

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. 39 of 85
[JA008930-JA009168]

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Evidentiary Hearing SLC Exhibit 102²			

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

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

EXHIBIT 277

EXHIBIT 277

ECHOSTAR RETAILER AGREEMENT

This EchoStar Retailer Agreement (the "Agreement") is made and effective as of December 31, 2004 (the "Effective Date"), by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("EchoStar"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and **DONALD KING DBA DIGITAL SATELLITE CONNECTIONS** having a principal place of business at 3620 SW 189TH AVE, DUNNELLON, FL 34432 ("Retailer").

INTRODUCTION

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

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

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

AGREEMENT

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

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

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

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

1.4 "Bulk Programming" means the Programming that EchoStar makes generally available for viewing in Guest Properties and bulk-billed MDU Properties, in each case assuming 100% penetration, subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Bulk Programming services offered and/or any restrictions applicable to such Bulk Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

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

1.6 "Business Rule(s)" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule by EchoStar which is communicated to Retailer by EchoStar or an Affiliate of EchoStar either directly (including e-mail) or through any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a "Charlie Chat", e-mail, facts blast, or posting on EchoStar's retailer web site. Retailer agrees that EchoStar has the right to modify any Business Rule at any time and from time to time in its sole and absolute discretion for any reason or no reason, upon notice to Retailer.

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

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

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

are defined below in Sections 1.29 and 1.25, respectively.

1.10 “Commercial Programming” means the Programming that EchoStar makes generally available for viewing in Commercial Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Commercial Programming services offered and/or any restrictions applicable to such Commercial Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

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

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

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

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

1.15 “Eligible Bulk Programming” means the Bulk Programming packages designated by EchoStar as qualifying for the payment of Bulk Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at any time and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.16 “Eligible Commercial Programming” means the Commercial Programming packages designated by EchoStar as qualifying for the payment of Commercial Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at any time and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.17 “Eligible Residential MDU Programming” means the Residential MDU Programming packages designated by EchoStar as qualifying for the payment of Residential MDU Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at any time and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.18 “Eligible Residential Programming” means the Residential Programming packages designated by EchoStar as qualifying for the payment of Residential Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at any time and from time to time in EchoStar’s sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.19 “Guest Property” means a hotel, motel, hospital, other healthcare facility or any other similar type of facility located in the Territory that regularly permits overnight or otherwise short-term stays by individuals. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Guest Property or is more appropriately considered another type of location.

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

1.21 “Institutional/Residential Location” means a property located in the Territory that displays Programming in a non-public, common viewing area within a property that is owned or operated by a government or commercial entity, in which employees are being provided residential living accommodations to facilitate the requirements of their job responsibilities. For example, non-public, common viewing areas within fire stations, oil rigs and coast guard stations are typically Institutional/Residential Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes an Institutional/Residential Location or is more appropriately considered another type of location.

1.22 “MDU Property” means a dormitory, apartment building, condominium complex, retirement community or other type of multifamily living establishment located in the Territory that affords residents living quarters. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a

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location constitutes an MDU Property (and, if so, what type of MDU Property, e.g., bulk-billed, non-bulk-billed or other) or is more appropriately considered another type of location.

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

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

1.25 “Private Commercial Location” means a place of business located in the Territory that may be accessible to the public, and is not classified within the hospitality industry. For example, office reception areas or waiting rooms and the private offices of attorneys, doctors/dentists, and other business professionals are typically Private Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Private Commercial Location, or is more appropriately considered another type of location.

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

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

1.28 “Promotional Program” means: (i) a promotional offer, as determined by EchoStar, which Retailer may present to consumers in connection with Retailer’s marketing, promotion and solicitation of orders for Programming; (ii) the Incentives, as determined by EchoStar, which Retailer may receive in connection with such promotional offer; and (iii) the Business Rules, as determined by EchoStar, setting forth the terms and conditions governing the promotional offer and any corresponding Incentives. EchoStar reserves the right to discontinue any Promotional Program or change the Business Rules associated therewith at any time and from time to time in its sole and absolute discretion for any reason or no reason, upon notice to Retailer.

1.29 “Public Commercial Location” means a place of business located in the Territory that: (i) is generally accessible to the public, (ii) is typically classified within the hospitality industry, (iii) typically serves food and/or liquor for immediate consumption, and (iv) is typically registered with a Fire Occupancy Certificate. No satellite master antenna television or private cable system in a commercial or residential multiple dwelling unit (i.e., hotels, hospitals, dormitories, etc.) shall be considered a Public Commercial Location; provided, however, that a place of business located within such multiple dwelling units that otherwise meets the definition of a Public Commercial Location (e.g., a restaurant within a hotel or hospital) may be considered a Public Commercial Location. For example, bars, restaurants, clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Public Commercial Location, or is more appropriately considered another type of location.

1.30 “Qualifying Bulk Subscriber” means a commercial enterprise providing Bulk Programming on a bulk basis, assuming 100% penetration, to a Guest Property and/or a bulk-billed MDU Property that orders Eligible Bulk Programming, that timely pays for all Bulk Programming ordered in full, that has not violated any of the terms and conditions set forth in an EchoStar Commercial Customer Agreement, and that has never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Bulk Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.31 “Qualifying Commercial Subscriber” means a commercial enterprise operating a business at a Commercial Location that orders Eligible Commercial Programming, that timely pays for all Commercial Programming ordered in full, that has not violated any of the terms and conditions set forth in an EchoStar Commercial Customer Agreement, and that has never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Commercial Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.32 “Qualifying Residential MDU Subscriber” means an individual at a non-bulk-billed MDU Property who orders Eligible Residential MDU Programming, who timely pays for all Residential MDU Programming ordered in full, who has not violated any of the terms and conditions set forth in an EchoStar Residential Customer Agreement, and who has never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential MDU Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

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1.33 “Qualifying Residential Subscriber” means an individual at a Residential Location or an Institutional/Residential Location who orders Eligible Residential Programming, who timely pays for all Residential Programming ordered in full, who has not violated any of the terms and conditions set forth in an EchoStar Residential Customer Agreement, and who has never previously received any audio, video, data or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole and absolute discretion for any reason or no reason, declines to activate.

1.34 “Residential Incentives” means Monthly Residential Incentives and Additional Residential Incentives, as such terms are defined in Sections 6.1.1 and 6.2.1, respectively.

1.35 “Residential Location” means a single family residential dwelling (i.e., single family houses, apartments, condominiums or other dwellings used primarily for residential purposes), located in the Territory; provided, however, in no case shall any satellite master antenna television system or private cable system in a residential multiple dwelling unit or any similar programming reception system (e.g., dormitories, etc.) be considered a Residential Location. Notwithstanding the foregoing, EchoStar reserves the right to determine from time to time, in its sole and absolute discretion for any reason or no reason, whether a location constitutes a Residential Location or is more appropriately considered another type of location.

1.36 “Residential MDU Incentives” means Monthly Residential MDU Incentives and Additional Residential MDU Incentives, as such terms are defined in Sections 6.1.2 and 6.2.2, respectively.

1.37 “Residential MDU Programming” means the Programming that EchoStar makes generally available for viewing in non-bulk-billed MDU Properties subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Residential MDU Programming services offered and/or any restrictions applicable to such Residential MDU Programming services at any time and from time to time in its sole discretion for any reason or no reason.

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

1.39 “Residential Programming” means the Programming that EchoStar makes generally available for viewing in Residential Locations and Institutional/Residential Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason. EchoStar reserves the right to change the Residential Programming services offered and/or any restrictions applicable to such Residential Programming services at any time and from time to time in its sole and absolute discretion for any reason or no reason.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **APPOINTMENT; TERRITORY.**

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

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promotion of Bulk Programming to, commercial enterprises providing Bulk Programming on a bulk-basis, assuming 100% penetration, to Guest Properties and bulk-billed MDU Properties.

