. Okay. You didn't do that.

4 So let's fast forward to 2008, PX469.

5 okay. Let's skip 469 for the moment and let's  
6 move on to 514. Which is also not in here.

7 Let's move on to 529.

8 So what we have here is TCPA violation  
9 prerecorded messages for a company called Vision  
10 Satellite in 2009. Do you remember this?

11 A. I've seen this document.

12 Q. Right. In fact, we talked earlier about how  
13 Vision Satellite was terminated for prerecorded  
14 message telemarketing; right?

15 A. Did we?

16 Q. I think we did. Vision Satellite was  
17 terminated for telemarketing violations. We said  
18 that earlier?

19 A. Okay.

20 Q. So Mr. Smith, BC Smith, seemed to still be  
21 involved in prerecorded message telemarketing for  
22 DISH for a number of years after the Star Satellite  
23 situation; wouldn't you say that?

24 A. I wouldn't say that.

25 Q. You wouldn't say that?

1 A. No.

2 Q. But you knew he -- he had told you, you  
3 certainly had knowledge from that earlier e-mail  
4 that we saw from 2006 that BC Smith was involved  
5 with prerecorded message telemarketing with Star  
6 Satellite; right?

7 A. That was a communication from Stampede.

8 Q. But you got that e-mail. We talked about  
9 that?

10 A. I did.

11 Q. Yes. So in 2009 BC Smith is providing a  
12 business plan to you and Josh Slater to move away  
13 from prerecorded telemarketing; right?

14 A. It says that he did.

15 Q. Yeah. And it seems like he's moving away  
16 from prerecorded message telemarketing at a pretty  
17 glacial pace, don't you think, Mr. Mills?

18 A. I don't think I would say that.

19 Q. I mean it took four years for DISH to do  
20 anything about this?

21 A. It's a separate retailer.

22 Q. Right. So he went to a different retailer  
23 and continued doing the exact same thing?

24 A. I believe that vision was terminated --  
25 (Court reporter requested clarification.)

1           A. I believe Vision Satellite was terminated  
2 very shortly after this e-mail.

3           Q. Okay. So let's move on.

4           If we could play a little bit more deposition  
5 testimony. Let's do page 92, line 4, from the May  
6 2012 deposition.

7           MR. EWALD: Your Honor, I continue to  
8 object. The last time it showed -- it was personal  
9 questions directed at Mr. Mills that Mr. Runkle  
10 could very easily ask him right now. He's in the  
11 courtroom.

12           MR. RUNKLE: Your Honor, I think what the  
13 last one showed was his testimony was inconsistent  
14 with what the documents showed. And as I said, I  
15 can independently admit this 30(b)(6) testimony.

16           THE COURT: The objection is overruled.  
17 You may proceed.

18           (The following video clip was played.)

19           "Q. Are you familiar with JSR Enterprises?

20           "A. Yes.

21           "Q. Did you ever meet Jerry Grider?

22           "A. I did.

23           "Q. When did you meet Mr. Grider?

24           "A. Again, I'm not exactly sure. I would say it  
25 was probably fairly close to after August 10th,

1 2006. I would -- I met him in his office and gave  
2 them much -- much the same training as I have in the  
3 past with products, pricing, promotions,  
4 disclaimers. Those kind of things.

5 "Q. Okay. What was your understanding of how --  
6 what marketing methods Mr. Grider was going to use  
7 to sell DISH Network?

8 "A. Several different tactics. Online, print.  
9 Yeah, those are the big ones, online and print, is  
10 what --

11 "Q. Okay. Anything else that you remember?

12 "A. Those are the big ones.

13 "Q. Okay."

14 (End of video clip.)

15 Q. All right, Mr. Mills. So what JSR actually  
16 told you was that they were going to only be doing  
17 outbound telemarketing out of their office; isn't  
18 that right?

19 A. I've seen documents since my deposition that  
20 does indicate that they were doing telemarketing,  
21 but at the time they also did indicate that they  
22 were going to do other things as well.

23 Q. They indicated that, but they didn't  
24 actually do that; right? You know that; right?

25 A. I know they did telemarketing. Again,

1        specifics on the other stuff that they did, not --  
2        not sure.

3            Q.    Okay.    So let's go to PX265.

4            These are your words, Mr. Mills.    (As read:)  
5        At the time of launch this was not discussed, nor  
6        did they disclose that they would be doing any  
7        marketing other than outbound out of their office.

8            That's fairly inconsistent with what you said  
9        at your deposition; right?

10          A.    Pardon me?

11          Q.    That's inconsistent with what you said at  
12        your deposition.    You said in your deposition they  
13        were doing print and online, that's what they were  
14        going to do.    But in this e-mail, this says at the  
15        time of launch they indicated they were only going  
16        to be doing outbound out of their office?

17          A.    So like I said, I've been provided  
18        additional documentation after my deposition.    I do  
19        believe that they were doing some outbound  
20        telemarketing.    But I also believe you're taking  
21        this out of context with what it's saying.

22          Q.    But that's not what you said at your  
23        deposition.    You said print and online, you didn't  
24        say telemarketing?

25          A.    That's correct.

1 Q. Because you knew they were a robo call shop,  
2 didn't you?

3 A. No, I wouldn't say that.

4 Q. You didn't know they were a robo call shop?

5 A. No.

6 Q. Did DISH know they were a robo call shop?

7 A. I don't believe so.

8 Q. Let's go to PX239.

9 Mr. Mills, if you could turn to the third page  
10 of this document. This is a spreadsheet that was  
11 sent to Brian Neylon and Mike Oberbillig from Steven  
12 Keller. We've talked about all of those gentlemen,  
13 right? They were all in your organization?

14 A. Correct.

15 Q. Yes. The very bottom -- the very bottom  
16 entry in this spreadsheet is an entry about JSR  
17 Enterprises, right? This document is from  
18 September 8th, 2006. Which was the 40th anniversary  
19 of Star Trek. I just have to add that.

20 So under the primary marketing tools entry it  
21 says (as read:) JSR was using mortgage leads,  
22 autodialers producing nearly 1 million connected  
23 calls a month.

24 That's a robo call shop, isn't it?

25 A. It says they were using autodialers. That's

1 not a specific --

2 Q. One million connected calls a month, that's  
3 a lot of calls?

4 A. I'm not that familiar with how autodialers  
5 work, so I couldn't speak to whether it was a lot of  
6 calls or not a lot of calls.

7 Q. You were in JSR's call center; right?

8 A. I think I was there once.

9 Q. It wasn't an enormous center, was it?

10 A. It was probably a medium -- small/medium  
11 call center.

12 Q. And that number of agents could generate 1  
13 million connected calls a month in your opinion?

14 A. It said the autodialer did it.

15 Q. Right.

16 A. So that's -- what you said was incorrect.  
17 Agents --

18 Q. So they were using autodialers to connect  
19 nearly 1 million calls a month? They were doing  
20 outbound telemarketing?

21 A. Yes. It says autodialer, yes.

22 Q. All right. A lot of outbound telemarketing.  
23 A million phone calls, is that a lot to you?

24 A. Well, a million is a big number, but I don't  
25 know the context of how it works in the



1 telemarketing world.

2 Q. You don't know, okay.

3 So let's look at the box to the left of that.

4 It says (as read:) In addition, he has brought  
5 along an ex-employee of United Satellite who has  
6 great experience in OE tool program. Also, account  
7 is currently working under Dish Nation's umbrella.

8 Not a very good picture again, is it, Mr.  
9 Mills. United Satellite was a robo call shop;  
10 right? we already established that.

11 A. Pardon me?

12 Q. United Satellite was a robo call shop;  
13 right?

14 A. I know they did outbound telemarketing.

15 Q. But they were terminated eventually for  
16 doing prerecorded message telemarketing; right?

17 A. I don't know the specifics of what they were  
18 terminated for.

19 Q. Okay. But you knew they were a robo call  
20 shop; right?

21 A. I knew they did telemarketing.

22 Q. Okay. Well, let's take a look at PX623.  
23 This is an e-mail from Mike Oberbillig. You were  
24 copied on this. This was to the principals of  
25 United Satellite from November 23rd, 2005. (As

1 read:) I need some immediate action items and  
2 response concerning the following issues. This is  
3 the second recent complaint stemming from your  
4 account representing themselves as DISH and message  
5 broadcasting opt-in as a source of marketing.  
6 That's robo calling; right?

7 A. Message broadcasting I believe is the same  
8 thing.

9 Q. Yeah. And you got this e-mail?

10 A. I did.

11 Q. So you knew that United Satellite was a robo  
12 call operation; right?

13 A. I was aware of a couple of complaints.

14 Q. You aware of that, okay.

15 So United Satellite was a robo call operation,  
16 and JSR Enterprises brought an ex-employee of United  
17 Satellite to help them with autodialers and their  
18 sales. This is from September 8th, 2006; is that  
19 right?

20 A. I didn't say United Satellite was a robo  
21 operation.

22 Q. Okay. But it certainly looks like it was a  
23 robo call operation, wouldn't you agree with me?

24 A. It looks like they had a couple of  
25 complaints.

1           Q. Okay. Did you know that United Satellite  
2 was the DISH Network sales arm of Global Satellite,  
3 which had been sued by the FTC as part of the  
4 DirectTV case for robo calling?

5           A. Pardon me?

6           Q. Did you know that United Satellite was the  
7 DISH Network OE sales arm of a different company  
8 called Global Satellite that had also been sued by  
9 the FTC as part of its case against DirectTV? Did  
10 you know that?

11          A. I'm not sure if I did or didn't.

12          Q. You didn't know that, okay.

13          So let's go back to JSR for one moment. Go to  
14 Exhibit 1044. This is the welcome package that was  
15 eventually shared with JSR Enterprises; is that  
16 right?

17          A. I don't know I'd say it's a welcome package,  
18 but it looks like a set of documents that would be  
19 shared with them.

20          Q. Right. It's a set of documents for them to  
21 become an OE retailer essentially; is that right?

22          A. I don't think I'd say that either. Looks  
23 like there was information provided to them when  
24 they became an OE retailer.

25          Q. Okay. And some of those were the terms and

1 disclosures that DISH was required -- I mean that  
2 JSR was required to read to DISH customers?

3 A. There are disclosures included in here.

4 Q. There's disclosures, there's business rules.  
5 There is a rate card. And there is a log-ins and  
6 passwords template; is that right?

7 A. Yes.

8 Q. Okay. And the log-ins and passwords  
9 template would allow the OE retailer to request  
10 log-ins so that the sales agents could log into the  
11 OE system; is that right?

12 A. I'm not positive. There was a template.  
13 Looks like we provided them log-ins with this  
14 template.

15 Q. Okay. So I'd like to turn your attention to  
16 1044, page 13. I think we may have mentioned --  
17 Ms. Ohta may have mentioned this on Friday. There  
18 is a call monitoring provision here; right,  
19 Mr. Mills?

20 A. Yes. In the business rules; correct.

21 Q. Okay. And that involves the idea that the  
22 retailer would allow EchoStar to monitor or record  
23 or otherwise access all information about the  
24 telephone calls that the retailer was making or  
25 receiving; is that right?

1 A. That's what it says.

2 Q. Do you know if DISH ever exercised its  
3 rights under this provision to get JSR's call  
4 records?

5 A. I don't -- I don't know if we did get their  
6 call records. No, I don't know.

7 Q. Right. Because what we now know is JSR was  
8 a robo call operation that was dialing people on the  
9 Do Not Call Registry; you know that, right?

10 A. I think that's part of this case.

11 Q. Part of this case, right.

12 But DISH never exercised its right to actually  
13 figure out what JSR was doing at the time, did it?

14 A. They were an OE retailer for less than six  
15 months, so -- again, I don't know if we asked for  
16 this information or not.

17 Q. Do you know how many calls a robo call  
18 operation can make in one day?

19 A. I have no idea.

20 Q. You don't know that. Does a hundred  
21 thousand or more sound right to you?

22 A. I have no idea.

23 Q. You have no idea, okay.

24 Let's turn to 265. In fact, when issues arose  
25 with JSR Enterprises, you were the one that

1 suggested that they -- that DISH shouldn't terminate  
2 JSR; right?

3 A. Are we at 265?

4 Q. PX265.

5 A. Could you repeat the question.

6 Q. You were the one that suggested that if JSR  
7 did what you guys wanted, they shouldn't be  
8 terminated; right. That was your suggestion?

9 A. It looks like they were using a call center  
10 out of the Philippines. They discontinued use. And  
11 that they were now 100 percent in-house. And I  
12 didn't support termination, but I would support a  
13 fine. That's what it says.

14 Q. As long as they told you what you wanted to  
15 hear calls could keep on rolling; right, Mr. Mills?

16 A. I wouldn't say that.

17 Q. But you didn't exercise any of your  
18 contractual rights to figure out what they were  
19 doing; isn't that right?

20 A. I'm sorry, can you say that again.

21 Q. DISH didn't exercise any of its contractual  
22 rights to figure out what JSR Enterprises was  
23 actually doing; right?

24 A. Again, I'm not understanding.

25 Q. DISH never figured out what JSR was actually

1     doing during this time frame? You were just  
2     listening to what they were saying and suggesting  
3     that you not terminate them?

4           A. I know we got a few complaints on JSR. And  
5     they responded to each and every one of them.

6           Q. They responded to the complaints, but DISH  
7     never figured out what was actually going on?

8           A. They responded very logically to the  
9     complaints.

10          Q. Did you know that JSR had a bunch of robo  
11     call dialers in a facility in Texas? Did you know  
12     that, Mr. Mills?

13          A. I believe they had -- a colo facility in  
14     Texas, is what they told us. I wouldn't equate that  
15     to robo dialing.

16          Q. Okay. Do you --

17                 THE COURT: I'm sorry, what did you call  
18     the facility?

19          A. A colo. Co-location.

20          Q. So facility --

21          A. C-o-l-o.

22          Q. -- a number of other company's telephone  
23     equipment also; right?

24          A. Again, I'm not an expert on telephone  
25     equipment.

1 Q. You don't know. Do you remember anything  
2 else about JSR?

3 A. Specifically?

4 Q. Yes.

5 A. I know we terminated them.

6 Q. Terminated them, okay.

7 So let's move on here. Now at certain times  
8 DISH has seemed to use the OE retailers as an  
9 extension of its own direct sales strategies; would  
10 you agree with that?

11 A. No, I don't think I'd agree with that.

12 Q. Let's turn to PX331. Who is Ira Bahr?

13 A. I believe he was -- he was in our Marketing  
14 Department.

15 Q. And who is Lana Luth?

16 A. She was my supervisor at the time.

17 Q. She was your supervisor at the time.

18 So it certainly seems like a certain point in  
19 2011 what happened was DISH was expecting a surge of  
20 phone calls to its own call centers. And in order  
21 to handle this surge DISH set up a system whereby  
22 several of the OE retailers would get those calls.  
23 So a consumer would call DISH's number and in fact  
24 they would get -- they would get an OE retailer's  
25 call center. And Mr. Bahr and Ms. Luth seemed to



1 think these retailers could answer the phone as DISH  
2 Corporate; isn't that right?

3 A. It says, (as read:) No processing fee and  
4 answer the phone as DISH Corporate. That's what it  
5 says.

6 Q. That's right. Now, Mr. Bicks asked some  
7 questions last week about how the retailers were  
8 never supposedly able to do this. It certainly  
9 seems like DISH sees the retailers as an extension  
10 of its own strategies, doesn't it?

11 A. I don't agree with that.

12 Q. You don't agree with that. So these  
13 retailers, when it's convenient for DISH to use them  
14 as overflow call centers, DISH will use them as  
15 overflow DISH centers. When it's not convenient to  
16 be close to the retailers, DISH has no idea what is  
17 going on. Isn't that right, Mr. Mills?

18 A. I wouldn't say that.

19 Q. You wouldn't say that. But DISH certainly  
20 feels -- seems to believe it can tell retailers to  
21 answer the phone as DISH Corporate. We know that?

22 A. This didn't happen.

23 Q. I know that it wasn't implemented, but I'm  
24 talking about what these people believed could  
25 happen?

1           A. For -- this didn't happen.

2           Q. It didn't happen, but they believed that  
3 they could have the retailers hook-up their systems  
4 to DISH's, take DISH's calls, and answer the phone  
5 as DISH Corporate; isn't that right?

6           A. I would not say that.

7           Q. But that's what happened in these e-mails?  
8 Right?

9           A. No, that's not what it says in these  
10 e-mails.

11          Q. That was the plan that was put into motion,  
12 and then the take down of the channel never actually  
13 happened?

14          A. No. You said specifically connecting phone  
15 systems and things like that. Absolutely never  
16 happened.

17          Q. But that's what is happening in this  
18 document, isn't it?

19          A. There's no connecting of phone systems.

20          Q. Well, they're answering -- those phone calls  
21 that are being called by the consumer to DISH are  
22 getting routed to the -- are getting routed to the  
23 retailers' call center; right? That's what is going  
24 on here at the bottom of 331, page 1?

25          A. This never happened.

1           Q. It was a plan that was -- it was a plan that  
2 was proposed; right?

3           A. It was a plan that was being discussed.

4           Q. That's right. And the reason that it never  
5 happened was because the channels weren't actually  
6 taken down? Or the channel takedown lasted a very  
7 short time; isn't that right?

8           A. I don't know if they were taken down or not,  
9 but I know that this did not happen.

10          Q. All right. So let's move on to Exhibit 409.  
11 What's this document, Mr. Mills?

12          A. Looks like this -- some activation  
13 information and some account updates.

14          Q. This is something that would have been  
15 generated from your department; would you agree with  
16 that?

17          A. Yes. It looks like it would have; yes.

18          Q. Right. So it goes through all of the OE  
19 retailers who were active at the time. And this is  
20 a document that looks like from January 2012. And  
21 it goes through exactly what's going on with those  
22 OE retailers, how much they're gonna spend on  
23 advertising, whether they're registered for Team  
24 Summit, and their business plans, and their current  
25 statuses at that -- in that period of time; is that

1 right?

2 A. It looks like there's a lot of information  
3 discussed on the accounts; yes.

4 Q. So you'd agree with me, wouldn't you,  
5 Mr. Mills, that DISH certainly has a lot of  
6 information about what the OE retailers are doing;  
7 isn't that right?