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

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

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

3.5 **Purchase of DISH DBS Systems by Retailer from EchoStar.** In the event that Retailer orders any DISH DBS Systems or Promotional Certificates from Echosphere L.L.C. or any of its Affiliates (collectively, "Echosphere" for purposes of this Section 3.5), Retailer shall order such products by phone order, via Echosphere online ordering or by written purchase order (each, a "Purchase Order") issued during the Term of this Agreement. A Purchase Order shall be a binding commitment by Retailer. Any failure to confirm a Purchase Order shall not be deemed acceptance by Echosphere. Purchase Orders of Retailer shall state only the: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. Any additional terms and conditions stated in a Purchase Order shall not be binding upon Echosphere unless expressly agreed to in writing by Echosphere. In no event shall Echosphere be liable for any delay, or failure to fulfill, any Purchase Order (or any portion thereof), regardless of the cause of such delay or failure. In the event of any conflict between the terms and conditions of a Purchase Order and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. In the event of any ambiguity between or among the terms and conditions of this Agreement and the terms and conditions of any Purchase Order, EchoStar shall have the sole and exclusive authority to interpret and/or make a final determination in its sole and absolute discretion for any reason or no reason concerning any issue arising from such ambiguity. Echosphere shall be considered a third party beneficiary of Retailer's obligations under this Agreement. Retailer hereby acknowledges and agrees that Echosphere has no obligation to re-purchase DISH DBS Systems or Promotional Certificates back from Retailer at any time for any reason.

3.6 **Sale of DISH DBS Systems.** Retailer agrees that as a condition precedent to eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System or Promotional Certificate to any person or entity whom Retailer knows or reasonably should know: (i) is not an end-user and/or intends to resell, lease or otherwise transfer it for use by another individual or entity; (ii) intends to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location; (iii) intends to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property; (iv) intends to use it, or to allow others to use it in Canada, Mexico or at any other location outside of the Territory; or (v) intends to have, or to allow others to have, Programming authorized for it under a single DISH Network account that has or will have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same phone line (except in the case of a bulk-billed MDU Property). It shall be Retailer's responsibility to investigate and determine whether any sale by Retailer would be in violation of this Section. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who uses it, or allows others to use it to (a) view Residential Programming at a location other than a Residential Location or an Institutional/Residential Location, or (b) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, then Retailer agrees to pay to EchoStar upon demand: (1) the difference between the amount actually received by EchoStar for the

Programming authorized for the DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (2) the total amount of any admission charges or similar fees imposed for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who has, or allows others to have, Programming authorized for it under a single DISH Network account that at any time has Programming activated for multiple DISH DBS Systems that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same phone line (except in the case of bulk-billed MDU Properties), and Retailer knew or reasonably should have known that the person or entity intended to have, or allow others to have, Programming authorized for the DISH DBS System under such an account, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate account. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 3.6, ECHOSTAR SHALL BE ENTITLED TO CHARGE BACK AT ANY TIME (EVEN AFTER THE TERMINATION OR EXPIRATION OF THIS AGREEMENT) THE INCENTIVES, IF ANY, PAID TO RETAILER BY ECHOSTAR WITH RESPECT TO ANY SUBSCRIBER ACCOUNT AFFECTED BY SUCH BREACH OR DEFAULT. IN THE EVENT THAT RETAILER WISHES TO DISPUTE ANY SUCH CHARGEBACK, RETAILER SHALL FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 15 BELOW. ECHOSTAR'S CALCULATION OF AMOUNTS OWING TO ECHOSTAR FROM RETAILER UNDER THIS SECTION 3.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 3.6 are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

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

3.9 **Installation Services.** Retailer represents, warrants, covenants and agrees that all installation and after-sales services performed by Retailer and/or its subcontractors, agents and employees in connection with the sale, lease or other transfer of DISH DBS Systems will be performed by Retailer and/or its subcontractors, agents and employees in accordance with all applicable laws, codes and regulations, and subject to all of the terms, conditions, standards and guidelines set forth in the DISH Network Installation Manual (located on the retailer web site), as such terms, conditions, standards and guidelines may be changed at any time and from time to time by EchoStar or any of its Affiliates (including, without limitation, DISH Network Service L.L.C.) in their sole and absolute discretion, for any reason or no reason, upon notice to Retailer.

3.10 **Prior Retailer Agreements.**

3.10.1 IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY INCENTIVIZED RETAILER AGREEMENT, COMMISSIONED RETAILER AGREEMENT, COMMISSIONED DEALER AGREEMENT OR ANY OTHER AGREEMENT WITH ECHOSTAR OR ANY OF ITS AFFILIATES RELATING TO THE MARKETING, PROMOTION, ADVERTISING OR SOLICITATION OF ORDERS FOR PROGRAMMING BY RETAILER AND THE PAYMENT OF CERTAIN AMOUNTS BY ECHOSTAR THEREFOR (A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE, THEN UPON THE EFFECTIVE DATE: (I) ALL PRIOR RETAILER AGREEMENTS SHALL BE AUTOMATICALLY TERMINATED, EXCEPT THAT THE PROVISIONS (EXCLUDING ANY PROVISIONS RELATED TO THE PAYMENT OF COMMISSIONS OR INCENTIVES) IN SUCH PRIOR RETAILER AGREEMENTS THAT EXPRESSLY SURVIVE AND SUCH OTHER RIGHTS AND OBLIGATIONS THEREUNDER AS WOULD LOGICALLY BE EXPECTED TO SURVIVE TERMINATION OR EXPIRATION SHALL CONTINUE IN FULL FORCE AND EFFECT FOR THE PERIOD SPECIFIED OR FOR A REASONABLE PERIOD OF TIME UNDER THE CIRCUMSTANCES IF NO PERIOD IS SPECIFIED; (II) ALL INCENTIVES, COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE DUE TO RETAILER UNDER SUCH PRIOR RETAILER AGREEMENT SHALL BE PAYABLE BY ECHOSTAR TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) EXCEPT AS SET FORTH IN SECTION 3.10.1(I), ALL RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND ALL PRIOR RETAILER AGREEMENTS SHALL BE OF NO FURTHER FORCE OR EFFECT.

3.10.2 RETAILER AND ITS AFFILIATES HEREBY ACKNOWLEDGE AND AGREE THAT THEY DO NOT, AS OF THE EFFECTIVE DATE, HAVE ANY CLAIMS OR CAUSES OF ACTION AGAINST ECHOSTAR OR ANY OF ITS AFFILIATES FOR ACTS OR OMISSIONS THAT MAY HAVE OCCURRED PRIOR TO THE EFFECTIVE DATE AND, IN CONSIDERATION OF RETAILER BEING APPOINTED AS AN AUTHORIZED RETAILER HEREUNDER BY ECHOSTAR, RETAILER AND ITS AFFILIATES HEREBY AGREE TO WAIVE ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION, WITH THE SOLE EXCEPTION OF ANY CLAIMS AND CAUSES FOR WHICH RETAILER PROVIDES WRITTEN NOTICE TO ECHOSTAR IN THE SAME FORM REQUIRED FOR A NOTICE OF CLAIM UNDER SECTION 15 BELOW WITHIN NINETY (90) DAYS (OR THE SHORTEST PERIOD OF TIME ALLOWED BY APPLICABLE LAW IF MORE THAN 90 DAYS) AFTER THE EFFECTIVE DATE. ECHOSTAR SHALL HAVE THE SAME RIGHTS WITH RESPECT TO REQUESTS FOR ADDITIONAL INFORMATION AND ACCESS TO RETAILER'S BOOKS AND RECORDS IN CONNECTION WITH ANY SUCH CLAIMS AND CAUSES OF ACTION AS ECHOSTAR HAS UNDER SECTION 17.9 BELOW. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 3.10.2 WITH RESPECT TO A PARTICULAR CLAIM AND/OR CAUSE OF ACTION SHALL CONSTITUTE A WAIVER BY RETAILER AND ITS AFFILIATES WITH RESPECT TO THE RELEVANT CLAIM AND/OR CAUSE OF ACTION. HOWEVER, NOTWITHSTANDING ANY TERMS OF THIS AGREEMENT, NOTHING CONTAINED IN THIS AGREEMENT WILL WAIVE ANY RIGHT RETAILER MAY HAVE IN THE CLAIMS BROUGHT IN THE FOLLOWING CLASS ACTION LAWSUITS IN THE EVENT THE FOLLOWING LAWSUITS ARE CERTIFIED: CASE NO. 00-CV-1989, STYLED *JOHN DEJONG, D/B/A ANEXWAVE, @ AND JOE KELLY, D/B/A AKEL-TRONICS, @ AND JAGUAR TECHNOLOGIES, INC. V. ECHOSTAR SATELLITE CORPORATION*, UNITED STATES DISTRICT COURT, DISTRICT OF COLORADO; CASE NO. 00-CV-3130, STYLED *AIR COMMUNICATION & SATELLITE, INC. ET AL. V. ECHOSTAR SATELLITE CORPORATION*, DISTRICT COURT, ARAPAHOE COUNTY, COLORADO; CASE NO. 500-CV-268, STYLED *SATELLITE DEALERS SUPPLY, INC. V. ECHOSTAR COMMUNICATIONS CORP.*, UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF TEXAS. IN THE EVENT THAT NO PRIOR RETAILER AGREEMENT IS IN EFFECT AS OF THE EFFECTIVE DATE, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE INCENTIVES FOR NEW SUBSCRIBER ACCOUNTS ACTIVATED AFTER THE EFFECTIVE DATE, NOTWITHSTANDING PAYMENT BY ECHOSTAR OF ANY INCENTIVES, COMMISSIONS OR OTHER PAYMENTS TO RETAILER PRIOR TO THE EFFECTIVE DATE. THIS AGREEMENT SHALL NOT AMEND, MODIFY, ALTER OR CHANGE ANY TERMS OR CONDITIONS OF ANY LEASE PLAN DEALER AGREEMENT, OR ANY SIMILAR AGREEMENT RELATING TO LEASING, WHICH IS NOW EXISTING OR LATER MADE WITH ECHOSTAR OR ANY OF ITS AFFILIATES.

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

3.12 **MDU Property / Guest Properties.** Retailer shall ensure that no Guest Property or bulk-billed MDU Property engages directly or indirectly in: (i) the reselling of Bulk Programming (i.e., the property cannot charge more for Bulk Programming than they pay to EchoStar for such Bulk Programming); (ii) the retransmission or rebroadcast of any Programming, except with the express written consent of EchoStar which consent EchoStar may withhold in its sole and absolute discretion for any reason or no reason; or (iii) modifying, adding to, or deleting from any of the Bulk Programming. Retailer shall promptly notify EchoStar if it is aware of or suspects a change in the number of Units at any Guest Property or bulk-billed MDU Property subscribing to Bulk Programming. Retailer understands and agrees that bulk-billed MDU Properties, non-bulk-billed MDU Properties and Guest Properties may require the purchase of commercially-invoiced DISH DBS Systems, as further described in applicable Business Rules and adjustable at any time and from time to time in EchoStar's sole and absolute discretion for any reason or no reason.

4. **PROGRAMMING.**

4.1 **Programming.** EchoStar shall determine from time to time, in its sole and absolute discretion for any reason or no reason, the Programming for which Retailer may solicit orders. EchoStar may expand, reduce or otherwise modify the content of any Programming packages or add or delete any Programming (either in a package or a-la-carte) at any time and from time to time in its sole and absolute discretion for any reason or no reason. Any changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date.

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

5. **PRICES.** EchoStar shall determine the retail prices for Programming from time to time in its sole and absolute discretion for any reason or no reason. Retailer will only solicit orders for Programming at the retail prices set by EchoStar from time to time. EchoStar may increase, decrease or otherwise modify those prices at any time and from time to time in its sole and absolute discretion for any reason or no reason. Any price changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date. Retailer shall not represent that Programming may be purchased or obtained on any other terms except as authorized in writing by EchoStar.

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

6.1 **Monthly Incentives.**

6.1.1 **Monthly Residential Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System or Promotional Certificate that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates (in the case of DISH DBS Systems and Promotional Certificates), or a Third Party Manufacturer (solely with respect to DISH DBS Systems); (ii) is re-sold by Retailer directly to a Qualifying Residential Subscriber; and (iii) results in the activation of Eligible Residential Programming for a new Residential Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Residential Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.2 **Monthly Residential MDU Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each commercially-invoiced DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Residential MDU Subscriber; and (iii) results in the activation of Eligible Residential MDU Programming for a new Residential MDU Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential MDU Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Residential MDU Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.3 **Monthly Commercial Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Commercial Subscriber; and (iii) results in the activation of Eligible Commercial Programming for a new Commercial Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Commercial Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Commercial Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW COMMERCIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY COMMERCIAL

INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY COMMERCIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.4 Monthly Bulk Incentives. Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each commercially-invoiced DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Bulk Subscriber; and (iii) results in the activation of Eligible Bulk Programming for a new Bulk Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Bulk Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Bulk Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW BULK SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY BULK INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY BULK INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.2 Additional Incentives.

6.2.1 Additional Residential Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential Incentives with respect to new Residential Subscriber Accounts, such as, co-op accrual, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential Incentives") under such Promotional Programs as EchoStar may make available to Retailer at any time and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Residential Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.2 Additional Residential MDU Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential MDU Incentives with respect to new Residential MDU Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential MDU Incentives") under such Promotional Programs as EchoStar may make available to Retailer at any time and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Residential MDU Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.3 Additional Commercial Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Commercial Incentives with respect to new Commercial Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Commercial Incentives") under such Promotional Programs as EchoStar may make available to Retailer at any time and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Commercial Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

6.2.4 Additional Bulk Incentives. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Bulk Incentives with respect to new Bulk Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Bulk Incentives") under such Promotional Programs as EchoStar may make available to Retailer at any time and from time to time in EchoStar's sole and absolute discretion for any reason or no reason. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Bulk Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.6 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

CONFIDENTIAL

6.2.5 RETAILER ACKNOWLEDGES AND AGREES THAT:

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

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

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

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

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

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

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

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

6.3 **Chargeback of Incentives.**

6.3.1 IN THE EVENT THAT RETAILER IS PAID AN INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK SUCH INCENTIVE PAID TO RETAILER. IN ADDITION TO THE FOREGOING, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE MONTHLY INCENTIVES (AT ANYTIME) OR ADDITIONAL INCENTIVES (TO THE EXTENT THAT THE APPLICABLE CHARGEBACK PERIOD SET FORTH IN THIS AGREEMENT OR APPLICABLE BUSINESS RULES HAS NOT EXPIRED) PAID:

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

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

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

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

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

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

6.4.1 **Electronic Funds Transfer.** Retailer shall provide EchoStar with the Retailer Account information and any changes thereto ("EFT Instructions"), in the manner prescribed by EchoStar. Until Retailer provides EchoStar with EFT Instructions, or in the event that Retailer elects to receive payments by check, EchoStar shall pay Incentives to Retailer by check and Retailer will be assessed EchoStar's standard processing fee, which may be changed by EchoStar at any time and from time to time in its sole and absolute discretion for any reason or no reason.

6.4.2 **Reliance on Retailer Account Information.** With respect to Retailer's EFT Instructions, and any purported changes or modifications thereof by Retailer, EchoStar may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing

or instrument and may assume that any person purporting to give any such writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so. The provisions of this Section 6.4.2 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

6.4.4 **Incentive Statements.** EchoStar shall make available to Retailer, in an electronic format determined by EchoStar at any time and from time to time in its sole and absolute discretion for any reason or no reason, periodic statements reflecting the Incentives (if any) payable to Retailer as well as any Chargebacks assessed against Retailer. For the avoidance of doubt, such statements will only be made available during periods when Incentives are payable to Retailer. Retailer acknowledges that EchoStar is not required to provide Retailer with any additional information, including but not limited to communications between EchoStar and any EchoStar Subscriber or any customer account information regarding any EchoStar Subscriber.