8 A. Again, I think we're looking at the 2012  
9 time frame. So it looks like the account managers  
10 were involved in the businesses and understood what  
11 was going on, you know, in the businesses.

12 Q. They understood what was going on in the  
13 businesses, because that's smart business, isn't it,  
14 Mr. Mills?

15 A. I think you should understand the businesses  
16 you do business with.

17 Q. Right. To understand who you're doing  
18 business with and how they're generated sales;  
19 that's smart business, isn't it, Mr. Mills?

20 A. Again, I think it's smart to have an overall  
21 understanding of the account; yes.

22 Q. Right. And this is more than an overall  
23 understanding. This is very specific, don't you  
24 think? Some of these have very, very detailed  
25 descriptions of what is going on with these OE

1       retailers; wouldn't you agree with me on that?

2           A. I don't know if I'd go very specific. There  
3       are details.

4           Q. Well, there's no reason to believe that  
5       the -- the account reps, the national account  
6       managers, wouldn't have been able to acquire even  
7       more information about this; isn't that right?

8           A. I don't know if I'd say that.

9           Q. You wouldn't say that. So the national  
10       account managers were not able to obtain information  
11       from these OE retailers about what they were doing?

12          A. Probably depends on the retailer.

13          Q. But they're contractually obliged to give  
14       you information about how they're executing the  
15       marketing part of their contract; isn't that right?

16          A. Again, I know that they're contractually  
17       obligated to do all marketing within the bounds of  
18       the law.

19          Q. Sure, but that wasn't the question I asked.  
20       The question I asked you was whether they were  
21       contractually obligated to provide DISH with  
22       information on how they were marketing this product?

23          A. I believe -- there was -- they had to submit  
24       marketing pieces to us for approval, make sure the  
25       brand was being represented correctly.

1           Q. But they also had to provide information to  
2 you; isn't that right?

3           A. I'm not understanding what you're asking.

4           Q. Okay. Let's go to PX238. It's not in your  
5 binder. We have looked at it many times. We will  
6 put it up on the screen so you can see it. If you  
7 would go to paragraph 7.3 of that.

8           Do we know which page 7.3 is on? Page 16. If  
9 you could blow up paragraph 7.3.

10          Look down four lines from the bottom, this is  
11 the standard retailer agreement. This is actually  
12 JSR Enterprises' retailer agreement. (As read:)  
13 Retailer shall cooperate by supplying EchoStar with  
14 information relating to those actions as EchoStar  
15 reasonably requests.

16          And those actions are the actions taken in  
17 connection with the marketing, advertisement,  
18 promotion and/or solicitation of orders for  
19 programming and the sale of DISH DVS systems.

20          Does that seem familiar to you? That  
21 provision?

22          A. It looks to be a part of our contract.

23          Q. Right. So the retailers actually had to  
24 provide information about what they were doing when  
25 they sold DISH Network; isn't that right?

1           A. So in practice I don't believe we did that.  
2 But it does say they'll cooperate by suppling us  
3 information as we reasonably request.

4           Q. Okay. So, Mr. Mills, you're familiar with  
5 some affidavits that DISH has filed in federal  
6 courts in telemarketing cases? Are you familiar  
7 with some affidavits about DISH's actions with  
8 relation to its retailers?

9           A. I'm aware of my affidavits.

10          Q. You're aware of your affidavits.

11          Let's look at Bruce Werner's affidavit from  
12 2007, I believe. If you could bring up PX1374.  
13 We're gonna get you a copy of this.

14          Sorry, this document is from 2011.

15                 MR. EWALD: Your Honor, I would just note  
16 that -- an objection. There have been a number of  
17 documents that have put before Mr. Mills today that  
18 were not in our binder, they were not identified by  
19 Plaintiffs. I understand there may be a couple that  
20 come up, you know, during examination, but there are  
21 a number that have not been provided that have come  
22 up.

23          Q. I think these are a number of exhibits that  
24 have already been marked as exhibits in this case,  
25 Your Honor.

1 THE COURT: The objection is overruled.

2 Q. Let's turn to page 3 to Paragraphs 10 and  
3 11. (As read:) DISH Network does not and cannot  
4 control the manner and means in which the retailers  
5 market and sell DISH brand systems and packages.  
6 The details of when, how, and by who the actual  
7 marketing and sales are to be performed are left to  
8 the retailers.

9 Seems in tension with the reality that we've  
10 been discussing today, Mr. Mills? Maybe it's not  
11 literally false, but it seems in tension with the  
12 reality we've been discussing; don't you think?

13 A. I don't believe so.

14 Q. We discussed the situation earlier where  
15 Mr. Ahmed and your team successfully controlled  
16 the -- the actions that the retailers were taking in  
17 providing a better quality sale to the customers;  
18 right?

19 A. We had a QA program.

20 Q. Right. But Paragraph 10 wasn't talking  
21 about the QA program, right?

22 Paragraph 10 says that you can -- you do not  
23 and cannot control the manner and means in which the  
24 retailers market DISH. But what we established  
25 today was that your employees are in the call



1 centers writing scripts, revising scripts, telling  
2 the retailers exactly how DISH wants the product  
3 marketed. Isn't that right, Mr. Mills?

4 A. No, it's not.

5 Q. That's what you said earlier?

6 A. Pardon me?

7 Q. That's what you said earlier, isn't it?

8 A. When did I say that?

9 Q. You said that your employees were in the  
10 call centers revising scripts; right? We agreed on  
11 that earlier.

12 A. My employees have looked at scripts; that's  
13 right.

14 Q. That's right. And you said your employees  
15 were in the call centers driving QA scores up and  
16 making sure that the retailers performed on a  
17 specific set of data points that DISH required them  
18 to perform on to get their scores up; isn't that  
19 right, Mr. Mills?

20 A. Yes. The account managers would work with  
21 the retailers on areas of improvement for the QA;  
22 yes.

23 Q. Right. But DISH didn't tell the Court that,  
24 did it? It didn't tell the Court that it put people  
25 in the call centers driving the retailers to change

1 their marketing methods? Didn't say that, did it?

2 A. No. It says specifically we did not do  
3 that.

4 Q. That's right. But you did?

5 A. I don't believe we did.

6 Q. All right. So let's look at Paragraph 11.  
7 (As read:) DISH Network does not supply, approve,  
8 or review the names, addresses, or other contact  
9 information of persons or entities to which the  
10 retailers or their third-party marketing vendors  
11 make telephone calls. DISH Network has no way of  
12 knowing who the retailers are calling or referring  
13 source of new orders.

14 Now, that one is even less true; right,  
15 Mr. Mills?

16 A. I'm reading it, one sec.

17 I know that I testified in the past that we  
18 have provided a couple of lead lists over the years,  
19 so that in its entirety is not 100 percent accurate.

20 Q. Right, it's not accurate. And you testified  
21 that it wasn't accurate; right?

22 A. I testified that we did provide a couple of  
23 lists over the years. Lead lists. So that part of  
24 it would not be accurate.

25 Q. Right. In fact, in 2011 there was an

1 initiative where DISH was providing leads because  
2 DISH's dialer wasn't working; right? Remember that?

3 A. Yes. We provided leads to a couple of  
4 retailers, I think Sterling and Infinity, over a  
5 couple month time frame.

6 Q. Right. And in 2007 and 2008, you and I had  
7 a discussion in September 2012, we had a deposition  
8 that was just about that topic; right?

9 A. Yes.

10 Q. Right. And so in 2007, 2008, there were  
11 also lead lists shared; right?

12 A. I know we spoke about a couple lead lists  
13 that were provided to Defender.

14 Q. Right. And the reason that that program  
15 didn't continue was because it was not successful;  
16 isn't that right, Mr. Mills?

17 A. I'm not 100 percent positive on why it  
18 didn't continue. But it did not continue.

19 Q. Right. But it wasn't because DISH Network  
20 does not supply, approve, or review the names,  
21 addresses, or other contact information of persons  
22 or entities to which the retailers make telephone  
23 calls; right? It's not because there was a DISH  
24 policy; right?

25 A. It certainly wasn't our practice to do it,

1 but there were some -- there were a couple one-off  
2 occasions that did occur.

3 Q. So it's multiple one-off occasions; that's  
4 your testimony?

5 A. Well, there was a few occasions.

6 Q. There were a few occasions, right.

7 Do you know whether DISH went back to the Judge  
8 in the Eastern District of Virginia and said, "Hey,  
9 we told a fib." Did DISH do that?

10 A. I know I told the truth when we spoke.

11 Q. Yes. But what I asked you was did you know  
12 whether DISH went back -- because this was a  
13 consumer who was -- I think got 90 telemarketing  
14 calls from some sort of DISH Network solicitor,  
15 something like that. Did you ever hear about this  
16 case?

17 A. I don't know if I did or didn't.

18 Q. You didn't hear about it because DISH won  
19 because summary judgment was granted. And this  
20 affidavit was helpful for that; right?

21 MR. EWALD: Is there a question?

22 THE COURT: Yes, there's a question. Can  
23 you answer?

24 A. I'm sorry, could you repeat the question. I  
25 got distracted.

1           Q. I said this affidavit was helpful for DISH,  
2 right? This affidavit that has false information in  
3 it was helpful for DISH?

4           A. I wasn't involved in this in any way,  
5 shape --

6           Q. You weren't involved. But you knew about  
7 the sharing of lead lists; right?

8           A. Yes. As I spoke about, I know there were a  
9 few lead lists over the years.

10          Q. Right. But Bruce Werner didn't know, did  
11 he?

12                 MR. EWALD: Objection. Asking about what  
13 Bruce Werner knew.

14                 THE COURT: He can answer if he knows.

15          A. Again, I don't know exactly what Bruce knew  
16 and when.

17          Q. But Bruce wasn't in your department, was he?

18          A. He wasn't in my department; no.

19          Q. But Bruce wouldn't have known if leads were  
20 sent to retailers, would he?

21          A. I don't know if he would or wouldn't. I  
22 really don't.

23          Q. He wouldn't have been part of that process,  
24 right? He was Risk and Audit, right?

25          A. He was in Risk and Audit.

1           Q. Right. He wouldn't have been part of that  
2 process; isn't that fair to say?

3           A. I don't know if he would or wouldn't.

4           Q. So this wasn't the only affidavit that was  
5 like this, was it, Mr. Mills?

6           A. Sorry?

7           Q. It's not the only affidavit that DISH filed  
8 that had that type of information in it, was it?

9           A. Can you provide some additional information?

10          Q. Sure. There's one that's, I believe --

11          This one's in this Court. So if you could turn  
12 to page 3, Paragraph 8.

13          A. Okay.

14          Q. Do you see this document? This is the  
15 affidavit that you filed in this case; right?

16          A. That's correct.

17          Q. It says (as read:) I am not aware of any  
18 instance in which DISH Network provided a lead list  
19 for telemarketing purposes to any other retailer,  
20 including Defender Security and Marketing Guru. In  
21 fact, I testified during my deposition that I did  
22 not believe that DISH Network provided Defender or  
23 Marketing Guru with leads for telemarketing  
24 purposes. Right?

25          A. Correct.

1 Q. Right. And that turned out not to be true  
2 either?

3 A. The Defender part was incorrect.

4 Q. Right. And there were certainly some big  
5 questions about Marketing Guru, because there was  
6 another e-mail where it certainly seems like --

7 (Court reporter requested clarification.)

8 Q. So the part about Defender Security was  
9 false. The part about Marketing Guru, there are  
10 certainly some questions about that, because there  
11 is an extended e-mail chain about sending lead lists  
12 to Marketing Guru; right?

13 A. So you and I had a follow-up discussion  
14 after this, after I was provided additional  
15 documentation on Defender Security. So we talked  
16 about that.

17 And on the Marketing Guru side, again, I still  
18 am unable to find any lead list we provided them.

19 Q. Okay. So let's turn to PX704. This is one  
20 of those e-mails that's the recycled lead process;  
21 right? Do you see those e-mails?

22 A. Give me a minute just to look through it.  
23 Okay, I've read it.

24 Q. Okay. So this is one of those e-mails that  
25 DISH was discussing internally sending leads to

1 Defender; right?

2 A. Looks to be; yes.

3 Q. And this is May 2007 to June 2007?

4 A. Those look like the dates it spans; yes.

5 Q. Okay. So that's talking about sending some  
6 sort of leads to Defender. We don't know how many.

7 Then if you could turn to PX58.

8 So this is June 2008, and you're sending lead  
9 lists to Defender again? DISH Network is sending  
10 lead lists to Defender again; right?

11 A. Looks like we were planning to, but I can't  
12 see where we did.

13 Q. Well, there's -- there's a contract here at  
14 the back of this document. And I believe you  
15 testified that sales leads were actually sent during  
16 this time period. It says (as read:) Defender is  
17 calling on behalf of DISH Network. Do you see that  
18 on page 2?

19 A. So I know Defender was going down the path  
20 of trying to get a vendor relationship. But again,  
21 I don't -- I can't find that we actually consummated  
22 that.

23 Q. Well, you know that now? You didn't know it  
24 when you told the Court that that never happened;  
25 right?



1           A. No, I -- I don't know that we did go down  
2 the path of a vendor relationship. I have not seen  
3 an agreement on that.

4           Q. If you didn't go down the path of a vendor  
5 relationship, you knew that DISH had sent leads;  
6 right? You know that now?

7           A. I believe the test that we did with them,  
8 the leads were DNC scrubbed, and that particular  
9 test was them as a retailer.

10          Q. Right. But you know it happened more than  
11 once; right?

12          A. I believe in that instance it was twice that  
13 I saw.

14          Q. Okay. But one of these e-mail chains is  
15 from 2007, the other is from 2008. Seems to suggest  
16 it's more than a one-off thing? In fact, you said  
17 it was a multiple one-off type of situation?

18          A. I think you said that. I said that there  
19 were a few instances.

20          Q. You said there were a few one-off instances?

21          A. That's correct.

22          Q. Okay. So that was a one-off instance that  
23 happened more than once?

24          A. So as I said previously, I believe there was  
25 a couple, like two lists, that were provided to

1 Defender.

2 Q. Sure. But when -- when it came down to tell  
3 the federal courts about this, DISH was reluctant to  
4 tell the federal courts the truth about what was on,  
5 don't you think?

6 MR. EWALD: Objection, Your Honor --

7 A. I wouldn't say --

8 THE COURT: The objection is overruled.

9 A. I wouldn't say that.

10 Q. You wouldn't say that.

11 well, we can go through some other affidavits  
12 that have the exact same language. Are you aware  
13 there are other affidavits that have the same  
14 language?

15 A. I'm not aware, no.

16 Q. well, let's do another document first.

17 Let's do PX621.

18 All right. So this is an e-mail from March  
19 2006, with the subject line DISH Network Call Center  
20 Harassment. It starts out as a complaint from a  
21 consumer. The complaint bounces all the way up to  
22 Jim DeFranco. And other people are involved in this  
23 e-mail chain.

24 And Eric Carlson, who we discovered last week  
25 worked his way, starting at DISH out of high school,

1 to be president of the company, he said on the first  
2 page, (as read:) Currently we do not share leads  
3 with OE retailers. However, we did share one list  
4 of leads through Maulik/Amir in Q4 last year. These  
5 were sent only to Marketing Guru, and Guru is no  
6 longer using the list. It may make sense to utilize  
7 some inbound-outbound retailer resources. We have  
8 discussed the concept with Jody/Tom briefly and  
9 we -- and will be continuing to evaluate the  
10 feasibility.

11 So DISH sent telemarketing leads to Marketing  
12 Guru; is that right, Mr. Mills?

13 A. I can't find anywhere that we did.

14 Q. This e-mail is about telemarketing, isn't  
15 it?

16 A. I don't think the entire e-mail is about  
17 telemarketing, but telemarketing is mentioned.

18 Q. Telemarketing is mentioned. DISH Network  
19 Call Center Harassment; right? That's what the  
20 subject line is?

21 A. Correct.

22 Q. So your testimony today is that DISH did not  
23 send leads to Marketing Guru also? That is your  
24 testimony today?

25 A. I can't find that we did.

1 Q. You can't find that you did?

2 A. Correct.

3 Q. Well, what do you think from reading this?

4 Think they used the list for mail pieces?

5 Inbound-outbound retailer resources. That sounds

6 like telemarketing to me; doesn't it, Mr. Mills?

7 A. Again, I don't know if that's the same

8 subject. Again, it does say something about a lead

9 list for Marketing Guru. I can't find that we did.

10 In a separate sentence, which again I wouldn't say

11 is necessarily related, it does say it may make

12 sense to utilize some inbound-outbound retailer

13 resources.

14 Q. Okay. That's all I have for right now.

15 THE COURT: Do the states have any

16 questions?

17 MR. RUNKLE: Oh, I have some documents to

18 admit also.

19 THE COURT: Go ahead.

20 MR. RUNKLE: So we have PX80. Do you want

21 them one by one, Your Honor?

22 MR. EWALD: Yes, Your Honor. I need to

23 check to see if we have an objection for each of

24 these. So it will take just one moment.

25 would you prefer, Your Honor, that we deal with

1 this over the lunch break and then come back and see  
2 if we have any objections that are outstanding?

3 THE COURT: Sure. Will Mr. Mills stick  
4 around in case there's a problem?

5 MR. EWALD: Yes. I think -- it's 11:33  
6 right now, I don't think I'll finish my direct  
7 before the lunch break. He will be around anyway.

8 THE COURT: All right.

9 MR. EWALD: Your Honor, could we just have  
10 a minute or two. We need to bring in a timeline for  
11 you to see.

12 THE COURT: A what?

13 MR. EWALD: A timeline for you to see.

14 THE COURT: Oh good. Court is in recess.

15 (A break was taken.)

16 THE COURT: Please proceed, Mr. Ewald.

17 REDIRECT EXAMINATION

18 BY MR. EWALD:

19 Q. Good morning, Mr. Mills.

20 A. Good morning.

21 Q. So I know you talked about a lot of  
22 different things during your testimony involving  
23 Mr. Runkle. I want to start out with Dish TV Now.

24 A. Okay.

25 Q. And to your right, to the Court's right,

1     you'll see a timeline up there that notes some of  
2     the significant events.

3             So are you aware that this Court found that  
4     Dish TV Now was responsible for over 6 million  
5     prerecorded calls being made from June to August  
6     2004?