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

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

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

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

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

date of the order; (v) the Bulk Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the Qualifying Bulk Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

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

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

6.6 **Suspension and Termination of Incentives.**

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

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

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

6.8 **Offsets.** In no event shall Retailer or any of its Affiliates offset any amounts due to EchoStar or any of its Affiliates from Retailer or any of its Affiliates against any Incentives or other amounts due to Retailer or any of its Affiliates from EchoStar or any of its Affiliates. In the event that the Incentives paid by EchoStar to Retailer exceed the amount to which Retailer was entitled, or if Retailer and/or any of its Affiliates are indebted to EchoStar or its Affiliates under Section 13 below or for any other reason (including

without limitation for any Chargebacks permitted hereunder), Retailer and its Affiliates hereby acknowledge and agree that EchoStar and its Affiliates shall have the right, but not the obligation, to offset any such amounts against any Incentives or other amounts otherwise due to Retailer or any of its Affiliates from EchoStar or any of its Affiliates, as well as any and all amounts for which EchoStar and/or any of its Affiliates may become liable to third parties by reason of Retailer's and/or any of its Affiliate's acts in performing, or failing to perform, Retailer's and/or any of its Affiliate's obligations under this Agreement or any Other Agreements. Further, EchoStar may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as EchoStar, at any time and from time to time in its sole and absolute discretion for any reason or no reason, deems necessary to protect EchoStar and/or any of its Affiliates from any loss, damage, or expense relating to or arising out of Retailer's actions, inaction or performance hereunder, or in response to any claim or threatened claim of which EchoStar becomes aware concerning Retailer or the performance of Retailer's duties hereunder. EchoStar's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim or recoupment of Retailer whatsoever, including, but not limited to, any which might arise from a breach of this Agreement by EchoStar or any of its Affiliates. The provisions of this Section 6.8 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

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

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

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

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

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

6.12 **No Admission.** No payment to Retailer under this Agreement, whether in full or in part, shall be deemed to operate as EchoStar's acceptance, waiver or admission that Retailer has complied with any provision of this Agreement or the requirements of any Promotional Program including, without limitation, any Business Rules related thereto. The parties agree that at all times (including but not limited to in any arbitration or court proceeding) it shall remain Retailer's burden to prove eligibility for receipt of any Incentive (including, without limitation, performance of any conditions precedent thereto) or that any Chargeback was incorrect.

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

continuing service to DISH Network Subscribers after initial activation.

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

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

7. **ORDERS.**

7.1 Retailer agrees to use its best efforts to promote and enhance EchoStar's business, reputation and goodwill. Retailer shall allow only its employees, and shall not use any independent contractors, Affiliates or sub-agents, to fulfill its obligations hereunder without EchoStar's specific prior written consent, which consent may be withheld in EchoStar's sole and absolute discretion for any reason or no reason. In the event EchoStar does grant consent to Retailer to use persons not employed by Retailer to perform activities contemplated hereunder, Retailer shall be responsible for the acts and omissions of such persons under this Agreement to the same extent it is responsible for the acts and omissions of its own employees.

7.2 Retailer shall not sell Programming under any circumstances. All sales of Programming are transactions solely between EchoStar and DISH Network Subscribers. Retailer shall promptly forward to EchoStar all orders for Programming in the manner prescribed by EchoStar from time to time. Retailer understands that EchoStar shall have the right, in its sole and absolute discretion and for any reason or no reason, to accept or reject, in whole or in part, all orders for Programming. Retailer also agrees that it shall not condition, tie or otherwise bundle any purchase of Programming with the purchase of other services or products other than as specifically consented to in writing by EchoStar in advance, which consent may be withheld in EchoStar's sole and absolute discretion for any reason or no reason.

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

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

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

9. CONDUCT OF BUSINESS.

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

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

9.3 Hardware and Programming Export and Sale Restrictions.

9.3.1 In addition to, and not in limitation of, the Territory restrictions contained in this Agreement, Retailer hereby acknowledges that the U.S. Department of State and/or the U.S. Department of Commerce may in the future assert jurisdiction over DISH DBS Systems, and that DISH DBS Systems, Promotional Certificates and Programming may not currently be sold outside of the Territory. Retailer represents and warrants that it will not directly or indirectly arrange for or participate in the export or sale of DISH DBS Systems, Promotional Certificates or Programming, in whole or in part, outside of the Territory, and agrees that it will take all reasonable and adequate steps to prevent the export or sale of DISH DBS Systems, Promotional Certificates and Programming outside of the Territory by others who purchase from Retailer and who might reasonably be expected to export or sell them outside the Territory.

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

9.4 **Bounty Programs.** Retailer acknowledges that it is in the best interest of both EchoStar and Retailer for DISH Network Subscribers to be long-term customers of EchoStar and/or its Affiliates. Retailer acknowledges that churning of DISH Network Subscribers is detrimental to EchoStar and negatively affects EchoStar's ability to offer Monthly Incentives and/or Additional Incentives. Retailer acknowledges that for any Promotional Program to be viable, DISH Network Subscribers must be long-term subscribers to DISH Network. Therefore, Retailer agrees that Retailer and its Affiliates will not directly or indirectly in any manner whatsoever operate, offer to any other person or entity, participate in, or assist any other person or entity to participate in, any promotion or program offered by any person or entity other than EchoStar or any of its Affiliates (including without limitation Retailer or any of its Affiliates) which directly or indirectly provides for the delivery of an economic incentive or other benefit to Retailer, DISH Network Subscribers or any other person or entity in any form directly or indirectly in connection with the direct or indirect solicitation of customers of EchoStar or any other DBS provider or customers of any DTH satellite programming service provider, for any purpose whatsoever (including, without limitation, in connection with such person or entity directly or indirectly assisting in the process of attempting to cause a customer of EchoStar or any other DBS provider or a customer of any DTH programming service provider to become a subscriber to any other programming service provider). In addition to and without limitation of the foregoing, Retailer agrees that Retailer and its Affiliates will not directly or indirectly produce, place, display or use any advertising or marketing material that explicitly references DISH Network, EchoStar, an Affiliate of EchoStar or DISH Network Subscribers and attempts to persuade DISH Network Subscribers to cancel their EchoStar service and/or switch to a service offered by any other DBS provider, DTH programming service provider or multi-channel video programming distributor ("MPVD"). Further, Retailer shall not convert, or directly or indirectly assist any other person or entity who Retailer actually knew or reasonably should have known intended to convert, any DISH Network Subscriber to the services of any other DBS provider, DTH programming service provider or MVPD. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

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

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

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

10. **TERM AND TERMINATION.**

10.1 **Term.** This Agreement shall commence on the Effective Date and shall continue through December 31, 2006 (the "Term"), unless earlier terminated by either party in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable, and neither party hereto shall be under any obligation whatsoever to offer or to accept an agreement to renew or replace this Agreement upon its expiration. RETAILER RECOGNIZES THAT THIS AGREEMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE TERM AND THAT NO REPRESENTATIONS HAVE BEEN MADE TO RETAILER THAT RETAILER WILL REMAIN AN AUTHORIZED RETAILER DURING THE ENTIRE TERM OR THAT THE AGREEMENT WILL NOT BE TERMINATED PRIOR TO EXPIRATION OF THE TERM PURSUANT TO SECTIONS 10.2, 10.3, 10.4 OR 10.5 BELOW.