7             A.    I am.

8             Q.    And during that time period in 2004, remind  
9     us what your position was at DISH?

10            A.    I was a -- my position was business  
11     development manager.

12            Q.    And in that position did you have  
13     responsibilities relating to Dish TV Now?

14            A.    I did.

15            Q.    During that time period in 2004, did you  
16     know that Dish TV Now was doing outbound  
17     telemarketing?

18            A.    I did not.

19            Q.    During that time period did you know that  
20     Dish TV Now was using prerecorded calls to generate  
21     sales?

22            A.    I did not.

23            Q.    In 2004, 2005, were you aware that Dish TV  
24     Now was using a company called Guardian  
25     Communications to make calls?

1 A. I was not.

2 Q. And when did you find out about the  
3 existence and use of Guardian?

4 A. Really in preparation for this case.

5 Q. And when you found out about that, how did  
6 you react?

7 A. I was actually shocked.

8 Q. Why do you say that?

9 A. You know, I spent time in their call center,  
10 and, you know, it -- it did not seem that that was  
11 the type of marketing they were doing. In fact,  
12 I -- I believe their -- most of their marketing was  
13 television.

14 And I remember being in the call center, and  
15 you know, I was doing training on agents for  
16 products and promotions, and -- and they would yell  
17 on the floor, "Hey, we have a commercial coming up  
18 in five minutes, everybody on the phone."

19 So nothing lead me to believe they were not  
20 doing that.

21 Q. So let's turn back to the start of the  
22 relationship. There have been some discussions of a  
23 name of the principal, Dave Hagan; is that right?

24 A. Yes.

25 Q. And you met Mr. Hagan; right?

1           A. I did on a few occasions; yes.

2           Q. What was your impression of him when you met  
3 him?

4           A. Seemed like a legitimate businessman.  
5 Had -- had a big call center. Was a very large  
6 DirectTV retailer. So just all in all seemed like a  
7 very legitimate business.

8           Q. And why was it notable for you that he was a  
9 DirectTV retailer?

10          A. That they understood the satellite business.  
11 And could leverage those learnings that they had on  
12 the DirectTV side on the DISH side.

13          Q. Did representatives from Dish TV Now visit  
14 DISH before Dish TV Now became a retailer?

15          A. They did.

16          Q. And can you describe that meeting?

17          A. Yeah. So this is -- it was actually a very  
18 memorable meeting for me. I was fairly junior in my  
19 career. We're talking about, you know, 2003, I had  
20 started in '01. And I was working with Amir at the  
21 time.

22                 And Dish TV Now was a big DirectTV retailer.  
23 They came into Denver for a meeting. And it was my  
24 responsibility to present what was, at the time,  
25 very limited knowledge of the OE tool. And I



1 remember specifically that Charlie Ergen was in that  
2 meeting and that was my first exposure to our CEO  
3 being in a meeting. So pretty memorable to me.

4 Q. And then how did your presentation go?

5 A. Well, I'm still here many years later, so --  
6 but no, I think it went well. And we proceeded from  
7 there.

8 Q. Was there any discussion about outbound  
9 telemarketing at that meeting?

10 A. There was not.

11 Q. Did Dish TV Now submit a business plan to  
12 DISH?

13 A. They did.

14 Q. PX148. Passing out binders. This will be  
15 in tab 1.

16 Is this the business plan you were referring  
17 to, Mr. Mills?

18 A. Yes.

19 Q. Now, what did this business plan indicate  
20 would be Dish TV Now's principle form of marketing?

21 A. Television.

22 Q. Do you see in the middle of that second  
23 paragraph starting with the sentence, (as read:)  
24 The company's in-house webmaster will immediately be  
25 assigned the responsibility to employ, establish

1 internet marketing techniques to capture significant  
2 market share by directing prospect response both to  
3 the call center and the website. Internet marketing  
4 is expected to incrementally realize several  
5 thousand new DISH Network subscribers per month.

6 So they also indicate that internet marketing  
7 would be a method of marketing?

8 A. They did indicate it in this; yes.

9 Q. In the very next sentence it says, (as  
10 read:) Dish TV Now principle form of marketing will  
11 be through response television advertising. Right?

12 A. Yes.

13 Q. Now, does this business plan also indicate  
14 what were the marketing methods that DISH -- or that  
15 Mr. Hagan used previously on -- in speaking -- or  
16 working with DirectTV?

17 A. Yes. In the top of the document it  
18 indicates that Prime TV, which was their DirectTV  
19 business, their marketing team developed some places  
20 a combination of direct response commercials,  
21 newspaper, co-op, direct mail, Yellow Pages, and  
22 internet advertising. And says to yield an average  
23 of 27,000 new DirectTV subscribers per month.

24 Q. Does this business plan make any reference  
25 to Dish TV Now using outbound telemarketing in

1 connection with DISH products?

2 A. It does not.

3 Q. And does this business plan indicate that  
4 Dish TV Now will be using Guardian to make  
5 prerecorded calls?

6 A. It does not.

7 Q. And what type of subscriber activations did  
8 Dish TV Now project in this plan?

9 A. A ramp-up up to somewhere between 19 and  
10 20,000 -- 21,000 activations per month over the  
11 course of roughly about a year.

12 Q. And how would this number of activations per  
13 month compare with -- with other DISH retailers at  
14 the time?

15 A. They would have been the largest by far.

16 Q. So I believe you testified during  
17 Mr. Runkle's questions, and then at the beginning of  
18 this direct, that you visited Dish TV Now once they  
19 became an OE retailer; right?

20 A. I did.

21 Q. And where were their offices located?

22 A. Southern Pines, North Carolina.

23 Q. What do you recall about their offices?

24 A. Large call center. You know, it -- it was  
25 in a former grocery store. I don't remember the

1 chain that it was, because I have never known before  
2 that, but it was a grocery store. You go inside,  
3 there with a large call center. They also had an  
4 area in which they had kind of executive offices.

5 Q. And this picture there, it's not the best  
6 one, is that a picture of the offices?

7 A. Yes.

8 Q. Now what kind of marketing did you think  
9 that Dish TV Now was doing in 2004?

10 A. Television predominantly.

11 Q. Did you ever see any copies or any  
12 indication of this type of advertising?

13 A. Yes. I saw copies and I saw it run on  
14 television.

15 Q. We talked a little bit about what you  
16 observed when you visited the call centers -- call  
17 center, rather. Did you observe any outbound  
18 telemarketing taking place while you were in the  
19 call center?

20 A. Not when I was there.

21 Q. Did you observe any indication that Dish TV  
22 Now was using prerecorded messages?

23 A. No.

24 Q. In the beginning of this testimony you  
25 referred to an incident related to a TV ad; is that

1 right?

2 A. Yes.

3 Q. Can you describe that in a little bit more  
4 detail?

5 A. My primary role at Dish TV Now was -- I was  
6 really training, supporting, working with the group  
7 back in Denver making sure the OE tool was working  
8 correctly; those kind of things.

9 But, you know, there was -- on more than one  
10 occasions when I was out there I'd be doing training  
11 with agents, going over products, pricing, and  
12 promotions. And the sales managing staff would  
13 literally tell everybody, "Everybody back on the  
14 phones. We have a television hitting in five  
15 minutes." And everybody would, you know, get back  
16 on the phones. They didn't want to abandon calls.

17 Q. Was Dish TV Now also marketing products  
18 other than DISH?

19 A. They were -- I know when they started they  
20 were still marketing DirectTV. I think they had  
21 other products and services, but I really wasn't --  
22 those would be the two I would know about.

23 Q. Now, did you notice an increase in Dish TV  
24 Now's activations at any point?

25 A. Yes. I mean shortly after they came on

1 board as a retailer.

2 Q. What did you think when you saw this rise in  
3 activations?

4 A. Honestly, I thought that, hey, these guys  
5 can do exactly what they told us they can do.

6 Q. And was it comparable generally to the  
7 20,000 or so activations that they had promised you  
8 in the marketing plan?

9 A. I don't know what they ultimately got up to,  
10 but I know that the sales ramp plan, while not  
11 exact, was along the lines of this type of ramp-up  
12 program.

13 Q. And as a reminder, how did Dish TV Now  
14 promise that it would get those activations in its  
15 business plan?

16 A. Marketing and internet. Sorry, television  
17 and internet.

18 Q. Now, with Mr. Runkle you talked a little bit  
19 about the concept of churn; right?

20 A. Mm-hmm, correct.

21 Q. Please describe again what is churn?

22 A. Well, churn ultimately is consumers who  
23 leave our service. So if they activate and  
24 subsequently leave the DISH service, that would be a  
25 churning customer.

1 Q. How long does DISH need to retain a customer  
2 in order for it to be profitable for DISH?

3 A. The numbers that I've seen are three plus  
4 years.

5 Q. I'm sorry, how long?

6 A. Three plus years.

7 Q. And can you describe why that's the case?

8 A. So we have a subscriber acquisition cost  
9 that we equate to every subscriber. So it takes us  
10 time, over time, to recoup that initial investment  
11 in the customer.

12 Q. Do you recall your testimony in response to  
13 Mr. Runkle's questions about what high churn means  
14 to DISH?

15 A. Yeah. I mean high churn ultimately would  
16 lead to unprofitable subscribers.

17 Q. PX1144, please.

18 Mr. Mills, what is this document?

19 A. Okay. So it looks like it would be  
20 something that would be included in a termination  
21 packet.

22 Q. And you see there in the middle section  
23 listing out activations and churn information for  
24 Dish TV Now for, seems to be a three month period in  
25 2005; is that right?

1 A. That's what it looks like; yes.

2 Q. And what is the churn rate listed for DISH?

3 A. So we got 1.59 percent, 1.66 percent,  
4 1.57 percent.

5 Q. Can you describe what that -- what that  
6 statistic means?

7 A. I mean that would be a -- a good -- not  
8 great, but a good churn rate. I know we had always  
9 targeted under one and a half percent to be -- to be  
10 on the good side.

11 Q. And is that representing the churn rate for  
12 sales made by DISH directly?

13 A. Yes.

14 Q. And what is the churn rate indicated for  
15 Dish TV Now for that time period?

16 A. 3.03 percent, 2.99 percent, 2.83 percent.

17 Q. And how would you characterize that churn  
18 rate?

19 A. That would be a very poor churn rate.

20 Q. And how does it compare to the churn rate  
21 for DISH?

22 A. Almost double.

23 Q. DTX970. Mr. Mills, does this document  
24 contain information that you use in your job on a  
25 regular basis?



1 A. I've seen documents like this.

2 Q. And is this the type of document that DISH  
3 creates and maintains in the regular course of its  
4 business?

5 A. Looks like it.

6 Q. We would move DTX970 into evidence.

7 THE COURT: Any objection?

8 MR. RUNKLE: No objection.

9 THE COURT: It's admitted.

10 (Defendant's Exhibit DTX970 admitted.)

11 Q. I want to focus on that middle chart there  
12 relating to activations, deactivations, and churn.  
13 And let's look at 2004, which is the primary time  
14 period we're talking about. How many activations  
15 are listed?

16 A. 78,334.

17 Q. And how many deactivations are identified  
18 there?

19 A. 25,687.

20 Q. And just so we're clear, when it says  
21 primary deactivations, what is it referring to?

22 A. That would be customers who were  
23 deactivating their DISH service.

24 Q. And what churn percentage is listed there?

25 A. 33 percent.

1 Q. And how would you characterize that  
2 situation in 2004 with Dish TV Now and the state of  
3 the churn percentage?

4 A. It's much like the document we just looked  
5 at. Again, this is annualized, so 33 percent,  
6 divide that by 12 months, so you'd be -- not perfect  
7 at math, but a little less than 3 percent average  
8 monthly churn for 2004.

9 Q. Is that a good figure for a retailer?

10 A. No, it's not good.

11 Q. And what does that figure indicate to you  
12 about whether or not the relationship with Dish TV  
13 Now was a profitable one?

14 A. I'd say we were probably breaking even at  
15 best.

16 Q. Are the activation numbers that you have  
17 seen for Dish TV Now during this time period, are  
18 those consistent with marketing plan that included  
19 TV and internet?

20 A. Yes. Certainly logical; yes.

21 Q. And is it consistent with what they -- what  
22 Dish TV Now indicated to you they had done in order  
23 to get a similar amount of activations for DirecTV?

24 A. Yes.

25 Q. Mr. Runkle showed you an e-mail chain

1 involving Amir Ahmed and Mr. Hagan and a problem  
2 with connections. Do you recall that?

3 A. Installation rate, is that --

4 Q. I'm sorry, you're right. Installation  
5 rates.

6 A. Yes.

7 Q. Well, I believe he also -- Mr. Runkle  
8 suggested, implied, that DISH looked the other way  
9 because it really didn't want to lose Dish TV Now's  
10 business. Do you recall that?

11 MR. RUNKLE: Your Honor, I don't believe  
12 that's what the question was.

13 THE COURT: The objection is overruled.  
14 Can you answer?

15 A. I'm sorry, can you repeat.

16 Q. Sure. Do you recall the suggestion by  
17 Mr. Runkle that DISH looked the other way with  
18 respect to Dish TV Now's marketing practices because  
19 they were afraid of losing it as a customer? Do --  
20 sum and substance, do you recall that?

21 A. That sounds correct.

22 Q. And what's your response to that  
23 implication?

24 A. Again, they told us what they were doing  
25 from a marketing standpoint. It seemed like that's

1     what they were doing. And had no reason to believe  
2     they weren't doing that.

3             THE COURT: why don't we break at this time  
4     for lunch.

5             You may step down, Mr. Mills.

6             So when we reconvene at 1:30 we'll go over the  
7     exhibits first. All right?

8             MR. EWALD: Yes, Your Honor.

9             THE COURT: Thank you.

10            (A lunch break was taken.)

11            THE COURT: Before we go over these  
12     exhibits, why don't we go ahead and finish with  
13     Mr. Mills. Then we will break for that purpose.

14            MR. EWALD: Thank you, Your Honor.

15     BY MR. EWALD:

16            Q. welcome back, Mr. Mills.

17            A. Thank you.

18            Q. Before we leave churn and Dish TV Now, I  
19     just wanted to ask you, how is the monthly churn  
20     percentage calculated?

21            A. So monthly churn would be number of --  
22     number of disconnects in a particular month divided  
23     by the number of disconnects in that particular  
24     month.

25            Q. Mr. Mills, how would you characterize DISH's

1 business relationship with Dish TV Now?

2 A. That of an independent contractor.

3 Q. Who decided how Dish TV Now would market  
4 DISH's products?

5 A. They did.

6 Q. Who chose the manner and means by which Dish  
7 TV Now compensated and disciplined its employees?

8 A. They did.

9 Q. Who kept Dish TV Now's financial books and  
10 records?

11 A. They did.

12 Q. Who filed Dish TV Now's taxes?

13 A. They did.

14 Q. Did DISH provide any lists of customers or  
15 referrals to Dish TV Now?

16 A. We did not.

17 Q. How were Dish TV Now's agents supposed to  
18 identify themselves to consumers?

19 A. As Dish TV Now, authorized DISH Network  
20 retailer.

21 Q. Was Dish TV Now free to market the goods and  
22 services of any other companies that it chose?

23 A. They were.

24 Q. Including DirecTV?

25 A. Correct.

1           Q. Mr. Mills, I can't remember if we talked  
2 about this before the break, but was Dish TV Now  
3 terminated?

4           A. They were.

5           Q. Do you recall approximately when that  
6 occurred?

7           A. Early part of 2006.

8           Q. And what was the -- was there a primary  
9 basis for that termination?

10          A. The -- I believe it was churn, and failure  
11 to promote.

12          Q. Mr. Mills, what was DISH's attitude towards  
13 compliance?

14          A. We took compliance seriously.

15          Q. Throughout your career what role did you  
16 play with respect to telemarketing compliance  
17 issues?

18          A. It's evolved over my career, but, you know,  
19 I would say I worked with the compliance group to,  
20 you know, track down any complaints and get back to  
21 compliance on what the findings of that were.

22          Q. And in your position of leadership over the  
23 years what did you tell the sales people working  
24 under you about compliance?

25          A. Take it seriously. It's very important.

1 Q. In your experience have people working for  
2 you taken compliance seriously?

3 A. Yes.

4 Q. Were you and your team perfect?

5 A. No.

6 Q. Do you feel like you acted reasonably during  
7 your period of time?

8 A. I do.

9 Q. Did DISH to your knowledge ever put profits  
10 above adherence to the law?

11 A. No.

12 Q. Did anyone at DISH ever give you direction  
13 to ignore telemarketing complaints?

14 A. No.

15 Q. Did you ever give the direction to anybody  
16 to ignore telemarketing complaints?

17 A. Never.

18 Q. Could DISH function as a business without a  
19 serious attitude -- could DISH function as a  
20 business without a serious attitude towards  
21 compliance?

22 A. We couldn't.

23 Q. Do you have an understanding that DISH was  
24 responsible for ensuring retailer compliance, or was  
25 it the retailers?

1           A. I mean ultimately it was retailers. They're  
2 independent contractors.

3           Q. But was it important to you for the  
4 retailers to be compliant?

5           A. Yes.

6           Q. Why?

7           A. It's very important for DISH to have good,  
8 long-term customers. And if they have a bad  
9 experience, you know, during the order process,  
10 that's not gonna lead to a long-term subscriber.

11          Q. Beginning of the questioning by Mr. Runkle  
12 he asked you, I believe, whether or not you have  
13 personally had success at DISH because of the OE  
14 program success. Do you recall that?

15          A. Yes.

16          Q. And what was your answer?

17          A. Ultimately yes, over the years.

18          Q. And you've worked at DISH I think you said  
19 for about 15 years?

20          A. Yeah, fourteen and a half years. Yes.

21          Q. In your experience at DISH what is the way  
22 to ensure that you have a short employment with the  
23 company?

24          A. One of our pillars is do things right the  
25 first time. All right, so you know, if you're



1 cutting corners, doing things the wrong way, it will  
2 lead to long-term consequences. And again, if  
3 you're not doing things the right way you won't be  
4 employed at DISH very long.

5 Q. Is there another pillar that relates to  
6 short versus long-term thinking?

7 A. Yeah. I mean you need to -- you know, you  
8 need to ensure, you know, that the decisions you  
9 make today have, you know, good long-term benefits  
10 for the company.

11 Q. Is your -- is your bonus impacted by the  
12 number of activations that you're able to attain in  
13 a given year?

14 A. Yes. A portion of my bonus is; yes.

15 Q. How is that impacted by that?

16 A. We have a sales budget. We have a sales  
17 budget every month. And one of the components of my  
18 bonus, as well as my folks, my sales folks' bonuses,  
19 is contingent on number of activations.

20 Q. And so how, if at all, does that play into  
21 the compliance on one hand and -- and activations on  
22 the other?

23 A. What we've seen over time, again, if --  
24 taking compliance seriously, you know, if people are  
25 doing things the right way, you can spend more of

1 your time with those folks that are doing things the  
2 right way and building good, long-term business.  
3 And we have seen that you can actually have more  
4 activations by focusing your time and energy on  
5 those folks who are bringing you quality business.

6 Q. PX99. Mr. Mills, do you recall being  
7 questioned about this by Mr. Runkle?

8 A. Yes.

9 Q. And this document is from August 6, 2007; is  
10 that right?

11 A. That's correct.

12 Q. Let's go to page 12. You see where it says  
13 (as read:) Per legal, do not call and disclosure  
14 complaints down 75 percent. And it lists out four  
15 different terminations. Do you see that?

16 A. Yes.

17 Q. Is that consistent with your understanding  
18 of what happened during this time period 2007?

19 A. Yes.

20 Q. And do you see where JSR Enterprises is  
21 listed on the slide?

22 A. Correct.

23 Q. Includes 6,262 activations for 2006?

24 A. Correct.

25 Q. The total number of activations at the

1 bottom is listed as 84,000 activations in 2007. Do  
2 you see that?

3 A. Yes.

4 Q. How does 84,000 activations compare to  
5 DISH's gross activations during this time period for  
6 OE retailers?

7 A. I'd probably say around ten percent.

8 Q. And is that a significant amount in your  
9 view?

10 A. Yeah, ten percent is significant.

11 Q. Did that impact the decision to terminate  
12 the retailers listed here?

13 A. No.

14 Q. PX730, please. Mr. Mills, do you recall  
15 being questioned by Mr. Runkle about this document?

16 A. Yes.

17 Q. There is a reference in this document to  
18 "shady" marketing practices. And I want to ask you,  
19 do you think that all OE retailers of DISH engaged  
20 in "shady" marketing practices, during this time?

21 A. No.

22 Q. Can you explain your answer, please?

23 A. I mean most of the retailers that we did  
24 business with were doing their marketing the right  
25 way, and we didn't have issues.

1 Q. Let's go to page 13 of this document. Do  
2 you recall being questioned about this page in  
3 particular by Mr. Runkle?

4 A. Yes.

5 Q. This shows the beginning of 2009 there were  
6 76 OE partners; right?

7 A. Correct.

8 Q. By the end, December 2009, you had 32  
9 retailers; right?

10 A. Correct.

11 Q. I believe you testified that, you know, that  
12 was -- do the math, more than half were terminated;  
13 correct?

14 A. Correct.

15 Q. And I believe Mr. Runkle also pointed out,  
16 you have in January 2009, 71K average monthly  
17 channel activations?

18 A. Correct.

19 Q. Then essentially 12 months later with less  
20 than half the retailers as of January 2009, you have  
21 100K monthly channel activations?

22 A. Correct.

23 Q. Do you have an understanding as to how you  
24 could end up with more activations and half the  
25 retailers?

1           A. It's much along the lines of what I was  
2 talking about earlier. So I mean if we have more  
3 time to focus our time and energy on those folks,  
4 those retailers, that are doing business the right  
5 way and committed to doing business the right way,  
6 you know, it is possible for them to do more  
7 activations and, you know, lower churn. You know,  
8 make fraud a non-issue, make completion rates  
9 higher, and have good quality customer experience on  
10 the QA scores.

11           Q. So does terminating retailers mean that  
12 activations will necessarily go down overall?

13           A. Not necessarily.

14           Q. PX1052, please. Mr. Mills, Mr. Runkle also  
15 questioned you about this document; right?

16           A. That's correct.

17           Q. I want to talk about another part of the  
18 e-mail that wasn't referred to. You see at the  
19 bottom of the first page your e-mail sent to Ms.  
20 Musso. Do you see that, "My guess is --"?

21           A. Yes.

22           Q. And do you see, P.S., I'm cutting off  
23 Eclipse today. Do you see that?

24           A. Yes.

25           Q. And then you go up to the very first e-mail,

1 last in the chain overall. And your response to Ms.  
2 Musso again saying about Enterprise, removing OE  
3 retailers, not terminating, or putting on hold. Do  
4 you see that?

5 A. Yes.

6 Q. What happened with Eclipse that resulted in  
7 the incident referred to here?

8 A. So Eclipse was a short-term OE retailer.  
9 They provided us a business plan in which they would  
10 be doing predominantly direct mail. The owner, I  
11 believe his name was Scott, I can't remember his  
12 last name. But he had indicated to us that he would  
13 be doing direct mail, his wife owned a direct mail  
14 company. Sounded very legitimate. He showed us a  
15 lot of mockups of what it would look like.

16 And one of my sales folks -- he was in Southern  
17 California. One of my sales folks was in his call  
18 center, and called me rather disturbed and said,  
19 "Hey, Mike, I was just in Eclipse. And I overheard  
20 one of their sales agents saying something to the  
21 effect of, you know, Mr. Customer, you pressed 1, so  
22 obviously you wanted to have, you know, more  
23 information on this."

24 And my direction to him was leave that call  
25 center immediately. Don't go back. And I took it

1       upon myself to -- I don't know if I did it myself,  
2       but I made the decision to deactivate their OE  
3       logs-in.

4             Q.   Why did you make that decision so promptly?

5             A.   Two reasons.  Number one, that wasn't the  
6       type of business we wanted.  And number two, he lied  
7       to my face about what they were gonna be doing.

8             Q.   Do you -- are you aware of any similar  
9       incident that occurred in connection with you or any  
10      of your employees on visits to the call center of  
11      Star Satellite?

12            A.   No.

13            Q.   Do you recall anything similar with respect  
14      to a similar incident in connection with a call  
15      center for Dish TV Now?

16            A.   No.

17            Q.   What is your understanding of the  
18      relationship between DISH and its retailers?

19            A.   The retailers are independent contractors.

20            Q.   Is that reflected in the retailer agreement  
21      in your view?

22            A.   Yes.

23            Q.   Has that always been the case?

24            A.   As long as I've been there; yes.

25            Q.   Has any DISH retailer ever communicated to

1     you that it thought it was an agent of DISH?

2             A. No.

3             Q. There was some discussion about you and  
4     members of your team commenting on scripts of  
5     retailers; do you recall that?

6             A. Yes.

7             Q. When you were commenting on a script, what  
8     were you and your team members looking at?

9             A. We were looking at, you know, disclaimers.  
10    Mainly disclaimers. Making sure that everything was  
11    as the disclaimers were provided.

12            Q. I think there's been a little testimony  
13    about this, but why was it important to DISH to  
14    review the product disclaimers and make sure that  
15    they were uniform?

16            A. Couple reasons. So I mean, number one, you  
17    know, they -- it was important for us to make sure  
18    that the customer was properly informed about what  
19    they were getting.

20            There's also some other legal parameters around  
21    that as well. I know that -- I don't know what time  
22    period it was, but there was a settlement with some  
23    AGs that required us to say certain disclaimers.  
24    And we wanted to make sure that our retailers were  
25    in alignment with that.



1 Q. Was DISH focused on other elements of the  
2 scripts besides the disclosures?

3 A. No. Not specifically.

4 Q. Did DISH advocate to retailers to use  
5 particular marketing strategies?

6 A. No.

7 Q. Now PX1200, please. Mr. Mills, do you  
8 recall being questioned about this document?

9 A. Yes.

10 Q. And is it possible to turn down the lights  
11 just a little bit. Thank you very much. I  
12 appreciate it. Please turn to page 2, Trudy.

13 And Mr. Mills, I believe you were questioned  
14 specifically about the e-mail from Mark Cohen there  
15 at the bottom from August 9th.

16 A. Correct.

17 Q. In particular Mr. Runkle repeated the word  
18 epidemic in a number of questions. Do you recall  
19 that?

20 A. Yes.

21 Q. And the e-mail says, quote, "I would say the  
22 issue is epidemic and the small changes sales has  
23 made has not addressed the heart of the problem."

24 From your review of the e-mail what issue is  
25 Mr. Cohen referring to?

1 A. Misinformation on price point and package.

2 Q. And that is right in the preceding paragraph  
3 there?

4 A. Correct.

5 Q. Does that have anything to do with  
6 telemarketing violations?

7 A. No.

8 Q. Did DISH do anything to respond to the issue  
9 raised by Mr. -- by Mr. Cohen in 2006?

10 A. Yes. I believe shortly after this, or right  
11 around the same time period, we had our first  
12 iteration of the QA program.

13 Q. PX1044, please. Mr. Mills, do you recall  
14 being questioned on this document by both Ms. Ohta  
15 and Mr. Runkle?

16 A. Yes.

17 Q. Would you please turn to page 9. Very first  
18 paragraph under overview, you see the first sentence  
19 that reads, (as read:) EchoStar Satellite  
20 Corporation, DISH Network, has entered into an  
21 agreement with the Attorneys General of 13 states:  
22 California, Colorado, Connecticut, Florida, Georgia,  
23 Illinois, Louisiana, Minnesota, New Jersey, New  
24 York, Ohio, Oregon, and Wisconsin, which is defined  
25 as Attorneys General, resolving a dispute about the

1 processes used in advertising disclosures, customer  
2 relationship, and similar issues related to DISH  
3 Network and its independent retailers. As part of  
4 the agreement, DISH Network must require that  
5 retailers follow the policies and guidelines set  
6 forth in these business rules.

7 Did I read that correctly?

8 A. Yes.

9 Q. And is that the settlement that you were  
10 referring to earlier in your testimony relating to  
11 the requirement of product disclosures?

12 A. Yes.

13 Q. How did that part you testified to, did that  
14 settlement impact your job in the way you were doing  
15 it on a day-to-day basis?

16 A. Again, I think it was just to the point  
17 where we were required and our -- our retailers were  
18 required to say certain things at the time of sale.

19 Q. Now, the next sentence reads (as read:)  
20 Nothing in these business rules is intended to  
21 change the existing independent contractor  
22 relationships between DISH Network and authorized  
23 retailers who sell DISH Network products, and no  
24 agency relationship is created by the requirements  
25 set forth herein.

1 Do you see that?

2 A. Yes.

3 Q. What is your understanding of that sentence  
4 I just read to you?

5 A. That the retailers are independent  
6 contractors.

7 Q. Do these business rules that are contained  
8 in this JSR packet change that?

9 A. No.

10 Q. Was the quality assurance program in place  
11 at the beginning of the OE program?

12 A. It was not.

13 Q. Was Star Satellite subject to the quality  
14 assurance program?

15 A. I don't believe so.

16 Q. Was Dish TV Now subject to the quality  
17 assurance program?

18 A. I don't believe so.

19 Q. Was JSR Enterprises subject to the assurance  
20 program?

21 A. I don't believe so.

22 Q. Now I want to talk a little bit about Star  
23 Satellite. We're gonna change the board and hand  
24 out associated timeline.

25 MR. RUNKLE: Your Honor, I'd like to make

1 an objection to part of this document. There's some  
2 pretty rank hearsay in here. This testimony (as  
3 read:) we're not dialing for the next two days  
4 because a representative from DISH Network is coming  
5 into our office and we can't let them know we're  
6 doing autodialing.

7 That's hearsay. That's from Kevin Baker. It's  
8 a classic out-of-court statement being offered for  
9 the truth of the matter asserted.

10 MR. EWALD: Mr. Baker was deposed in this  
11 case, as was Mr. Myers.

12 MR. RUNKLE: Mr. Myers didn't say that,  
13 Mr. Baker did. And Mr. Baker is saying about what  
14 Mr. Myers told him. It's hearsay. I just want to  
15 raise an objection. There's no hearsay exception  
16 that I've heard.

17 THE COURT: I have the wrong timeline,  
18 that's why I can't find what you're objecting to.

19 Did Mr. Baker testify?

20 MR. EWALD: Mr. Baker is not testifying  
21 live. We will be designating his deposition  
22 testimony later this week and reading some of it  
23 into the record.

24 MR. RUNKLE: But that's not a statement  
25 from Mr. Baker. That's a statement Mr. Baker said

1 Mr. Myers told him. That's hearsay.

2 MR. EWALD: We will also be doing the same  
3 with Mr. Myers' testimony and the surrounding --  
4 surrounding testimony as to what is quoted here on  
5 the timeline.

6 MR. RUNKLE: Mr. Myers testimony is fine.  
7 Mr. Baker's testimony about what Mr. Myers told him  
8 is hearsay.

9 MR. EWALD: Your Honor, I would also note  
10 that even if the Court does hold it as hearsay, it  
11 is important, separate and apart from the truth of  
12 the matter asserted, the fact that they -- Mr. Myers  
13 was communicating to Mr. Baker that he intended to  
14 deceive DISH and to what was done.

15 So whether it was hearsay or whether -- whether  
16 it's purely on notice issue, I think comes in either  
17 way. We will be able to show to the Court the  
18 surrounding context when we read in the deposition  
19 testimony later this week.

20 MR. RUNKLE: Yes, but it's not notice to  
21 anybody. It wasn't notice to DISH because DISH  
22 claims it didn't know about it, so it's not offered  
23 for notice. I just want to preserve my objection, I  
24 think it is rank hearsay and it's on a demonstrative  
25 being shown to this witness.

1 THE COURT: Did Baker testify to this in  
2 his deposition?

3 MR. EWALD: Yes.

4 MR. RUNKLE: But these aren't his words.  
5 He testified this is what Mr. Myers told him.

6 THE COURT: Right. Well, it's certainly  
7 hearsay. I'll allow it for limited purpose. Even  
8 though you're indicating it isn't for notice  
9 purpose, Mr. Ewald?

10 MR. EWALD: I'm sorry? I didn't understand  
11 the question?

12 THE COURT: What are you -- what limited --

13 MR. EWALD: The truth of the matter  
14 asserted, if the -- if it's ruled hearsay we do  
15 think it has impact both as to what Mr. Myers' state  
16 of mind was when he said these words to Mr. Baker,  
17 and not -- whether or not they actually, you know,  
18 hid something from DISH, they felt the need to  
19 communicate this to Mr. Baker.

20 We also have further action, based on further  
21 action of the case, that Baker stopped dialing in  
22 connection with --

23 THE COURT: I'm allow it for those limited  
24 purposes.

25 MR. RUNKLE: Thank you, Your Honor.

1 BY MR. EWALD:

2 Q. Mr. Mills, are you aware that this Court  
3 found that Star Satellite was responsible for over  
4 43 million prerecorded records being made from July  
5 to November of 2005?

6 A. Yes.

7 Q. Were you aware that Star Satellite was using  
8 a company -- at the time were you aware that Star  
9 Satellite was using a company called Guardian  
10 Communications to make those prerecorded calls?

11 A. I was not.

12 Q. Did DISH ultimately terminate Star Satellite  
13 as an OE retailer?

14 A. We did.

15 Q. Who was Star's principal?

16 A. Eric Myers.

17 Q. Did you meet him?

18 A. I did. Once, possibly twice.

19 Q. What was your impression of him?

20 A. Young guy. Ambitious, wanted to be  
21 successful.

22 Q. Before Star Satellite was an OE retailer did  
23 Mr. Myers do any work for DISH?

24 A. Yes. He was a TVRO retailer.

25 Q. And how did he market his products? At



1       least what was your understanding of that marketing?

2           A.   Predominantly door to door.

3           Q.   Did Star Satellite fill out a business  
4       questionnaire before being approved as a retailer?

5           A.   I believe they did.

6           Q.   DTX335, please.   Tab 4 of the binder.  
7       Mr. Mills, the smaller binder that you have from us.  
8       Shows up in tab 4.

9           Is this the business questionnaire that you  
10       were referring to?

11          A.   Yes.

12          Q.   Is this the standard application at the time  
13       that DISH required its retailers to fill out?

14          A.   Looks to be.

15          Q.   What retailer name is indicated at the top  
16       of this document?

17          A.   Star Satellite, LLC.

18          Q.   Was this maintained in the regular course of  
19       DISH's business?

20          A.   Looks like it.

21          Q.   I'd like to move DTX335 into evidence.

22               THE COURT:   Any objection?

23               MS. HSIAO:   No objection.

24               THE COURT:   335 is admitted.

25       (Defendant's Exhibit 335 was admitted.)

1           Q. If you could highlight the middle part under  
2 current advertising mediums.

3           Mr. Mills, what does this questionnaire  
4 indicate Star Satellite's marketing methods would  
5 be?

6           A. 80 percent direct mail, 20 percent  
7 newspaper.

8           Q. Does this questionnaire indicate that Star  
9 Satellite would be doing any outbound telemarketing?

10          A. It does not.

11          Q. Does this questionnaire indicate that Star  
12 Satellite would be using prerecorded calls to market  
13 DISH?

14          A. It does not.

15          Q. Does this questionnaire indicate that Star  
16 Satellite would be using Guardian or any affiliate  
17 to market DISH?

18          A. It does not.

19          Q. In 2005, when Star Satellite became an OE  
20 retailer, what type of marketing did you understand  
21 that Star Satellite would primarily be doing?

22          A. They indicated to us that they would  
23 basically be doing internet lead generation.  
24 Driving folks to a website. That's the way they  
25 predominantly positioning the product.

1 Q. Didn't you visit Star's office?

2 A. I did.

3 Q. What did it look like?

4 A. Two stories. Downstairs was a call center.  
5 Looked like a typical call center, cubes, phones.  
6 And then upstairs was more executive offices.  
7 That's where Eric's office was.

8 Q. While in the call center what did you  
9 observe?

10 A. Again, seemed like a typical call center.  
11 Folks taking orders for DISH, and answering phones.  
12 Typical call center.

13 Q. While you were in the call center was there  
14 any indication that they were using prerecorded  
15 calls to generate sales?