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

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

10.4 **Automatic Termination.** This Agreement shall terminate automatically should any of the following occur, unless EchoStar notifies Retailer to the contrary in writing at any time thereafter: (i) Retailer becomes insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings are instituted against Retailer; (ii) Retailer, for more than twenty (20) consecutive days, fails to maintain operations as a going business; (iii) Retailer, for more than twenty (20) consecutive days, ceases to continuously and actively market and promote DISH DBS Systems and/or Programming; (iv) Retailer, or any officer, director, substantial shareholder or principal of the Retailer is convicted in a court of competent jurisdiction of any criminal offenses greater than a Class C (or comparable) Misdemeanor; (v) Retailer fails to comply with any applicable federal, state or local law or regulation, or engages in any practice, substantially related to the business conducted by Retailer in connection with this Agreement, which is determined to be an unfair trade practice or other violation of any applicable federal, state or local law or regulation, including without limitation any violations of telemarketing/do-not-call laws, spam laws, privacy laws, fair credit reporting laws or warranty laws; (vi) Retailer falsifies any records or reports required hereunder or under any Business Rule; (vii) Retailer fails to renew, or loses, due to suspension, cancellation or revocation, for a period of fifteen (15) days or more, any license, permit or similar document or authority required by law or by any governmental authority having jurisdiction, that is necessary in carrying out the provisions of this Agreement or to maintain its corporate or other business status in effect as of the Effective Date; (viii) Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another individual or entity, (b) intended to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, (c) intended to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, (d) intended to use it, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory, or (e) intended to authorize, or to allow others to authorize, Programming for it using a single DISH Network account that had or would have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same phone line (except in the case of a bulk-billed MDU Property); (ix) Retailer makes, or attempts to make, any representation, promise or agreement on behalf of EchoStar; (x) the Trademark License Agreement (Exhibit A hereto) or any Other Agreement expires or terminates for any reason; (xi) Retailer directly or indirectly uses a single DISH Network account for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same phone line (except in the case of a bulk-billed MDU Property); (xii) any actual or alleged fraud, misrepresentation, or illegal action of any sort by Retailer in connection with this Agreement, the Trademark License Agreement, and/or any Other Agreement; (xiii) Retailer Pre-Activates any DISH DBS System or directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System to a person or entity who Retailer knew or reasonably should have known intended to Pre-Activate it; (xiv) Retailer directly or indirectly makes any payment to EchoStar for Programming services or otherwise on behalf of any retail end-user of any DISH DBS System; (xv) the churn rate experienced by EchoStar for DISH Network Subscribers activated through Retailer is equal to or greater than 125% of the churn rate experienced by EchoStar with respect to DISH Network subscribers generally during any consecutive three-month period; (xvi) Retailer is in breach or default of its obligations under Sections 3.6, 3.7, 3.8, 3.9, 6.10, 6.14, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8 or 14; (xvii) Retailer indefinitely ceases to actively market and promote DISH DBS Systems and/or Programming, as determined in EchoStar's sole and absolute discretion for any reason or no reason; (xviii) Retailer fraudulently receives, or attempts to receive, an Incentive or other payment to which it is not entitled under this Agreement or any Other Agreement, including without limitation by misrepresenting any information concerning a prior DISH Network Subscriber to make that person or entity appear to be a new DISH Network Subscriber or creating a fictitious or fraudulent customer account; or (xix) Retailer fails to activate the applicable minimum number of new subscribers set forth in any applicable Business Rules

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

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Retailer to continue as an Authorized Retailer. Retailer acknowledges and agrees that it cannot require EchoStar to allow Retailer to remain an Authorized Retailer regardless of whether or not any other retailer is allowed to remain an Authorized Retailer

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

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

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

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

13. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold EchoStar and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively the "EchoStar Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorney fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) Retailer's performance or failure of performance under this Agreement, the Trademark License Agreement and/or any Other Agreement, and any direct or indirect results thereof, including but not limited to Retailer's sale and/or installation of DISH DBS Systems or Promotional Certificates; (ii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees whether or not such acts are within the scope of employment or authority of such employees) relating to the sale, leasing, transfer of possession, marketing, advertisement, promotion and/or solicitation of orders for Programming, Promotional Certificates and/or DISH DBS Systems and/or any other products or services of EchoStar or any of its Affiliates; (iii) the failure of Retailer to comply with any provision of this Agreement or any Business Rule; (iv) the breach of any of Retailer's representations or warranties contained herein; (v) all purchases, contracts, debts and/or obligations made by Retailer; (vi) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation; (vii) any claim brought by Retailer's employees, subcontractors and/or agents for compensation and/or damages arising out of the expiration or termination of this Agreement; (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers (except with respect to any marketing materials supplied to Retailer by EchoStar); (ix) any installation and/or after-sale services performed by Retailer, or any of its subcontractors, employees or agents; (x) Retailer's, or any of its subcontractors, agents or employees failure to comply with any performance standard; (xi) a DISH Network Subscriber's dissatisfaction with any aspect of the installation and/or after-sale services performed by the Retailer, or any of its subcontractors, employees or agents; (xii) the termination, disturbance, interruption or other interference with the service provided by any public utility or damage to the equipment of any public utility caused directly or indirectly by Retailer, or any of its subcontractors, employees or agents; (xiii) Retailer directly or indirectly selling, leasing or otherwise transferring possession of a DISH DBS System or Promotional Certificate to any person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another

individual or entity; (b) intended to use it, or to allow others to use it, to (1) view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, or (2) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property; (c) intended to use it, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory; or (d) intended to authorize, or to allow others to authorize, Programming for it using a single DISH Network account that has or would have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same phone line (except in the case of a bulk-billed MDU Property); and/or (xiv) Retailer directly or indirectly using a single DISH Network account for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same phone line (except in the case of a bulk-billed MDU Property). In the event of any claim for indemnification by the EchoStar Group under this Section 13, the EchoStar Group shall be entitled to representation by counsel of its own choosing, at Retailer's sole cost and expense. The EchoStar Group shall have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such claim and Retailer shall, at its own cost and expense, render all assistance requested by EchoStar in connection with any such negotiation, litigation, settlement or other proceeding. Each indemnity obligation herein shall be in addition to and not in limitation of any other indemnity obligation set forth herein. The provisions of this Section 13 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

15. **DISPUTE RESOLUTION.**

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

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

(I) THE DATE, TIME AND NATURE OF THE OCCURRENCE; (II) THE TOTAL AMOUNT CLAIMED BY RETAILER, IF ANY, IN CONNECTION WITH SUCH OCCURRENCE AND THE BASIS FOR ANY AMOUNT CLAIMED, AND (III) IDENTIFICATION OF ALL DOCUMENTS AND OTHER INFORMATION IN RETAILER'S CONTROL OR POSSESSION RELATING TO SUCH OCCURRENCE. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING INCENTIVE PAYMENTS THROUGH ECHOSTAR'S RETAILER WEBSITE (<http://retailer.echostar.com>) IN ACCORDANCE WITH APPLICABLE BUSINESS RULES. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING ALL OTHER CLAIMS VIA ELECTRONIC MAIL TO executiveresolution@echostar.com WITH THE SUBJECT LINE "NOTICE OF CLAIM." AFTER SUBMITTING A NOTICE OF CLAIM, RETAILER SHALL PROVIDE ECHOSTAR WITH ANY AND ALL ADDITIONAL INFORMATION REQUESTED BY ECHOSTAR WITHIN THIRTY (30) DAYS AFTER RECEIPT OF ECHOSTAR'S REQUEST. ECHOSTAR SHALL BE ENTITLED TO HAVE ACCESS TO RETAILER'S BOOKS AND RECORDS DURING ITS INVESTIGATION OF RETAILER'S CLAIM. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 15.1 WITH RESPECT TO A PARTICULAR OCCURRENCE THAT RENDER, OR MIGHT RENDER, ECHOSTAR IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES OR INJUNCTIVE RELIEF, SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING ANY DAMAGES RELATED THERETO.