16 A. No.

17 Q. Are you aware of any telemarketing  
18 complaints that DISH received in 2005 relating to  
19 Star Satellite?

20 A. Yes. I know we had a few complaints.

21 Q. DTX237. Mr. Mills, do you recognize this  
22 document?

23 A. Yes.

24 Q. Sorry. It's tab 5 in your binder. And what  
25 is -- what do you recognize it to be?

1           A. It's a letter from Amir Ahmed, our senior  
2 vice-president of sales at the time, to Star  
3 Satellite informing them of a telemarketing  
4 complaint. That they need to comply with their  
5 retailer agreement.

6           Q. Your Honor, I'd like to move DTX237 into  
7 evidence.

8           THE COURT: Any objection?

9           MR. RUNKLE: No objection.

10          THE COURT: DTX237 is admitted.

11          (Defendant's Exhibit DTX237 was admitted.)

12          Q. So, Mr. Mills, this is a letter October 26,  
13 2005, from Mr. Ahmed to Mr. Myers. Do you see in  
14 the first paragraph a statement, (as read:)  
15 Further, to our conversation yesterday, among other  
16 issues EchoStar, Star Satellite, LLC, EchoStar, has  
17 received an inquiry from the office of Congressman  
18 Fred Upton from the state of Michigan, 6th  
19 Congressional District, concerning telemarketing  
20 activities apparently being conducted by your  
21 company.

22          See that?

23          A. I do.

24          Q. What did you understand Mr. Ahmed to be  
25 referring to when he talked about "further to our

1 conversation yesterday?"

2 A. So actually memorable conversation call.  
3 The previous day, I remember it with a midday  
4 conference call. Amir asked me to set up the  
5 conference call with Eric Myers regards to this  
6 issue. And the memorable part was Amir basically  
7 ripped into Eric like I've never heard anybody rip  
8 into anybody since or after. That he needed to get  
9 serious, he needed to do things the right way, and  
10 this is not the kind of business we wanted.

11 Q. How did Mr. Myers respond?

12 A. I believe he was scared.

13 Q. From that conversation did you think that  
14 Mr. Myers would be compliant?

15 A. I believed so. Ultimately he was terminated  
16 very shortly thereafter from the OE tool.

17 Q. Do you see the next sentence in that first  
18 paragraph. (As read:) You have confirmed that you  
19 have halted all telemarketing activities involving  
20 persons named on the National Do Not Call Registry  
21 as necessary to comply with applicable  
22 telemarketing, do not call, and other laws.

23 Do you see that?

24 A. Yes.

25 Q. Did DISH have a process during this time

1 period to respond to telemarketing complaints?

2 A. Yes.

3 Q. Can you describe that process?

4 A. Depending where the complaint went, legal  
5 would be involved, the sales team was involved.  
6 That would trickle down to the field, and either  
7 someone in the management group or area manager at  
8 the time would address the complaint with the  
9 retailer.

10 Q. And do you have an understanding as to who  
11 the area sales manager would have been for Star  
12 Satellite at this time?

13 A. I believe it was Regina Thompson.

14 Q. Mr. Mills, do you have any reason to believe  
15 that DISH's normal system of dealing with complaints  
16 was not followed here?

17 A. No.

18 Q. PX205. You were shown this e-mail chain by  
19 Mr. Runkle during his questioning; do you recall  
20 that?

21 A. Yes.

22 Q. Do you see the very top it says, (as read:)  
23 Jeff, I forwarded this information to Regina Thomas  
24 for further investigation. We have received a few  
25 complaints for other issues on this retailer that

1 have also been sent to her for review and  
2 assistance.

3 A. Yes, I see that.

4 Q. And then -- when Ms. Williams referred to  
5 Regina Thomas, is it your belief that she meant  
6 Regina Thompson?

7 A. Yes.

8 Q. Were you aware of a Regina Thomas could have  
9 possibly have been connected with this in 2005?

10 A. I can't.

11 Q. When Mr. Myers said he would be compliant,  
12 did you believe him?

13 A. I didn't have any reason not to.

14 Q. Did any of the issues regarding Star of  
15 which you were aware in 2005 give you any indication  
16 Star Satellite was responsible for over 40 million  
17 prerecorded calls?

18 A. No.

19 Q. When did DISH terminate Star's access to the  
20 OE tool?

21 A. I believe it was early 2006.

22 Q. The timeline says January 20th, 2006. Does  
23 that seem right to you?

24 A. Yes, that's seems correct.

25 Q. And how long was this after Star became an

1 OE retailer?

2 A. I think they began in late April, '05. So  
3 nine months.

4 Q. How would you characterize DISH's business  
5 relationship with Star Satellite?

6 A. They were an independent contractor.

7 Q. Who decided how Star Satellite would market  
8 DISH's products?

9 A. They did.

10 Q. Who chose the manner and means by which Star  
11 Satellite compensated and disciplined its employees?

12 A. They did.

13 Q. Who kept Star's financial books and records?

14 A. They did.

15 Q. Who filed Star's taxes?

16 A. They did.

17 Q. Did DISH provide any list of customers or  
18 referrals to Star Satellite?

19 A. We did not.

20 Q. How were Star's agents supposed to identify  
21 themselves to consumers?

22 A. Star Satellite, authorized DISH Network  
23 retailer.

24 Q. Was Star free to market the goods and  
25 services of any other company it chose?



1 A. They were.

2 Q. PX386, please. Mr. Mills, this is another  
3 document that Mr. Runkle questioned you about. Do  
4 you recall that?

5 A. Yes.

6 Q. I believe you just testified that Star  
7 Satellite was taken off the OE tool in January of  
8 2006; is that right?

9 A. That's correct.

10 Q. What's the date of this e-mail that you  
11 received?

12 A. September 8th, 2006.

13 Q. You also recall questions from Mr. Runkle  
14 about whether you reported the information obtained  
15 in this e-mail to the government? Do you recall  
16 that?

17 A. Yes.

18 Q. Do you see the second paragraph, the last  
19 sentence. What does that sentence say?

20 A. (As read:) Since talking to BC, appears the  
21 FTC is preparing a case against these dealers, as  
22 well as DISH Network.

23 Q. What information did that convey to you?

24 A. That the FTC already had this information.

25 Q. Are you aware whether or not the FTC and the

1 government actually did make a case against Star  
2 Satellite?

3 A. I believe they did.

4 Q. And are you aware whether or not there was a  
5 consent judgment entered into between Star Satellite  
6 and the government?

7 A. I believe there was. I don't know what the  
8 actual terms were.

9 Q. Show you what's been marked DTX309.

10 MR. RUNKLE: Your Honor, I think we have an  
11 ongoing objection to the use of consent judgments  
12 from this case.

13 MR. EWALD: And, Your Honor, as Mr. Runkle  
14 indicated last week, the Court had overruled that  
15 objection in a motion in limine ruling.

16 THE COURT: The objection is again  
17 overruled.

18 I'm confused. How did the Myers spell their  
19 last name?

20 MR. EWALD: I'm sorry, Your Honor?

21 THE COURT: How did the Myers spell their  
22 last name?

23 MR. EWALD: That's a good question. My  
24 understanding is with the M-y-e-r-s. But I have  
25 seen it other places M-e-y-e-r-s.

1 THE COURT: In the e-mails you were just  
2 using it was M-e-y.

3 MR. EWALD: That's correct. My  
4 understanding is the correct way is m-y.

5 MR. RUNKLE: Your Honor, it is M-y-e-r-s.  
6 These are the correct legal entities.

7 THE COURT: Okay. The way you should spell  
8 Myers.

9 MR. EWALD: Fair point, Your Honor.

10 BY MR. EWALD:

11 Q. Mr. Mills, will you please turn to page 8.  
12 Are you there?

13 A. Yes.

14 Q. Do you see at Paragraph A indicates a  
15 judgment in the amount of \$4,374,768 is hereby  
16 entered against defendant Star Satellite and Walter  
17 Eric Myers as a civil penalty.

18 Do you see that?

19 A. Yes.

20 Q. You see it indicates Myers irrevocable trust  
21 and its beneficiaries are hereby required to turn  
22 over \$56,665 to the plaintiff?

23 A. I see that.

24 Q. And you see where it indicates later in that  
25 paragraph that (as read:) Based upon defendant Star

1     Satellite's and Walter Eric Myers' sworn  
2     representations and financial statements provided to  
3     the Commission on behalf of themselves and the  
4     relief defendants, and the relief defendants'  
5     stipulation of the amount of money they received  
6     from the telemarketing of EchoStar Satellite  
7     programming, full payment of the foregoing is  
8     suspended except for \$75,000 contingent upon the  
9     accuracy and completeness of the financial  
10    statements as set forth later in the agreement. To  
11    you see that?

12           A. Yes.

13           Q. So even after all of the activations Star  
14    Satellite made for DISH, they ultimately paid  
15    \$75,000; is that right? According to this document?

16           MR. RUNKLE: Objection, Your Honor. He  
17    said he didn't know anything about the terms of the  
18    settlement.

19           THE COURT: The objection is sustained.

20           But I'm confused. On page 9, I see the  
21    language you just read, Mr. Ewald, about suspending  
22    the 75,000. So they entered judgment in the amount  
23    of 4 plus million, but then they suspended it? The  
24    Judge did?

25           MR. EWALD: Yes.

1 THE COURT: Okay.

2 MR. RUNKLE: We can have a discussion about  
3 this without a witness on the witness stand, because  
4 he doesn't know anything about it. But we could  
5 have a discussion about this practice, Your Honor.

6 THE COURT: Okay.

7 BY MR. EWALD:

8 Q. Okay, let's now turn to JSR. Change the  
9 board one more time. Last time of the day.

10 (A discussion was held off the record.)

11 Q. Mr. Mills, let's talk about JSR. Do you  
12 recall when JSR became an OE retailer?

13 A. Yes.

14 Q. When?

15 A. I believe it was in the 2006 time frame.  
16 August.

17 Q. Did you visit JSR before DISH made the  
18 company an OE retailer?

19 A. Yes.

20 Q. What was the purpose of that visit?

21 A. Just to meet them, see their call center,  
22 check out their operation.

23 Q. And do you recall who JSR's principal is?

24 A. Jerry Grider.

25 Q. What was your impression of him?

1           A. Business guy. You know, had a call center.  
2 I understand he had other products as well that he  
3 was also selling. And he had a desire to sell DISH.

4           Q. Did you deal with anyone else at JSR on a  
5 regular basis?

6           A. I wouldn't say regular basis, but the other  
7 person I dealt with there is Richard Goodale.

8           Q. What was your impression of him?

9           A. Didn't have any huge impressions. One of  
10 the things that stuck out, still to this day, is he  
11 always ended his e-mails with God Bless. Stuck out.

12          Q. Before JSR became an OE retailer did it  
13 submit a business plan to DISH?

14          A. I believe they did.

15          Q. There was some discussion in your testimony  
16 responding to Mr. Runkle's questions about what had  
17 or had not been represented to you by JSR about the  
18 methods of marketing. Do you recall that?

19          A. Yes.

20          Q. PX235.

21          (Court reporter requested clarification.)

22          Q. PX 235. Is this the JSR business plan you  
23 were referring to?

24          A. Yes.

25          Q. Was this maintained in the regular course of

1 DISH's business?

2 A. Yes.

3 Q. I would move PX235 into evidence.

4 THE COURT: Any evidence?

5 MR. RUNKLE: No objection.

6 THE COURT: It's admitted.

7 (Defendant's Exhibit PX235 was admitted.)

8 Q. All right. Trudy, if you could please  
9 highlight the forms of advertising there in the  
10 middle.

11 So what, based on this document, was your  
12 understanding of how JSR would be marketing DISH's  
13 products and services?

14 A. Some percentage print, percentage  
15 telemarketing, as well as percentage direct mail.

16 Q. Does this business plan say anything about  
17 prerecorded calls?

18 A. It does not.

19 Q. Does this say anything about a call center  
20 in the Philippines?

21 A. It does not.

22 Q. Did JSR ever make representations to DISH  
23 regarding whether it was using prerecorded calls?

24 A. I believe they did.

25 Q. DTX752. Tab 7 of your small binder. I know

1 it's hard to toggle between the two. Can we dim the  
2 lights a little bit, please. Thank you.

3 So you see in the middle there an e-mail from  
4 Bobby Fielding to Brian Neylon and yourself. I'm  
5 sorry, to yourself, Brian Neylon, and Mike  
6 Oberbillig. Who is Bobby Fielding?

7 A. At this time I believe he was the regional  
8 sales manager out of the Sacramento office.

9 Q. Who is Brian Neylon?

10 A. I believe at this time he was vice-president  
11 of sales.

12 Q. What is the date of this e-mail?

13 A. December 5th, 2000 -- December 5th, 2006.

14 Q. So what does Mr. Fielding tell you and your  
15 colleagues in that first paragraph?

16 A. (As read:) They specifically told David and  
17 I that they are not when I inquired. Will continue  
18 to keep an eye out and let you know if we hear  
19 otherwise.

20 That was in response to a question from  
21 Mr. Neylon, (as read:) Are they doing voice  
22 broadcasting -- or voice message broadcasting.

23 Q. So you're at the very top of the e-mail.  
24 We'll get back to that.

25 A. Sorry.



1 Q. Understandable.

2 Right in the middle there, what is that first  
3 paragraph that Bobby Fielding communicated to you  
4 and Mr. Neylon and Mr. Oberbillig?

5 A. At the "based?"

6 Q. Yes.

7 A. (As read:) Based on my meeting with JSR,  
8 they have expanded their outbound telemarketing  
9 efforts by adding a dialer and increasing the number  
10 of employees. I inquired about their calling  
11 practices and was assured they will following all  
12 DNC guidelines cautiously, and wanted to know if I  
13 hear otherwise.

14 Q. And then you testified, what is Mr. Neylon's  
15 response?

16 A. (As read:) Are they doing voice message  
17 broadcasting.

18 Q. And how did Mr. Fielding respond?

19 A. (As read:) They specifically told David and  
20 I that they are not when I inquired. Will continue  
21 to keep an eye out and let you know if we hear  
22 otherwise.

23 Q. Mr. Mills, did you ever receive notice of  
24 telemarketing complaints associated with JSR?

25 A. Yes, I did get a few complaints. Yes.

1 Q. Do you recall an incident related to a  
2 Philippines call center?

3 A. I do.

4 Q. Let's take a look at PX253. Mr. Mills, does  
5 this e-mail relate to the incident that you're  
6 referring to?

7 A. Yes.

8 Q. Can you describe what this issue was?

9 A. This looks like it a voice broadcasting  
10 call.

11 Q. What is the date on this e-mail chain?

12 A. December 20th, 2006.

13 Q. You see in your e-mail dated December 20th,  
14 2006, 12:38 p.m., a little bit down the page. You  
15 say, (as read:) The only affiliate JSR told me they  
16 were using was out of the Philippines, and they were  
17 ending that relationship the end of this week.

18 A. Yes.

19 Q. Do you recall that communication?

20 A. I mean I don't remember the specific call,  
21 but I said I made the call, I assume I did.

22 Q. And then at the top of that e-mail chain,  
23 2:57 p.m., what did you tell Ms. Musso?

24 A. (As read:) P.S., JSR just called me. They  
25 are de-activating the log-ins the Philippines call

1 center is using today.

2 Q. So to the best of your knowledge did JSR  
3 cease using the Philippines call center?

4 A. To the best of my knowledge they did.

5 Q. Do you recall having an e-mail discussion  
6 with other DISH employees about what action, if any,  
7 DISH would take against JSR because of the  
8 Philippines call center issue?

9 A. I'm sorry, can you say that again.

10 Q. Sure. Do you recall having e-mail  
11 discussion with other DISH employees about what  
12 action, if any, to take in response to the  
13 Philippines call center issue?

14 A. So I think in this particular one I think I  
15 had supported a fine but not termination in this  
16 instance.

17 Q. So let's look at PX254. Let's go to page 3.  
18 Do you see there at the very bottom your e-mail that  
19 goes on to page 4 dated December 21st, 2006?

20 A. What is that?

21 Q. That's actually under tab 9.

22 A. Sorry. Yes.

23 Q. And let's go to page 4, please. All the way  
24 to the bottom, Trudy.

25 So first you have an e-mail from Ms. Musso to

1 Mr. Neylon, copying you amongst others, on  
2 December 21st, 2006. Do you see that?

3 A. Yes.

4 Q. Ms. Musso said, (as read:) I had a lengthy  
5 discussion with Richard Goodale yesterday. This  
6 latest allegation is probably a violation. It was  
7 done by a third-party call center.

8 Then Mr. Neylon responds later that day and  
9 asks you (as read:) what is his volume? why would  
10 I just not terminate.

11 What did you understand Mr. Neylon to be asking  
12 you in that e-mail?

13 A. So the next question there is (as read:)  
14 where is he located?

15 So again, I think it seems in this instance  
16 Mr. Neylon was asking me for some context. Who's  
17 the retailer? You know, what do they do? Where are  
18 they located? You know, what's their volume? Just  
19 trying to gain some context into, you know, is this  
20 indicative of the overall business? Is it an  
21 isolated incident? He's just trying to get some  
22 more information on it.

23 Q. In your mind why is volume -- by volume, by  
24 the way, is he referring to the number of  
25 activations?

1 A. Yes.

2 Q. And why is that relevant to the question of  
3 whether or not to terminate?

4 A. Well again, it's just trying to get some  
5 context. You know, if you have someone who is, you  
6 know, doing very few activations and gets, you know,  
7 a lots of complaints, then that would tell you that  
8 there's -- there's probably a big problem there. If  
9 you have somebody doing large volumes with a very  
10 small number of complaints, again, that -- maybe  
11 it's an isolated incident.

12 Q. Then you responded to Mr. Neylon; right?

13 A. I did.

14 Q. And how did you respond?

15 A. I said (as read:) I don't have the OE grid,  
16 but I believe they around 1500 to 2K activations a  
17 month. At the time of launch this was not  
18 discussed, nor did they disclose they would be doing  
19 any marketing other than outbound out of their  
20 office. I met with the guys last week and they  
21 indicated they were using a center out of the  
22 Philippines. I indicated it was in their best  
23 interest to discontinue that relationship. They  
24 said they would be done with that center within ten  
25 days.

1           Q. Let's put in contact. You indicated 1500 to  
2           2,000 activations per month; correct?

3           A. Correct.

4           Q. How did that number of activations compare  
5           to other OE retailers at the time?

6           A. Probably bottom half.

7           Q. So can you describe your mindset at this  
8           time and your decision to recommend not to  
9           terminate?

10          A. Again, when you look at, you know, the  
11          volume of sales, they had had a couple of  
12          complaints. They had what seemed to be very logical  
13          explanations when those came up. This one came up,  
14          they made a mistake, they used a third party call  
15          center in the Philippines. Seemed logical. They  
16          said they would discontinue it. If what they were  
17          saying was correct, my -- what I said was, they're  
18          gonna keep everything in-house and not have  
19          affiliate, that I didn't think we should terminate,  
20          but I would support a fine.

21          Q. Do you recall a court order from the State  
22          of Missouri in early 2007 involving JSR?

23          A. I do.

24          Q. Mr. Mills, look at the bottom of that first  
25          page. February 8th, 2007, e-mail from Ms. Musso to

1 a number of DISH employees including yourself. Do  
2 you see that.

3 A. Yes.

4 Q. Your Honor, I would move PX1083 into  
5 evidence.

6 THE COURT: Any objection?

7 MR. RUNKLE: No objection.

8 THE COURT: It's admitted.

9 (Plaintiff's Exhibit PX1083 admitted.)

10 Q. What was your understanding about this  
11 Judge's order when you received it? Well, first,  
12 let me ask you, this e-mail is dated February, 8,  
13 2007; right?

14 A. Yes.

15 Q. And you see the Attorney General news;  
16 release December 7, 2006?

17 A. Yes.

18 Q. Was this the first time that you became  
19 aware -- when you see this e-mail on February 8th,  
20 2007, was it the first time that you received news  
21 of this Judge's order in Missouri?

22 A. I believe so, yes.

23 Q. What was your understanding of that order?

24 A. That they were no longer able to make  
25 telephone calls in the State of Missouri.

1 Q. If you will scroll up a little bit, Trudy.  
2 Mr. Neylon responds to Mr. Origer, and who is  
3 that at this time? Bob Origer?

4 A. I believe at this time he was the director  
5 in our Retailer Services Group. He might have been  
6 vice-president, I'm not exactly sure of his title.

7 Q. Mr. Neylon said, (as read:) Assume our plan  
8 would be immediate termination of JSR.

9 Do you see that?

10 A. Yes.

11 Q. Did you agree at that time with Mr. Neylon's  
12 direction that JSR be terminated?

13 A. 100 percent.

14 Q. Can you explain why you changed, basically,  
15 your mind from December 20th, 2006, to February 8th,  
16 2007?

17 A. When we got this, you know, my thought was  
18 this kind of put together all of the prior  
19 complaints that they had. And that they were -- you  
20 know, while they had logical excuses, logical  
21 explanations as to what was happening, this --  
22 again, this kind of put it all together and said,  
23 well, they just have not been truthful with us. And  
24 I agreed with termination.

25 Q. Knowing what you know now, what is your



1 impression of Jerry Grider and Richard Goodale?

2 A. They were untruthful to us for the duration  
3 of their -- when they were an OE retailer.

4 Q. Remind us again how long of a duration they  
5 were an OE retailer?

6 A. So I believe it was August '04 through, I  
7 guess this would have been early February '08. So  
8 less than six months. I'm sorry, early February  
9 '07. So less than six months.

10 Q. You said August, '04, did you mean --

11 A. Yeah, August '06 to February '07, so less  
12 than six months.

13 Q. I know it's already been a long day of  
14 testifying.

15 Do you believe, looking back, that you acted  
16 reasonably with respect to JSR?

17 A. I believe we did.

18 Q. Can you tell -- can you explain why you  
19 think that's so?

20 A. Again, we did have some complaints. We had  
21 a process for those. They responded to those. The  
22 explanations that they gave seemed logical. But you  
23 know, in the end when this -- when the Missouri  
24 decision came out it really kind of put the pieces  
25 together that they were not being truthful to us and

1 it was time to move on.

2 Q. DTX139, please.

3 we had talked about churn in the context of --  
4 this is tab 11 in your binder, Mr. Mills. We had  
5 talked about churn in the context of Dish TV Now.  
6 Have you seen this document before, Mr. Mills?

7 A. Yes.

8 Q. What do you understand this document to be?

9 A. This looks to be a part of a termination  
10 packet.

11 Q. And is this information that DISH keeps in  
12 the regular course of its business?

13 A. I believe so.

14 Q. Your Honor, I would like to move DTX139 into  
15 evidence.

16 THE COURT: Any objection?

17 MR. RUNKLE: No objection.

18 THE COURT: It's admitted. Did you say  
19 DTX?

20 Q. Yes, Your Honor.

21 THE COURT: Okay.

22 (Defendant's Exhibit DTX139 was admitted.)

23 Q. Trudy, can you please blow up the middle  
24 part there of the chart.

25 Mr. Mills, what is the churn that is listed for

1 2006 for JSR?

2 A. 8 percent.

3 Q. Do you believe that JSR could be a  
4 profitable arrangement for DISH with a churn rate  
5 like this at this stage of their OE retailership?

6 A. So with the few months they were with us,  
7 8 percent churn in those short months, that would  
8 seem to indicate they were not going to have  
9 long-term subscribers. A churn like that, I'd say  
10 break even at best.

11 Q. Remind us again when they were terminated?

12 A. Pardon me?

13 Q. Remind us again when they were terminated?

14 A. February 2007.

15 Q. Mr. Mills, how would you characterize DISH's  
16 business relationship with JSR?

17 A. They were an independent contractor.

18 Q. Who decided how JSR would market DISH's  
19 products?

20 A. They did.

21 Q. Who chose the manner and means by which JSR  
22 compensated and disciplined its employees?

23 A. They did.

24 Q. Who kept JSR's financial books and records?

25 A. They did.

1 Q. Who filed JSR's taxes?

2 A. They did.

3 Q. Did DISH provide any lists of customers or  
4 referrals to JSR?

5 A. We did not.

6 Q. How were JSR agents supposed to identify  
7 themselves to consumers?

8 A. JSR Enterprises, authorized DISH Network  
9 retailer.

10 Q. And was JSR free to market the products and  
11 services of any other company they chose?

12 A. That's correct.

13 Q. Mr. Mills, at some point did DISH request  
14 that certain retailers use PossibleNow?

15 A. Yes.

16 Q. Do you recall approximately when that took  
17 place?

18 A. I think it was in the 2008 time period.

19 Q. And why did DISH make that request?

20 A. It was a do not call solution. And again,  
21 it was kind of furtherance of our commitment to  
22 compliance.

23 Q. Where did this idea come from?

24 A. It was really a joint effort. So I mean it  
25 was sales working with Retail Services working with

1       our legal folks. So it was really a joint effort.

2           Q. Did you play a role in connecting retailers  
3       with PossibleNow?

4           A. I did.

5           Q. And what was that role?

6           A. Again, it was working with the compliance  
7       group. Getting the contact information: who to  
8       work with, where to sign up. That was really the  
9       main thing.

10          Q. Did DISH have any retailer activation  
11       requirements associated with this PossibleNow  
12       relationship?

13          A. The number that sticks -- I think it was  
14       600. 600 activations per year.

15          Q. As a general matter did the retailers sign  
16       up with PossibleNow?

17          A. Yes. It took a little bit of time, but yes,  
18       they did get signed up.

19          Q. And how did you believe that the use of  
20       PossibleNow affected retailer's telemarketing  
21       compliance?

22          A. I think it had a positive effect. It's a do  
23       not call compliance solution. And I think it's had  
24       positive effects on the business.

25          Q. Okay. Mr. Mills, let's turn to SSN,

1     retailer you were asked a number of questions by  
2     Mr. Runkle.

3             Are you aware that this Court found in summary  
4     judgment that SSN made about 380,000 calls to  
5     numbers on the National Do Not Call Registry from  
6     2010-2011?

7             A. Yes, I am.

8             Q. Were you aware at that time that SSN was  
9     calling Registry numbers?

10            A. I was not.

11            Q. Did you believe that SSN was compliant with  
12     the telemarketing laws in 2010 and 2011?

13            A. I did.

14            Q. Why did you believe they were compliant?

15            A. They were signed up with PossibleNow. That  
16     was the big one. They also indicated to us that  
17     they had a SAM number, they were using that to scrub  
18     against National and state do not call. So yes, I  
19     believed they were compliant.

20            Q. And was SSN terminated?

21            A. They were.

22            Q. Now let's talk about the -- some of the  
23     earlier e-mails back from 2010-2011. Let's go back  
24     to PX194. You were asked a couple of questions  
25     about this one. It will be in your big binder.

1 Do you recall being asked about this document?

2 A. Yes.

3 Q. Do you recall that Mr. Runkle was arguing  
4 that DISH didn't follow its lawyer's advice. Do you  
5 recall that?

6 A. Yes.

7 Q. What was actually Mr. Novak's advice in this  
8 e-mail?

9 A. (As read:) I favor probation provided there  
10 is unanimous understanding that if EchoStar becomes  
11 aware of any one additional violation, he's  
12 terminated.

13 Q. Now, let's go to PX504. Do you recall also  
14 being questioned on this document?

15 A. Yes.

16 Q. Specifically let's look at the e-mail from  
17 Mr. Oberbillig from October 27th, 2005. I believe  
18 in discussing this e-mail Mr. Runkle suggested that  
19 DISH really just didn't do anything in connection  
20 with Star Satellite -- I'm sorry, SSN, at this time.

21 But what happened after Mr. Oberbillig  
22 apparently informed Alex that he must, quote, "stop  
23 using voice broadcasting and leave messages even if  
24 he has followed do not call lists?"

25 A. I'm sorry, where are you at.

1           Q. Middle of that e-mail, second paragraph  
2 reads, (as read:) I informed Alex that he must stop  
3 using message broadcasting and leaving messages even  
4 if he has followed do not call lists and even if he  
5 has a prior relationship with that customer. And is  
6 following federal telemarketing guidelines.

7           A. Yes, I see that.

8           Q. Are you aware -- well, the problem at this  
9 point that you testified to related to prerecorded  
10 calls; right?

11          A. For SSN; yes.

12          Q. And are you aware that prerecorded calls --  
13 whether or not prerecorded calls remained an issue  
14 with SSN in 2006, 2007, 2008, 2009?

15          A. I don't recall seeing complaints in regards  
16 to message broadcasting; no.

17          Q. Now, as a general matter, from the period of  
18 2006, until I think you said it was -- when was it  
19 your understanding that SSN signed up with  
20 PossibleNow?

21          A. I believe in the 2008 time frame.

22          Q. So from 2006 until, let's say, SSN signs up  
23 with PossibleNow in 2008, what is your understanding  
24 of the nature of complaints, if any, that DISH  
25 receiving during that time relating to SSN?



1           A. I don't really recall getting many  
2       complaints during that time frame for SSN.

3           Q. And after you became aware that SSN was  
4       signed up with PossibleNow, what was your mindset as  
5       to their compliance?

6           A. Well, at that point in time, again, we  
7       hadn't had many, if any, complaints, you know, after  
8       '06. They signed up with PossibleNow. Verified  
9       with us that, you know, they were -- had a SAM  
10      number, they were using it scrubbing against  
11      National and state do not call lists. So we had a  
12      higher comfort level in moving forward.

13          Q. How would you characterize DISH's business  
14      relationship with SSN?

15          A. They were an independent contractor.

16          Q. Who decided how SSN would market DISH's  
17      products?

18          A. They did.

19          Q. Who chose the manner and means by which SSN  
20      compensated and disciplined its employees?

21          A. They did.

22          Q. Who kept SSN's financial books and records?

23          A. They did.

24          Q. Who filed SSN's taxes?

25          A. They did.

1 Q. Did DISH provide any list of customers or  
2 referrals to SSN?

3 A. We did not.

4 Q. How were SSN agents supposed to identify  
5 themselves to consumers?

6 A. Satellite Systems Network, authorized DISH  
7 Network retailer.

8 Q. Was SSN free to market the products and  
9 services of any other business it chose?

10 A. Yes.

11 Q. Now, Mr. Mills, there was also some  
12 testimony about lead lists; right?

13 A. Yes.

14 Q. And discussion of an affidavit that you  
15 submitted to this Court in this case, as well as  
16 deposition testimony relating lead lists. Do you  
17 recall that?

18 A. Yes.

19 Q. At the time that you executed the affidavit  
20 in this case, and gave your deposition testimony,  
21 did you believe it to be truthful?

22 A. Yes.

23 Q. Did you make a mistake?

24 A. I did.

25 Q. Mistakes happen?

1 A. Yes, they do.

2 Q. Did you intentionally mislead this Court or  
3 plaintiffs?

4 A. I did not.

5 Q. The general policy that you described of not  
6 providing lead lists to retailers -- what is the  
7 reasoning behind that policy?

8 A. Pardon me?

9 Q. The general policy you described in the  
10 testimony with Mr. Runkle of not providing lead  
11 lists to retailers; do you remember that?

12 A. Yes.

13 Q. What's the thinking behind that? Why would  
14 DISH typically not provide lead lists to retailers?

15 A. Well, ultimately DISH and retailers complete  
16 with each other for the same subscribers. That  
17 would be probably the number one.

18 Q. Your Honor, I don't have any further  
19 questions at this time.

20 THE COURT: Okay. Why don't we take a ten  
21 minute recess at this time.

22 (A break was taken.)

23 MR. RUNKLE: Your Honor, I have a very  
24 brief recross. And we have another witness who  
25 needs to go on today, so I'm going to try to make it

1 as snappy as possible.

2 THE COURT: I just left my notebook in  
3 here. I apologize.

4 Who is the next witness?

5 MR. RUNKLE: It's Mr. Goodale. He has a  
6 work obligation in California tomorrow, but I think  
7 we can get him done if we can get Mr. Mills off the  
8 stand in 15 minutes, which I think is definitely  
9 possible.

10 THE COURT: Okay. Please proceed.

11 RECROSS EXAMINATION

12 BY MR. RUNKLE:

13 Q. Mr. Mills, I'm gonna ask you just a few more  
14 questions today. And we're -- as I said, I'm gonna  
15 try to get you off the stand as quickly as possible.

16 A. Okay.

17 Q. So, Mr. Mills, it's appropriate it's Ground  
18 Hog Day today, don't you think?

19 A. Pardon me?

20 Q. Because the same thing kept happening to  
21 DISH over and over again; right?

22 A. Sorry?

23 Q. These retailers, they kept -- you kept  
24 bringing them on, they kept doing a lot of  
25 activations for you, and then lo and behold it

1       turned out they were doing illegal telemarketing.  
2       Isn't what happened over and over again?

3           A. I don't think I would characterize it like  
4       that.

5           Q. That's what you just testified to, isn't --

6           A. I testified to these retailers.

7           Q. It happened over and over again; right?

8           A. There were a few instances we talked about  
9       today.

10          Q. All right. So let's look at Star Satellite.  
11       If we could bring up PX205. DISH doesn't seem to  
12       like my Post-Its, but I'm going to soldier on ahead  
13       with some more Post-Its.

14          So we established that DISH knew in May of 2005  
15       that Star Satellite was using voice broadcasting.  
16       So we're gonna put that Post-It on. We looked at  
17       this document earlier, do you remember?

18          A. Is it outside of the binder?

19          Q. Well, Mr. Ewald questioned you on it. It's  
20       the one that Russel Bangert said, "We have a  
21       retailer, Star Satellite, who is using automated  
22       messages." Right? Do you recall that document?

23          A. I do. I'd like to take a look at it though.  
24       It's outside the binder?

25          Q. Yes. It's outside the binder. You can look

1 at the screen, I've highlighted it?

2 A. I'd like to look at the document.

3 MR. EWALD: He should be able to look at  
4 the document.

5 THE COURT: He should.

6 A. Thank you. Sorry.

7 Q. So you see that document?

8 A. Hm-mm.

9 Q. So we see how in May of 2005, DISH knew that  
10 Star Satellite was using voice broadcasting? You  
11 see that? DISH knows Star Satellite is using voice  
12 broadcasting.

13 A. I know there was complaints, yes.

14 Q. Right. But that's not what Mr. Bangert says  
15 in that e-mail, right? Mr. Bangert says, (as read:)  
16 We have a retailer that is using telemarketing?

17 No question about that, is there?

18 A. That's Russell's -- yeah, Russell says that.

19 Q. Right. The other thing Mr. Ewald didn't run  
20 you through was PX208, which is -- did you know that  
21 DISH got sued in August 2005? PX208 isn't in there,  
22 you're gonna have to look at the screen.

23 Can we bring up PX208, please. It's already  
24 been admitted into evidence.

25 So this is a letter from Dana Steele to Star

1     Satellite August 12th, 2005. (As read:) Jay Connor  
2     has filed the attached complaint against Star  
3     Satellite and DISH Network for violation of the TCPA  
4     for a prerecorded voice call made to Mr. Conner's  
5     residential telephone number on or about July 5,  
6     2005.

7             You see that, right?

8             A. Yes.

9             Q. Okay, so DISH got sued in August, 2005. So  
10     there's that.

11             And then Star Satellite went on to make  
12     43.1 million illegal calls, which the Court has  
13     already adjudicated?

14             Isn't that the price of DISH twiddling its  
15     thumbs on this? 43.1 million illegal calls. It's a  
16     pretty high price for consumers to pay for DISH not  
17     getting its act together; right?

18             A. I disagree with that.

19             Q. You didn't get your act together, did you?

20             A. They're a retailer, an OE retailer for --

21             Q. Did you --

22             THE COURT: You're talking over each other.

23             Q. I'm sorry. I didn't hear you were talking?  
24     You had a few complaints; right?

25             A. Yes, we had a few complaints, investigated

1 those complaints, and terminated Star Satellite.

2 Q. Right. After they were able to make  
3 43.1 million illegal calls? Isn't that right?

4 A. That's what the Courts found; yes.

5 Q. Okay. And in fact, the action that DISH  
6 took was only after the U.S. House of  
7 Representatives got involved; isn't that right?