15.2 Mediation. The parties agree to submit any and all disputes, controversies or claims not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4, which may arise between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all disputes, controversies, and claims arising in connection with this Agreement including, without limitation, all disputes, controversies or claims related to: (i) the execution and delivery of this Agreement (whether via signature or electronic acceptance); (ii) the interpretation of this Agreement; (iii) a party's performance or failure to perform hereunder; (iv) the termination of this Agreement; and (v) any rights Retailer may have under dealer termination or non-renewal laws (collectively "Disputes"), to mandatory non-binding mediation (the "Mediation") in front of a single mediator. Either party may initiate mediation by giving written notice to the other party describing the Dispute (a "Notice of Mediation"). The Notice of Mediation shall include (a) a statement of the initiating party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other persons who will accompany the executive. The Mediation shall take place in the City and County of Denver, Colorado at a mutually agreeable time and location before a mediator chosen by mutual agreement of the parties. In the event that either party fails to negotiate the selection of a mediator in good faith or unreasonably withholds its approval of a mediator, such party shall be deemed to have waived its right to select the mediator by mutual agreement of the parties and shall be required to participate in the mediation with the mediator chosen by the other party. Each party shall participate through a representative with full settlement authority and shall bear its own costs and expenses and one-half of the costs and expenses of the mediator. Any such Mediation must be concluded within sixty (60) days of the Notice of Mediation. Nothing contained herein (excluding the provisions of Section 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of any Other Agreement. In the event that a party (the "Non-Mediating Party") fails to: (1) pay one-half of the costs and expenses of the mediator to the mediator when due; or (2) otherwise refuses or fails to participate in or attend a mediation that has been properly initiated pursuant to this Section 15, then: (A) the Non-Mediating Party agrees that the other party (the "Mediating Party") shall have the right to obtain immediate relief in the form of specific performance from a court located in the State of Colorado, as delineated in Section 15.5 below; and (B) the Mediating Party shall have the option, exercisable upon written notice to the Non-Mediating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court located in Colorado, as delineated in Section 15.5 below. In the event that the Mediating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to clause (B) above, the Parties agree that the Non-Mediating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such court proceeding as fully participating in a mediation pursuant to this Section 15.2 is a condition precedent to recovery.

15.3 Arbitration. Except as set forth to the contrary in this Section 15.3 and in Section 15.4 below, any and all disputes, controversies or claims between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including without limitation any and all disputes, controversies or claims arising out of or in connection with this Agreement, including but not limited to the validity of this Section 15, the circumstances concerning the execution and delivery of this Agreement (whether via signature or electronic acceptance), and allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any state or federal law, which are not settled through negotiation, the claim process above, or the mediation process set forth above, shall be resolved solely and exclusively by binding arbitration in accordance with both the substantive and procedural laws of Title 9 of the U.S. Code ("Federal Arbitration Act") and the Commercial Arbitration Rules of the American Arbitration Association. In the event of any conflict between the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association, the Federal Arbitration Act will control. In consideration of EchoStar entering into this Agreement with Retailer, Retailer agrees that it will not serve as a class representative in any class action lawsuit brought by any person or legal entity concerning this Agreement in any respect. The Arbitration must be initiated within ninety (90) days from the final day of mediation, or one hundred and fifty (150) days from the Notice of Mediation in the event Mediation is not concluded within sixty (60) days of the Notice of Mediation, and shall be initiated by written notice from the initiating party to the other party stating the initiating party's intent to initiate arbitration ("Notice of Arbitration"). The Arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected as follows: (i) one arbitrator shall be selected by the

claimant(s) within thirty (30) days of sending the Notice of Arbitration; (ii) one arbitrator shall be selected by the respondent(s) within thirty (30) days of the claimant(s) notifying respondent of the identity of claimant's arbitrator; and (iii) the third arbitrator shall be selected by the arbitrators chosen by the claimant(s) and the respondent(s) within thirty (30) days of the appointment of the respondent(s)' arbitrator. In the event that either party fails to timely select an arbitrator pursuant to this Section 15.3, such party shall be deemed to have waived its right to a three-member arbitration panel and shall be required to participate in the arbitral proceedings with the one arbitrator selected by the other party. The parties hereby agree that the arbitration panel selected pursuant to this Agreement is not authorized to: (a) conduct "class arbitration" in any form; and/or (b) arbitrate any dispute on a representative basis in any form. The parties hereby agree that the arbitration panel has the authority to entertain and rule upon dispositive motions, including but not limited to, default judgments as governed by Rule 55 of the Federal Rules of Civil Procedure, motions for summary judgment as governed by Rule 56 of the Federal Rules of Civil Procedure and motions to dismiss as governed by Rule 12 of the Federal Rules of Civil Procedure. The decision of the arbitrators shall be final and binding on the parties and any award of the arbitrators may be entered and enforced as a final judgment in any state or federal court of competent jurisdiction in the United States. The parties agree that, in no event, shall the arbitrators' decision include a recovery under any theory of liability, or award in any amount, not expressly allowed under this Agreement, any Promotional Program or applicable Business Rules. In furtherance and without limitation of the foregoing, any award made by the arbitrators shall be within the limitations set forth in Section 12. The parties further agree that the arbitration panel selected pursuant to this Agreement may not award damages, injunctive relief or any other remedy to any person or legal entity who is not present at the arbitration or who does not submit proof of any alleged damages at the arbitration. The cost of any arbitration hereunder, including without limitation the cost of the record or transcripts thereof, if any, administrative fees, and all other fees involved, shall be paid by the party(ies) determined by the arbitrators to not be the prevailing party(ies), or otherwise allocated in an equitable manner as determined by the arbitrators. NEITHER PARTY HERETO NOR ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES IF IT AND/OR ITS AFFILIATES HAVE FAILED TO FULLY COMPLY WITH THE PROCEDURES SET FORTH IN SECTIONS 15.1 AND 15.2; provided, however, that nothing contained herein (excluding the provisions of Section 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of any Other Agreement. In the event that a party (the "Non-Participating Party") fails to: (1) pay any amount to the American Arbitration Association when due; or (2) otherwise refuses or fails to participate in or attend an arbitration that has been properly initiated pursuant to this Section 15, then: (A) the Non-Participating Party agrees that the other party (the "Participating Party") shall have the right to obtain immediate relief in the form of specific performance from the arbitration panel or a court located in the State of Colorado, as delineated in Section 15.5 below; and (B) the Participating Party shall have the option, exercisable upon written notice to the Non-Participating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court located in Colorado, as delineated in Section 15.5 below. In the event that the Participating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to clause (B) above, the Parties agree that the Non-Participating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such court proceeding as fully participating in an arbitration pursuant to this Section 15.3 is a condition precedent to recovery.

15.4 **Exceptions.** Notwithstanding the foregoing, the request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to mediation or arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Colorado or in the appropriate state court of competent jurisdiction located in Arapahoe County, Colorado pursuant to Section 15.5 below; provided, however, that nothing contained herein (excluding the provisions of Section 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of any Other Agreement.

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

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

16. **INSURANCE.**

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

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

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

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

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

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

17. **MISCELLANEOUS.**

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

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

17.3 **Construction and Interpretation.** Retailer and EchoStar hereby represent, warrant, acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or the Business Rules, including any amendments hereto or thereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

17.5 **Entire Agreement.** This Agreement and the Business Rules constitute the entire agreement between the parties with respect to the subject matter of this Agreement. Except as otherwise expressly provided herein, no party shall be bound by any communications between them on the subject matter of this Agreement, unless the communication is: (i) in writing; (ii) bears a date contemporaneous with or subsequent to the date of this Agreement; and (iii) is signed by all parties to this Agreement. On the date this Agreement becomes effective as provided herein, all prior agreements (except as set forth to the contrary in Section 3.10 and with further exception of the Business Rules and Other Agreements (including without limitation any previous "Exclusive Bounty Hunter Agreements")) or understandings between the parties shall be null and void. The parties specifically acknowledge there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Agreement. In addition to any provisions of this Agreement that expressly survive termination or expiration, any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances.

17.6 **Compliance with Law.** Retailer hereby agrees to comply with, and hereby agrees that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

17.7 **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other for failure to fulfill its obligations hereunder if such failure is caused by or arises out of an act of force majeure including acts of God, war, riot, natural disaster, technical failure (including the failure of all or part of any communications satellite or transponders on which the Programming is delivered to DISH Network Subscribers, or of related uplinking or other equipment) or any other reason beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

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

17.9 **Records and Audit Rights.** During the Term of this Agreement and for a period of three (3) years thereafter, Retailer shall keep and maintain at its principal place of business complete and accurate records and books of account, as well as all documentation of all material processes and procedures, in connection with: (i) its performance under this Agreement, the Trademark License Agreement and any Other Agreement; (ii) the payment of Incentives and any other payments to Retailer and its Affiliates by EchoStar and its Affiliates; and (iii) all payments made by Retailer and its Affiliates to EchoStar and its Affiliates. Such books, records and documentation shall be in sufficient detail to show all information necessary to support any Retailer claim, request or entitlement of any nature from EchoStar. EchoStar shall have the right, upon two (2) days prior written notice, to review, audit and make copies of Retailer's books, records and documentation for the purposes of: (a) determining Retailer's compliance with its duties and obligations under this Agreement, the Trademark License Agreement or any Other Agreement; (b) investigating claims against EchoStar and/or any of its Affiliates made by Retailer and/or any of its Affiliates; and (c) verifying that Incentive payments and any and all other payments made to Retailer and its Affiliates by EchoStar and its Affiliates are being properly calculated (an "Audit"). EchoStar shall be entitled to conduct an Audit regardless of the existence of any claim, dispute, controversy, mediation, arbitration or litigation between the parties. In the event that Retailer refuses to allow EchoStar to conduct an Audit, Retailer acknowledges that EchoStar shall be entitled to obtain immediate relief in the form of specific performance from either the panel of arbitrators (if arbitration has been commenced pursuant to Section 15 above) or a court located within the State of Colorado, as delineated in Section 15.5 of this Agreement. Any audit conducted by EchoStar shall be conducted by EchoStar or its representative(s) at Retailer's offices during normal business hours. If, during the course of an EchoStar Audit, EchoStar uncovers that (1) Retailer has failed to comply with any of its obligations under this Agreement, and/or (2) Retailer and/or any of its Affiliates has made a frivolous claim against EchoStar and/or any of its Affiliates, Retailer shall pay to EchoStar the costs and expenses incurred by EchoStar in connection with such Audit. If an Audit reveals that (A) Retailer and/or any of its Affiliates have underpaid EchoStar and/or any of its Affiliates, or (B) Retailer has miscalculated any item bearing upon the Incentives paid to Retailer resulting in an overpayment of Incentives by EchoStar and/or any of its Affiliates, Retailer agrees to repay to EchoStar the amount of any overpayment made together with interest thereon at the highest rate allowed by law, computed from the date of overpayment; and pay all reasonable costs and expenses, including reasonable attorney fees and accountant fees incurred by EchoStar and/or any of its Affiliates in connection with its Audit and with enforcing the collection of such amounts. The provisions of this Section

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17.9 are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely even if termination is due to a breach or default by EchoStar.

17.10 Notices.

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

If by first class certified mail:

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

If by overnight courier service:

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

The receipt of such notice shall constitute the giving thereof.

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

17.11 Attorney Fees. In the event of any suit, action or arbitration between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all suits, actions or arbitrations to enforce this Agreement, any Business Rules, any Promotional Program or any provisions thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney fees, at arbitration, at trial and on appeal, in addition to all other sums allowed by law. The provisions of this Section 17.11 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

17.12 Modifications. Retailer acknowledges that EchoStar competes in the multi-channel video distribution market, which is highly competitive, fluid and volatile and that EchoStar must make changes to its marketing, promotion and sales of products and services from time to time to stay competitive. Therefore, Retailer agrees that EchoStar may, at any time and from time to time in its sole and absolute discretion for any reason or no reason, change or modify Incentives, Incentive schedules, Incentive structures, Promotional Programs and Business Rules, payment terms, or the Chargeback rules associated therewith, upon notice to Retailer, without the need for any further consent, written or otherwise, from Retailer. IF ANY SUCH MODIFICATION OR CHANGE IS MATERIAL

AND UNACCEPTABLE TO RETAILER, RETAILER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. RETAILER'S CONTINUED PERFORMANCE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF NOTICE OF A CHANGE OR MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE OR MODIFICATION.

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

17.14 **General Provisions.** The exhibits hereto are hereby incorporated into this Agreement by reference in their entirety.

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

17.16 **Consent to Receive Faxes.** Retailer hereby acknowledges that this Agreement serves as Retailer's express written consent to receive facsimile transmittals from EchoStar and its Affiliates, including facsimile transmittals which contain unsolicited advertisements. For the avoidance of doubt, such permitted facsimile transmittals from EchoStar or its Affiliates shall include, but not be limited to, information about the commercial availability or quality of products, goods or services; notices of conferences and seminars; and new product, programming or promotion announcements. This written consent shall include all facsimile transmittals regulated by future Federal Communications Commission action.

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

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

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

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

ECHOSTAR SATELLITE L.L.C.

By: _____

Name: Amir Ahmed
Title: National VP, Sales and Distribution

RETAILER

Retailer Number: 134218

Retailer Company Name: DONALD KING DBA DIGITAL SATELLITE CONNECTIONS

Street Address: 3620 SW 189TH AVE
City, State, Zip Code: DUNNELLON, FL 34432
Facsimile Number: N/A
(for notice to Retailer pursuant to Section 17.10.2)

By: _____
Signature

Print Name: CATHERINE KING
Title: Owner

[SIGNATURE PAGE OF ECHOSTAR RETAILER AGREEMENT]

CONFIDENTIAL

EXHIBIT A

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made and effective as of the 31st day of December 2004, by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("ESLLC"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and **DONALD KING DBA DIGITAL SATELLITE CONNECTIONS** having a principal place of business at 3620 SW 189TH AVE, DUNNELLON, FL 34432 ("Licensee").

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

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

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

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

1. ESLLC hereby grants to Licensee a non-exclusive, non-transferable, revocable license (the "License") to use the Trademarks and such other trademarks as ESLLC may from time to time expressly in writing permit Licensee to use during the term of this Agreement, and no other term or license whatsoever, solely to promote the retail sale of ESLLC satellite television programming and the hardware necessary to receive such programming in its local advertising and promotional materials and at its business locations. Licensee expressly recognizes and agrees that Licensee shall not, in whole or in part, modify, alter, supplement, delete or otherwise change the Trademarks (whether in typewritten, stylized or any other form) as provided to Licensee by ESLLC. Licensee shall have no right to use the logos, service marks or trademarks (whether in typewritten, stylized or any other form) of any programming providers, other than the logos, service marks and trademarks of programming providers that are contained in the advertising and promotional material provided to Licensee by ESLLC. No such materials shall indicate that any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distributorship exists between Licensee and ESLLC, unless ESLLC and Licensee enter into a separate written agreement permitting Licensee to do so. Notwithstanding the above, Licensee shall provide to ESLLC, at least thirty (30) days prior to first use, an example of any advertising or promotional materials in which Licensee intends to use any Trademarks or any such other trademarks (whether in typewritten, stylized or any other form), which use has not, within the past twelve months, been approved by ESLLC in exactly the manner intended for use. ESLLC may reject and prohibit Licensee from using such materials, in its sole and absolute discretion for any reason or no reason. If Licensee is required to, but fails to provide ESLLC with proposed advertising or promotional materials at least thirty (30) days prior to first use, ESLLC shall have just cause to immediately terminate this Agreement by providing written notice to Licensee to that effect. This Agreement is not intended, nor shall it be construed, as creating any agreement of agency, partnership, joint venture, franchise or of exclusive or non-exclusive distributor, or as creating any obligation on the part of ESLLC to enter into any such agreement with Licensee. Further, this Agreement is not intended, nor shall it be construed, as providing any rights to Licensee to purchase or sell products or programming manufactured and/or distributed by ESLLC. Licensee expressly recognizes and agrees that any goodwill now existing or hereafter created through any sales by Licensee of products or programming manufactured and/or distributed by ESLLC, shall inure to ESLLC's sole benefit. This License shall be effective until terminated by either party in accordance with the terms of this Agreement, or until termination of the Incentivized Retailer Agreement to which this Agreement is attached for any reason or no reason whatsoever.