8 A. No. It was a culmination of all the  
9 complaints.

10 Q. So it wasn't because a member of Congress  
11 complained that DISH finally decided to take action?

12 A. They weren't terminated at that time.

13 Q. Right. They were able to continue on;  
14 right?

15 A. Shortly thereafter they were terminated.  
16 But yes, they were not terminated after that.

17 Q. Okay. So it's basically the same story with  
18 JSR, right? You had no idea what they were doing,  
19 they tried to hide it from you. And then lo and  
20 behold they're committing millions of violations;  
21 right?

22 A. They had a few complaints that they had  
23 logical explanations to.

24 Q. But the scope of those complaints you now  
25 know in retrospect revealed a massive pattern of



1 telemarketing violations; right?

2 A. They had a few complaints, again. We got  
3 the Missouri injunction. Again, painted a picture  
4 they were not being truthful with us and we took  
5 action at that time.

6 Q. But they had admitted to you they were using  
7 a Philippines call center, which wasn't something  
8 DISH approved of; right?

9 A. They admitted one of the complaints was due  
10 to the use of a Philippines call center.

11 Q. And you let them continue on after that;  
12 right?

13 A. Yes.

14 Q. Because they promised they would stop?

15 A. They told us they were no longer gonna use  
16 that Philippines call center.

17 Q. Just like every other retailer said they  
18 would stop; right?

19 A. Is that a question?

20 Q. Yes. The other retailers that you testified  
21 about, they all said, "oh, we stopped?" And you  
22 believed them?

23 A. They did --

24 Q. Okay.

25 A. -- say they stopped, yes.

1           Q. And I think we talked about, when I  
2 questioned you before, that DISH has the right to  
3 audit these people, these retailers' calling  
4 records; right?

5           A. Can you pull up the document again? Sorry.

6           Q. That was 1044.

7           THE COURT: That's PX1044, right?

8           Q. PX1044. Page 13.

9           THE COURT: Can you highlight that section  
10 for him?

11          Q. It's the call monitoring section. (As  
12 read:) Monitor, record and/or otherwise access,  
13 whether electronically or otherwise, and in all  
14 cases at EchoStar's election, any and all telephone  
15 and other similar communications made between such  
16 retailer and any of its employees, agents,  
17 sub-agents, independent contractors, or affiliates  
18 on the one hand, and any prospective or actual  
19 consumer on the other hand, that arises from or  
20 relates in any manner to the marketing promotion  
21 and/or solicitation of orders for programming and/or  
22 any other services or hardware offered by EchoStar  
23 and/or any of its affiliates?

24          You would agree with me that EchoStar had the  
25 right to access what these people were doing?

1           A. Based on what that says, the right, not the  
2 obligation.

3           Q. Right. And EchoStar did not exercise that  
4 obligation?

5           I'm sorry, EchoStar did not exercise that  
6 right, correct?

7           A. With regards to.

8           Q. The retailers we have been talking about:  
9 SSN, Star Satellite, Dish TV Now.

10          A. In what time frames are we talking about?

11          Q. In any time frame? Did EchoStar ever audit  
12 the call records and/or telephone calls of those  
13 retailers?

14          A. In the case of Satellite Systems Network,  
15 they were on the QA program. So I think that would  
16 probably qualify under that. I don't believe we  
17 asked for call records on the others.

18          Q. But you didn't audit them for telemarketing  
19 compliance? Isn't that right?

20          A. I did not.

21          Q. Right. Because the QA system didn't audit  
22 retailers for telemarketing compliance?

23          A. The QA was for disclosures.

24          Q. That's right. It was for disclosures.

25          So Mr. Ewald walked you through Exhibit 730,

1     which is a PowerPoint that I also asked you about.  
2     Had to do with changes to the OE system.

3             Seems like there was a dramatic change, I think  
4     we can go to page 13, I believe, is the -- dramatic  
5     change between January 2009 and December 2009. You  
6     know this lawsuit started in March 2009? Did you  
7     know that?

8             A. I did not.

9             Q. You didn't know that, okay.

10            And just one final thing. I have two  
11     affidavits here for you of Blake Van Emst? Do you  
12     know Blake?

13            A. Yes, I know Blake.

14            Q. He still works at DISH?

15            A. He does.

16            Q. Okay. And he was the vice-president of  
17     Retailer Services for a while? I don't know if he  
18     still is?

19            A. He still is.

20            Q. He still is, okay. So these are some  
21     affidavits that he offered. First one from 2008 in  
22     a telemarketing case in Ohio. The second one from  
23     2012 in a telemarketing case in Colorado.

24            Your Honor, I'd like -- these are marked as  
25     PX1422 and PX1425. I'd like to move to admit these.

1 THE COURT: Any objection?

2 MR. EWALD: No, Your Honor.

3 THE COURT: They're both admitted.

4 (Plaintiff's Exhibit 1422 and 1425 admitted.)

5 Q. So if you could look at the language in  
6 paragraph -- in Paragraph 7 of the 2008 declaration,  
7 which goes from pages 2 to 3. And the language in  
8 paragraph 4 of the 2012 declaration.

9 A. I'm sorry, I'm having trouble finding the  
10 dates on these.

11 Q. Okay. I'm sorry, you're not a lawyer,  
12 which -- I'm sorry for not explaining this to you.  
13 The dates are at the top. There's a line across the  
14 top --

15 A. Okay. So the 12/19/08 is the first one?

16 Q. Correct.

17 A. Okay.

18 Q. I'm sorry about that. So that one has the  
19 same language that we just talked about that says,  
20 (as read:) EchoStar does not supply, approve, or  
21 review the names, addresses, or other contact  
22 information of persons or entities to whom the  
23 retailers or their third-party marketing vendors  
24 make telephone calls.

25 Do you see that?

1           A. Which section? I'm sorry, I got them  
2 confused.

3           Q. It's Paragraph 7 of the 2008 affidavit?

4           A. Okay.

5           Q. Do you see that? It's the same sentence  
6 from the affidavit, the Werner affidavit that we  
7 looked at earlier.

8           A. Okay.

9           Q. Okay. So we already established that one is  
10 not entirely true. And summary judgment was  
11 actually granted on this affidavit also. Did you  
12 know that?

13          A. I did not.

14          Q. Okay. And so if we turn to the second  
15 affidavit, this one is about four years later.  
16 There's some -- been some changes to this language.  
17 It says (as read:) DISH does not supply, approve,  
18 or review the names, addresses, or other contract  
19 information of persons or entities to whom the  
20 retailers or their third-party marketing vendors  
21 make telephone calls, except that DISH informs the  
22 retailers when existing consumers are about to  
23 disconnect.

24          Are you familiar with that?

25          A. I believe so.

1 Q. Yeah. That's called the disconnect report;  
2 right?

3 A. I believe it's called -- was called the soft  
4 disconnect report.

5 Q. Okay. How long did the disconnect report  
6 exist?

7 A. The soft disconnect report. I don't know  
8 exactly the time frames that it did.

9 Q. You don't know. But do you think it existed  
10 in 2008?

11 A. I believe so.

12 Q. Right. So DISH wasn't being entirely  
13 forthright in the 2008 affidavit, or in the 2011  
14 affidavit that we saw from Mr. Werner earlier, which  
15 had the exact same language in it. Wouldn't you  
16 agree with me?

17 A. Can you ask that again. I'm sorry.

18 Q. DISH wasn't being entirely forthright, was  
19 it?

20 A. I believe they were in regards to the soft  
21 disconnect report.

22 Q. But the disconnect report is a way that DISH  
23 has the retailers try to get customers to keep their  
24 DISH services so that DISH can keep making money;  
25 right?

1           A. So those are customer who are in soft  
2     disconnect status. They are technically active  
3     customers. So I wouldn't consider that to be a lead  
4     from DISH.

5           Q. Right. But it's information that DISH  
6     supplies about consumers to retailers with the idea  
7     that the retailer would contact those people?

8           A. Yeah. I believe it was also scrubbed  
9     against do not call.

10          Q. Right. But that's not the question I asked.  
11     The question I asked, is it information about  
12     consumers that was provided to the retailers?

13          A. It was information about consumers that were  
14     in soft disconnect status.

15          Q. And that was provided during this whole time  
16     that these affidavits were being offered to courts  
17     as far as you know?

18          A. I don't know about the whole time. I don't  
19     know exactly the range that it went.

20          Q. How difficult was it for you to figure out  
21     that DISH had given lead lists to Defender on  
22     several one-off occasions, to use your words?

23          A. Those aren't my words. I didn't say  
24     several. I said I believe two, possibly three.

25          Q. Okay.



1           A. And it was -- it was not a practice in our  
2 business, so it not easy to find that information.

3           Q. All right. But Mr. DeFranco had that  
4 information? Didn't he?

5           A. Pardon me?

6           Q. Did Mr. DeFranco have that information?

7           A. At what point?

8           Q. Well, he came here and testified beside it  
9 the other day. Seems like he had it?

10          A. You had it as well. We had a deposition  
11 about it.

12          Q. Well, I didn't have it until I filed a  
13 motion and this Court ordered you to show up and  
14 testify about it. So I mean I got it then.

15          A. That was in 2012.

16          Q. Yeah. Well, I have it now. That's why  
17 we're talking about it today.

18          A. Well, it was from 2012. So I'm not sure  
19 what Jim has reviewed, but that was out there.

20          Q. Okay. But it wasn't hard for him to figure  
21 it out, was it?

22          A. I'm not sure I'm understanding where you're  
23 going with this.

24          Q. Okay. That's all that I have.

25               THE COURT: Do the states have any

1 questions? Okay.

2 MR. EWALD: Your Honor, I have very few  
3 redirect questions.

4 REDIRECT EXAMINATION

5 BY MR. EWALD:

6 Q. First, PX1044. We were talking about this  
7 package given to JSR and the call monitoring  
8 provision, Mr. Mills. Do you recall that? I know  
9 you're jumping all around in the binder.

10 A. That's okay. Can you say that again?

11 Q. PX1044.

12 A. Okay, I'm there.

13 Q. Turn to page 12 of PX1044.

14 A. Okay.

15 Q. See at the top, Retailer Order Entry  
16 Promotional Program Effective July 1st, 2006,  
17 through September 30th, 2006?

18 A. That's correct, yes.

19 Q. When was Star Satellite terminated as an OE  
20 retailer?

21 A. Star Satellite was terminated I believe in  
22 January of 2006.

23 Q. And when was Dish TV Now terminated as an OE  
24 retailer?

25 A. January or February, I don't remember the

1 exact date, of 2006.

2 Q. Now, talking about -- two declarations from  
3 Mr. Van Emst. Do you know Blake Van Emst?

4 A. I do.

5 Q. Do you know Blake Van Emst to be an honest  
6 man?

7 A. I do.

8 Q. Do you have any reason to believe he would  
9 intentionally misrepresent something to this Court?  
10 Or to any other court?

11 A. I don't.

12 Q. You also heard Mr. Runkle talk about Ground  
13 Hog Day. And I actually don't know whether it is  
14 actually Ground Hog Day today?

15 THE COURT: It is.

16 Q. I didn't know.

17 THE COURT: He did not see his shadow, so  
18 we'll have an early spring.

19 Q. Now, the earliest retailer we talked about  
20 in -- today, would you agree that would be Dish TV  
21 Now, the OE retailer?

22 A. Yes.

23 Q. What time -- what year did they start being  
24 an OE retailer?

25 A. Late 2003.

1           Q. And would you agree with me that SSN and the  
2 violations found by the Court in 2011, that was sort  
3 of the latest time period that we've talked about  
4 today?

5           A. Yes.

6           Q. So from 2003 to 2011 how many retailers did  
7 DISH do business with? Approximately?

8           A. Thousands.

9           Q. And how many did we talk about here today?

10          A. Four.

11          Q. Thank you.

12                 MR. RUNKLE: Nothing further, Your Honor.

13                 THE COURT: Okay. You may step down.

14                 THE WITNESS: Thank you, ma'am.

15                 (The witness was excused.)

16                 THE COURT: Mr. Goodale. Sir, if you will  
17 step up here and be sworn, please.

18                 (The witness was sworn.)

19                 THE COURT: This pulls out. And then I'll  
20 adjust the microphone so you can be heard.

21                 I apologize, that's awful with that gate. But  
22 we added it because prisoners testify in shackles,  
23 so we don't want the jury to see that.

24                 THE WITNESS: Okay.

25                 THE COURT: Please proceed.

1                   RICHARD GOODALE  
2       called as a witness herein, having been duly sworn,  
3       was examined and testified as follows:

4                   DIRECT EXAMINATION

5       BY MR. RUNKLE:

6           Q.    Afternoon, Mr. Goodale.

7           A.    Good afternoon.

8           Q.    How do you like the weather here in  
9       Springfield?

10          A.    I want to go back to California. Thank you.

11          Q.    Could you state your name and spell it for  
12       the record, please.

13          A.    I am Richard, last name is Goodale.  
14       G-o-o-d-a-l-e.

15          Q.    Could you give a brief educational  
16       background for the court, please?

17          A.    Education high school graduate, some  
18       college.

19          Q.    Have you spent most of your life in  
20       California?

21          A.    And New York.

22          Q.    And New York. Could you give a little bit  
23       of a background into your sales experience?

24          A.    Well, sales. My first sales job, I was door  
25       to door selling Kirby vacuum. When I was 16.

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1 Q. That was in the 1990s you were 16?

2 A. Oh, yeah, right, 1990. I don't know what  
3 year. Seventies probably.

4 Q. Then what did you do?

5 A. I worked in the restaurant industry for five  
6 years. Then from there I decided to be more of an  
7 entrepreneurial individual.

8 Q. What types of entrepreneurial activities did  
9 you do?

10 A. Well, I had -- I was selling sunglasses  
11 online, Funky Finger Shades for a couple of years.  
12 Then I decided to -- I started a jewelry cleaner  
13 company, bio degradable, and marketed that  
14 nationwide to jewelry retailers across the country.

15 Q. Did you have success in some of these  
16 endeavors?

17 A. It was successful. The jewelry cleaner was  
18 starting to get there. But then, you know, some of  
19 the cash flow started drying up, so I looked for  
20 other early morning employment so I could subsidize  
21 my company.

22 Q. So that takes us up to the Nineties?

23 A. It does.

24 Q. What happened to you personally in the  
25 Nineties?

1           A. In 1991 I was convicted of drunk driving. I  
2           had three in five years. I was sentenced to  
3           18 months in jail. And I did nine.

4           Q. Did you clean up your act?

5           A. Well, the Lord cleansed me of drugs and  
6           alcohol on the last arrest that I made, yes.

7           Q. And you're a man of God?

8           A. I am.

9           Q. That's why you end your e-mails with God  
10          Bless; right?

11          A. Amen.

12          Q. Okay. So what was your first encounter with  
13          call center sales?

14          A. Call center sales. My first encounter was,  
15          once again, trying to subsidize another -- a  
16          hair-brained idea that I had, I actually worked in a  
17          call center selling tools to construction -- to  
18          contractors nationwide.

19          Q. Was that a long, long time ago?

20          A. It was a long time ago.

21          Q. How did it work back then?

22          A. Well, we actually -- it was just right after  
23          rotary dial, they came out with the push button and  
24          four line phones. It was real neat. So we would,  
25          depending on where we wanted to call, we would go to

1 a room and grab phone books and just open them and  
2 start reaching out and giving people the good news  
3 about the special pricing we had on tools.

4 Q. How long did you do that?

5 A. In that role, probably a year I would say.

6 Q. Okay. When was your next encounter with  
7 call center sales?

8 A. Well, after that I heard of another company  
9 that was doing well. It was telemarketing, once  
10 again outbound. And I got into selling advertising  
11 specialty items.

12 Q. And let's bring -- bring it up more to the  
13 present day. Have you been involved in call center  
14 sales since the 2000s?

15 A. I have.

16 Q. When was your first encounter with DISH  
17 Network outbound sales?

18 A. Well, DISH Network -- well, it wasn't  
19 outbound, it was -- well, I was in -- I answered the  
20 phone. My first encounter was I was once again  
21 trying to subsidize another hair-brained idea for a  
22 company, and I saw an ad in the newspaper that said  
23 you could make 1500 a week part time. So I called  
24 that and came in and was interviewed and then I was  
25 hired.



1 Q. Okay. What company was that?

2 A. United Satellite.

3 Q. United Satellite?

4 A. United Satellite.

5 Q. And that was a DISH OE retailer; right?

6 A. It was a DISH OE retailer.

7 Q. Are there a lot of telemarketing rooms in  
8 Orange County, California?

9 A. Absolutely.

10 Q. How does that industry work?

11 A. The telemarketing industry in Orange County?

12 Q. Yes.

13 A. Basically what people do is they always are  
14 looking for the way to make a fast buck. So Orange  
15 County is just -- well, we call it a den of thieves.  
16 That, you know, they find what they think is a hot  
17 product, and then, you know, market accordingly.

18 Q. When you say market accordingly, what do you  
19 mean?

20 A. Well, they would just basically, you know,  
21 find a product, put the data in an autodialer, and  
22 light up the nation.

23 Q. And when you say light up the nation, what  
24 does that mean?

25 A. Well, we would try to reach out and touch as

1 many people as we could in one day.

2 Q. Okay. So we'll get into that in a second.  
3 When you got to United Satellite what was it like  
4 there?

5 A. It was a circus. All inbound calls. And a  
6 lot of people were angry on -- you know, when you  
7 answered. You know, "Satellite Services, how can I  
8 help you?" And then we would get death threats and  
9 "I'm gonna kill you" and all that, but that's okay.

10 Q. Why did people give you death threats?

11 A. Well, apparently they were tired of being  
12 called 15 or 20 times a day.

13 Q. So these weren't really inbound calls?

14 A. No.

15 Q. What they were?

16 A. They were prerecorded voice broadcasting  
17 things P-1, public service announcement, however you  
18 want --

19 Q. Public service announcement, that's a  
20 euphemism; right?

21 A. It was more of an inside joke.

22 Q. Okay. Can you describe P-1 marketing?

23 A. P-1 marketing is that we would write a  
24 script designed for whatever product we wanted to  
25 market. We would then record it in specific, either

1 a wave file, or depending on what the system used.  
2 We would, in that recording, give people the option  
3 to press 1 to learn more, or 9 to opt out, if they  
4 chose to.

5 Q. How did you know that United Satellite was  
6 doing that?

7 A. Just based on when I would answer the phone  
8 people would say, "I'm on the do not call list, why  
9 are you calling me."

10 Q. Do you know a man named Doug Chang?

11 A. I do.

12 Q. Who is Doug?

13 A. Well, Doug actually, I came across him at  
14 United Satellite. He was a western sales manager  
15 for DISH Network.

16 Q. What did he do at United?

17 A. He basically just came to hang out and watch  
18 the circus.

19 Q. Do you think Doug knew about the prerecorded  
20 message telemarketing?

21 A. Absolutely.

22 Q. Why do you say that?

23 A. Well, because as, you know, the way this  
24 call center was set up, there was stations that you  
25 would just stand and observe, you know, a block of

1 20 people, 20 here, 20 there. Just hearing people  
2 yelling all the time. But yeah, there was no way he  
3 didn't hear people yelling, because it was, you  
4 know, quite a lot of people yelling.

5 Q. And it was obvious that these people were  
6 yelling because they had gotten calls they didn't  
7 want?

8 A. Yes. And they kept saying that they're on  
9 the do not call list. But you know, our policy was  
10 just to hang up on them and move along. Because  
11 obviously I'm waiting for somebody that did want to  
12 enroll and sign up for DISH Network.

13 Q. What was your sales experience like at  
14 United Satellite?

15 A. Well, when I first started, you know, it was  
16 pretty easy because, you know, it's DISH Network, it  
17 was an easy product to sell. HDTVs were just coming  
18 online, so we had to let them know that they needed  
19 to, you know, upgrade so they can have their HDTV.

20 Q. What happened to your short-lived career at  
21 United Satellite?

22 A. Well, what happened was is that when I first  
23 arrived there, the company that I was working for, I  
24 did notice that a lot of the principals in the  
25 company were driving Lamborghinis, Ferraris and

1 stuff like that. And so I thought, well, you know,  
2 maybe let's see what this is all about, because if  
3 they can have a Ferrari, you know, they don't seem  
4 to be like the sharpest crayon in the box, that I  
5 probably can have that too.

6 Q. Okay. So you wanted to make some money?

7 A. I did.

8 Q. It was fast money?

9 A. Yes.

10 Q. Who were the principals of United Satellite?

11 A. Mike Gleason, Jacques something or other.  
12 Jacques something. I don't remember his last names.

13 Q. They had sports cars?

14 A. Yeah. He had the lime green Lamborghini.

15 Q. And what happened -- why did you leave  
16 United Satellite?

17 A. Well, I wasn't -- I didn't leave, I was  
18 terminated. The reason being is that during the  
19 ten days that I was there, a couple days in the  
20 manager of my, what they call pod, his name was  
21 Blaze, he was -- we started talking. And I was  
22 saying, "So how does this work? How do you --"  
23 I started picking his brain. And then he really  
24 didn't have too much information, or he was still  
25 afraid to tell me what it's all about. But he said

1     that when Doug walked in, he said, "well, Dude,  
2     there's the dude right there." So I went and talked  
3     to Doug regarding, you know, what it would take to  
4     become a DISH Network retailer.

5             Q. Okay. So does Blaze have a real name?

6             A. He does.

7             Q. What is his real name?

8             A. His name is Shaun Gazzara.

9             Q. So he's the S is JSR?

10            A. He is the S. Or was.

11            Q. What did Doug Chang tell you?

12            A. well, Doug said, well, you need to do this,  
13     this, and this. The like the proper steps. I said  
14     okay. And then he put me in touch with somebody  
15     that can help us get started by referring us to  
16     somebody that had an affiliate log-in that we can  
17     use.

18            Q. So Doug Chang was a DISH employee at the  
19     time?

20            A. Absolutely.

21            Q. And he put you in touch with someone who  
22     gave you a log-in to use as an affiliate?

23            A. Absolutely.

24            Q. Who was that person?

25            A. Sean Portela.

1 Q. Was Sean Portela then a DISH employee?

2 A. Well, I was under the impression that he  
3 just was retired, if you will, as a vice-president.  
4 And then he opened up his own affiliate marketing  
5 for DISH.

6 Q. Okay. And what was his company called at  
7 the time?

8 A. I don't remember. Cactus.

9 Q. Did he have a company called DISH Nation?  
10 Does that ring --

11 A. Oh, DISH Nation, DISH Nation. But then he  
12 had another, Cactus Satellites. He had many.  
13 Multiple log-ins.

14 Q. So how was JSR formed?

15 A. Well, JSR was formed by, well, in speaking  
16 with, well, Blaze, Sean, and after talking to Doug  
17 -- well, let me back up.

18 what happened after I talked to Doug.  
19 Apparently he then told Mike Gleason I was asking  
20 him questions. So then Mike Gleason came in and  
21 terminated me because I was gonna start my own DISH  
22 Network company, or --

23 Q. And did --

24 A. I did.

25 Q. You did. How did that come about?

1           A. How it came about was that Sean said he knew  
2 an investor that wanted to come on board that had 50  
3 stacks. And I said okay.

4           Q. Did the investor have 50 stacks?

5           A. He did. Well, no, he didn't. He actually  
6 only had seven stacks. And --

7           Q. What does stacks mean?

8           A. Thousand.

9           Q. Okay. Who was that person?

10          A. Jerry Grider.

11          Q. Why is Jerry Grider on the application?

12          A. He had better credit than I did. I just  
13 co-signed for somebody that the vehicle was  
14 repossessed and my credit was shot. So I recommend  
15 not co-signing for anybody. Just saying.

16          Q. And so can you walk us through a little bit  
17 more about the process of how JSR started up?

18          A. Well, JSR started by -- well, at first the  
19 promise of there was gonna be funds available, but  
20 that didn't happen. But how it came to pass is that  
21 Sean was still working for United. And my part of  
22 the partnership was that I would open up the call  
23 center itself. I would hire, train. And then the  
24 two partners would be in the shadows, not  
25 interfering with what we were gonna do.



1 Q. Okay. Did Doug know that you were gonna be  
2 doing P-1 marketing?

3 A. Absolutely.

4 Q. Why do you say that?

5 A. Well, because in -- it's just the way it was  
6 in Orange County. Every call center was using press  
7 1 for DISH Network.

8 Q. Why is that?

9 A. It was the fastest way to reach out and  
10 touch people.

11 Q. When you say reach out and touch people, you  
12 mean a lot of people?

13 A. I'm talking lighting it up. Absolutely.

14 Q. Can you explain a little bit more about  
15 lighting someone up?

16 A. Well, for example, you know, we would get  
17 notification through Doug and others that worked for  
18 DISH that would tell us -- for example, I remember  
19 when Lifetime Movie Channel was taken off a certain  
20 network. El Paso, certain cities in Texas. So what  
21 we did is we loaded up a few million records and  
22 then lit up the state of Texas.

23 Q. What would happen when you did that?

24 A. We would pretty much contact every phone  
25 number that we had for the State of Texas and invite

1       them to participate in the new HD television  
2       experience.

3           Q.   And you would contact them more than once?

4           A.   Yeah.   The same people in Texas?

5           Q.   Yeah.

6           A.   Sure.

7           Q.   That's how the dialer worked?

8           A.   That's how it did work.

9           Q.   Okay.   So let's talk about those dialers.  
10       How did JSR acquire dialers?

11          A.   Well, we started out with, we were buying  
12       dialer time from a company out of the Philippines.  
13       And then getting back to how JSR started, it turned  
14       out that Jerry, the 50 stacks that he said that he  
15       had, he only had 7,000.   So I had to put up some  
16       cash.   And, you know, buy the cubes, the telephone  
17       systems, the computers.   And then pay for the dialer  
18       to start dialing.

19          Q.   Did you -- was this before you acquired an  
20       OE license?

21          A.   It was.   Our goal was to -- what we were  
22       told is that we need to produce volume and then we  
23       can earn our way into having a full OE, which would  
24       increase our profitability by, I would say, 175 per  
25       enrollment.

1 Q. Who told you that?

2 A. Well, Doug, and then Sean.

3 Q. Doug told you you had to make a certain  
4 volume?

5 A. Well, we had to show that we're capable of  
6 producing sales.

7 Q. Did you do that?

8 A. Of course.

9 Q. And how did you do it?

10 A. We used a voice broadcasting system in  
11 offering people free satellite equipment valued at  
12 over \$1200.

13 Q. Who made the prerecorded messages?

14 A. I did.

15 Q. Did other people do it too?

16 A. Some, some. We hired voices. To do test  
17 marketing I would always record, and then broadcast  
18 and see what the response rate was. Then we would  
19 hire professionals.

20 Q. Now, did there come a time when you got your  
21 full OE license?

22 A. There was.

23 Q. Do you remember anything about that?

24 A. I do remember the people, the -- well, we  
25 call them suits, for DISH, came to our location in

1 Santa Anna, California. Doug, Mike Mills, Mike  
2 Oberbillig, Sean Portela. I can't remember the  
3 other gentleman's name. And then some other  
4 ex-Marines. Came to our office to welcome us aboard  
5 to the full OE licensing.

6 Q. Now, there was an application submitted to  
7 become an OE retailer; do you remember that?

8 A. Yes. Well, there was. I didn't fill it  
9 out, but I think Jerry did.

10 Q. Was everything on there accurate?

11 A. Relatively speaking it was more window  
12 dressing than it was accuracy of the application.

13 Q. Because everybody knew you were going to be  
14 doing robo; right?

15 A. Everyone knew.

16 Q. Okay. Let's talk about that meeting. You  
17 said Mike Mills was there?

18 A. He was.

19 Q. Mike Oberbillig was there?

20 A. He was.

21 Q. What was the tone of that meeting?

22 A. Well, the tone of the meeting was basically,  
23 you know, welcome aboard. We're glad that you're  
24 here, you know, part of the DISH Network family.  
25 And you know, they wished us success.

1 Q. Okay. Did you call -- you call them the  
2 Mikes, is that --

3 A. Yeah, the Mikes.

4 Q. Did the Mikes tell you anything about voice  
5 broadcasting?

6 A. Well, what -- in the -- Jerry was speaking  
7 up that he was happy that we did get our licensing  
8 because that availed us to be able to purchase 15  
9 more autodialers. So that we can light it up even  
10 more.

11 Q. So Jerry told the Mikes that you were gonna  
12 buy 15 more autodialers and light it up more?

13 A. Absolutely.

14 Q. As someone in the industry what does that  
15 language mean?

16 A. Well, lighting it up means that this gave us  
17 another availability to have 1500 more phone lines  
18 that we can dial out constantly at 15 hours a day  
19 per day. Day in, day out.

20 Q. That's P1 marketing; right?

21 A. That's press-1 marketing.

22 Q. Does it mean anything other than P-1  
23 marketing?

24 A. No.

25 Q. Do you think Mike Mills and Mike Oberbillig

1 understand that?

2 A. Well, they did, because they specifically --  
3 I know one of the Mikes did state to us that we --  
4 we cannot use the name DISH in our voice  
5 broadcasting message.

6 Q. So one of the Mikes told you you can't use  
7 the name DISH?

8 A. Cannot use the name DISH.

9 Q. In your voice broadcasting?

10 A. Correct.

11 Q. Okay. I want to show you a little bit of  
12 video from Mike Mills deposition. Can you play  
13 that.

14 (The following video clip was played.)

15 "Q. Okay. Are you familiar with JSR  
16 Enterprises?

17 "A. Yes.

18 "Q. Okay. Did you ever meet Jerry Grider?

19 "A. I did.

20 "Q. When did you meet Mr. Grider?

21 "A. Again, I'm not exactly sure. I would say  
22 it's probably fairly close to after August 10th,  
23 2006. I would -- I met him in his office and gave  
24 them much the same training as I have in the past  
25 for products, pricing, promotions, disclaimers,

1     those kind of things.

2             "Q. Okay. What was your understanding of how --  
3     what marketing methods Mr. Grider was going to use  
4     to sell DISH Network?

5             "A. Several different tactics. Online, print.  
6     Those are the big ones, online and print is what --

7             "Q. Okay. Anything else that you remember?

8             "A. Those are the big ones.

9             "Q. Okay."

10            (End of video clip.)

11            Q. Is that truthful testimony in your opinion?

12            A. No, he --

13                     MR. BICKS: Your Honor, he can't comment on  
14     the truthfulness of someone else's testimony.  
15     Objection.

16            Q. I can rephrase the question.

17                     THE COURT: All right.

18            Q. All right. Is that accurate testimony?

19            A. It is not.

20                     MR. BICKS: Your Honor, he can't comment on  
21     the accuracy of somebody else's testimony.  
22     Objection.

23                     THE COURT: The objection is overruled.

24            Q. Is that accurate testimony?

25            A. It is not. He actually bumped his head just

1 reading that saying that he trained us in marketing.  
2 He didn't do anything. They did give us a poster  
3 that we can put on our wall.

4 Q. But what about the methods of marketing; was  
5 that accurate testimony?

6 A. No, not at all. No marketing was ever  
7 addressed.

8 Q. Because they knew what marketing you were  
9 going to do?

10 A. They knew exactly that we were --

11 MR. BICKS: Your Honor, objection.

12 THE COURT: The objection is overruled.

13 MR. BICKS: He can't testify to what  
14 somebody knew.

15 Q. You can answer.

16 A. Oh, I'm sorry. Could you repeat --

17 THE COURT: He already did answer.

18 Q. He did answer, okay.

19 So anything else you remember about that  
20 meeting with the Mikes and the suits from DISH, as  
21 you called them?

22 A. Well, other than we were looking forward to  
23 growing and acquiring more dialers. And you know,  
24 being able to be the number one retailer in the  
25 country. That was our goal. And then I do know



1 after our meeting they all went out to a club.

2 Q. What kind of a club?

3 A. It was called Captain Cream Strip Club.

4 Q. Did they take a lot of cash with them?

5 A. I know one of the gentleman that was a  
6 different retailer, he took 5,000 with him for  
7 dollar bills for the -- the working girls you call  
8 it.

9 Q. Okay. Now, you were voice broadcasting the  
10 entire time that you were a DISH retailer; right?

11 A. Absolutely.

12 Q. And where were your dialers located?

13 A. Texas. Then we were opening up -- well, we  
14 had a facility in the Philippines. But then we were  
15 opening one up in Nevada for less state tax.  
16 Because we were taxed on our phone records.

17 Q. The Texas facility, how many dialers were  
18 there?

19 A. I believe we had 25 in that facility.

20 Q. Are they still there today?

21 A. Well, I know there's some collecting dust.

22 Q. And what is was the source you used for your  
23 leads?

24 A. Well, basically, I knew somebody in the data  
25 collection industry that I would just buy CDs,

1 basically white page data for every state in the  
2 union.

3 Q. Did that come on CD-ROMs?

4 A. It did.

5 Q. And that information would be fed into those  
6 dialers?

7 A. well, we would actually ship them to our  
8 support in Texas, because it would take too long to  
9 upload 40 million records, as an example, from a  
10 state.

11 Q. Now, you knew that prerecorded messaging was  
12 at least in a gray area of marketing; would you say  
13 that?

14 A. well, it was frowned upon, you know. But  
15 did I know -- it was gray area, for whatever that is  
16 worth.

17 Q. Does it surprise you that there were Do Not  
18 Call Registry numbers that were called out of those  
19 dialers?

20 A. No.

21 Q. why doesn't that surprise you?

22 A. well, it just is what it is. You know,  
23 obviously if you're making millions of phone calls a  
24 day, somebody has to be on the DNC.

25 Q. Those dialers were pretty hungry; right?

1 A. They -- they needed to keep running; yes.

2 Q. So what was the structure of a day for one  
3 of those dialers? Could you tell me how they would  
4 operate?

5 A. Well, in the morning we would pre-set it to  
6 just, you know, all -- we just light every one of  
7 them up and just start dialing. And you know, point  
8 the calls to different call centers that we had in  
9 Orange County.

10 Q. Did you vary the -- the number of calls, the  
11 rate of calls throughout the day?

12 A. No.

13 Q. Did you do more calls in the evening?

14 A. Yes. We had to, just because of, you know,  
15 with time zone constraints, we had to keep backing  
16 it up until we ultimately got to the west coast.

17 Q. Mr. Goodale, do you know who Reji Musso is?

18 A. I do.

19 Q. What do you remember Mr. Reji Musso?

20 A. I remember that she was just some sort of  
21 a -- or compliance to make sure that we would remove  
22 e-mail addresses or something, basically.

23 Q. She contacted you about some do not call  
24 issues; right?

25 A. She did.

1 Q. Did you take her seriously?

2 A. Well, I didn't think she had any juice card.  
3 In other words, I didn't she had any authority. So  
4 did we address what she wanted to hear? Absolutely.

5 Q. But you may have told her some fibs?

6 A. Well, probably. I don't know what I told  
7 her, but I'm sure there was some truth in whatever I  
8 told her.

9 Q. Because you were doing some do not call  
10 compliance?

11 A. I was.

12 Q. You were trying?

13 A. I did try.

14 Q. But your operation got so big that things  
15 happened?

16 A. It was untenable. I mean it was just too  
17 much.

18 Q. Now, you talked earlier about a situation  
19 where you'd get information from DISH that a certain  
20 geographic region should be targeted?

21 A. That is correct.

22 Q. What did you understand that information to  
23 mean?

24 A. Well, what we understood if, for example,  
25 Comcast -- like I say, Lifetime Movie Channel was a

1 big channel. And if a carrier was losing the  
2 channel through contract negotiation, we would come  
3 in and target that area by lighting it up and trying  
4 to reach out, touch everyone in that state.

5 Q. And that's what you did?

6 A. That's what we did.

7 Q. Did you like selling DISH Network?

8 A. I love DISH. I do. I still have DISH.

9 Q. Do you like using P-1 marketing?

10 A. I wish I could still to this day.

11 Q. It was effective; right?

12 A. Very effective.

13 Q. So let's talk a little bit about other forms  
14 of marketing. Are you familiar with running print  
15 ads?

16 A. Well, print in this demographic was only  
17 used for, I guess to -- if you're training a puppy  
18 or cleaning out a bird cage.

19 Q. Print didn't work?

20 A. Print is dead.

21 Q. How about online pay per click during the  
22 time that you were operating?

23 A. No, there was no point. It wasn't  
24 cost-effective.

25 Q. How about live outbound dialing?