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

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

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

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

5. Nothing in this Agreement shall be construed to bar ESLLC from protecting its right to the exclusive use of its Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including Licensee, either during the term of this Agreement or following any expiration or termination of Licensee's right to use the Trademarks pursuant to this Agreement for any reason or no reason whatsoever. Licensee will promptly and fully advise ESLLC of any use of any mark that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with ESLLC in defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESLLC's expense. Similarly, nothing in this Agreement shall be construed to require that ESLLC take any action to protect the Trademarks in any instance, and ESLLC shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

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

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

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

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

Any and all disputes arising out of, or in connection with, the interpretation, performance or the nonperformance of this Agreement or any and all disputes arising out of, or in connection with, transactions in any way related to this Agreement and/or the relationship for any reason whatsoever between the parties (including but not limited to the termination of this Agreement or the relationship and Licensee's rights thereunder or disputes under rights granted pursuant to statutes or common law, including those in the state in which Licensee is located) shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties consent to the *in personam* jurisdiction of said court for the purposes of any such litigation, and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C.S. 1404 or 1406 (or any successor statute). In the event the United States District Court for the District of Colorado does not have subject matter jurisdiction of said matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado.

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

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

ECHOSTAR SATELLITE L.L.C.

By: _____

Name: Amir Ahmed

Title: National VP, Sales and Distribution

LICENSEE

Retailer Number: 134218

Retailer Company Name: DONALD KING DBA DIGITAL SATELLITE CONNECTIONS

Street Address: 3620 SW 189TH AVE

City, State, Zip Code: DUNNELLON, FL 34432

By: _____
Signature

Print Name: CATHERINE KING

Title: Owner

[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]

CONFIDENTIAL

JA008961
007805

EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT



EXHIBIT 278

EXHIBIT 278

CONFIDENTIAL

Message

From: Jessen, Nicholas [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=NICHOLAS.JESSEN]
Sent: 3/7/2005 4:00:02 PM
To: Ahmed, Amir [amir.ahmed@echostar.com]; Mitchell, Vishnu [vishnu.mitchell@echostar.com]; Mills, Mike [mike.mills@echostar.com]
Subject: RE: Telemarketing AUTODIALER abuse

Eric claims that they pulled their auto-dialers after I had spoken to him a couple of weeks ago. He said if people were complaining – it had to be a result of calls placed prior to our conversation a few weeks back.

I'll continue to research to find out who it is.

Nick Jessen
Regional Director - Mountain Region
Echosphere L.L.C.
Phone: 720-833-6001

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

From: Ahmed, Amir
Sent: Monday, March 07, 2005 10:41 AM
To: Jessen, Nicholas; Mitchell, Vishnu; Mills, Mike
Subject: RE: Telemarketing AUTODIALER abuse

Fix it or its all over. No excuses, I want an email from Erik if it's them.

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

From: Jessen, Nicholas
Sent: Monday, March 07, 2005 10:40 AM
To: Ahmed, Amir; Mitchell, Vishnu; Mills, Mike
Subject: RE: Telemarketing AUTODIALER abuse

I have a feeling it's Star Satellite. It's almost identical to the complaint we received a couple of weeks ago. I've got a call into Eric right now.

Nick Jessen
Regional Director - Mountain Region
Echosphere L.L.C.
Phone: 720-833-6001

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

From: Ahmed, Amir
Sent: Monday, March 07, 2005 9:47 AM
To: Mitchell, Vishnu; Mills, Mike; Jessen, Nicholas
Subject: FW: Telemarketing AUTODIALER abuse

Vishnu,

Is this one of our retailers? Who is this retailer?

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

From: Carlson, Erik
Sent: Monday, March 07, 2005 9:28 AM
To: Ahmed, Amir
Subject: FW: Telemarketing AUTODIALER abuse

Any ideas on who this is?

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

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JA008964
007808

Confidential

SLC_DNC_Investigation_0005908

TX 102-008226

CONFIDENTIAL

From: avscorn [mailto:avscorn@comcast.net]
Sent: Saturday, March 05, 2005 12:30 PM
To: Ergen, Charlie; DeFranco, Jim; Carlson, Erik; Spreitzer, Jim
Subject: Telemarketing AUTODIALER abuse

Gentlemen, We are being constantly bombarded with unwanted autodialer telemarketing calls from "System Satellite" out of Utah. I have had six angry people call my dealership in the last week to complain. I have received 5 calls just this morning from their autodialer, and it's only 11:00 am! Two weeks ago they were calling here and maintaining that they were "Dish Network". When I questioned them, they insisted that they were DISH, and NOT a dealer, and refused to divulge the name of their dealership. They have called every line in my business, my cell phone and my residence repeatedly, and my residence is on the "do not call list" (for what good that does). Twice this morning, I spoke to one of their reps and requested that they cease calling my numbers, the rep simply hung up on me. I felt that you should be aware of the bad publicity that this outfit is giving Dish Network, not only by harassing people with an autodialer, that people assume is endorsed by Dish, but by repeated violation and lack of regard for "do not call" policies, and out right lying to consumers by claiming that they will provide 4 receivers for only \$29.99 Per Month!

We strive to run an honest business and promote the good name of Dish Network, to our mutual benefit. We play by the rules, and do not employ illegal telemarketing procedures. Does the volume of sales that this dealer does somehow exclude them from being held to the same rules as the rest of us, and exonerate them from the consequences that we would face if we followed these illegal practices?

I trust that you will give this matter the attention it deserves and stop these people from soiling both of our reputations.

Thank you in advance, for your time.

Nick Stocking
AstroView Inc.

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JA008965
007809

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SLC_ DNC_Investigation_0005909

TX 102-008227

EXHIBIT 279

EXHIBIT 279

To: Origer, Robb[Robb.Origer@echostar.com]
Cc: Anderson, Denyse[Denyse.Anderson@echostar.com]
From: Werner, Bruce
Sent: Fri 3/11/2005 12:14:06 PM
Subject: RE: Authorized Dish retailers and illegal sales tactics

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Yes we called and tried to trick agents into acknowledging an out bound call was made.

We were not able to get them to agree that they use this sales tactic.

Other information on the call was as we expected.

Bruce Werner
General Manager of Risk
Retail Services
720.514.5745

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

From: Origer, Robb
Sent: Thursday, March 10, 2005 9:43 AM
To: Werner, Bruce
Subject: FW: Authorized Dish retailers and illegal sales tactics

have we been able to shop these guys?

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

From: DeFranco, Jim
Sent: Friday, February 18, 2005 6:10 PM
To: Origer, Robb
Cc: Carlson, Erik; Jessen, Nicholas
Subject: RE: Authorized Dish retailers and illegal sales tactics

thanks

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

From: Origer, Robb
Sent: Friday, February 18, 2005 6:08 PM
To: DeFranco, Jim
Cc: Carlson, Erik; Jessen, Nicholas
Subject: RE: Authorized Dish retailers and illegal sales tactics

I called the two #'s that the subscriber provided for this Retailer- the -4951 is a invalid #; the proper # is 4957. The -4957 # advertises a business name (not Star Satellite) and makes no mention of Dish Network. The -3474 number does not identify the Retailer's name nor our product - simply "you've reached the #1 provider in Satellite TV".

I spoke to the Retailer (Eric). He started using the dialer about 30 days ago - and uses a live sales script - no recordings. Each month they utilize a 'new phone number/new move' list and scrub it against the 'Do Not Call' list. This customer was loaded into the dialers that Star Satellite used. At the time I spoke with him - the Retailer had already contacted the subscriber, apologized for the treatment by his CSR, and removed him from the dialer. Eric was very apologetic, was willing to take whatever corrective actions we can recommend. He claimed to be Dish exclusive - so he was responsive to the changes that Nick or I suggested.

- 1) Retailer promised the recordings to be changed on Monday to reflect the Star Satellite name. We will call again Monday to confirm.
- 2) We will secret shop their business over the next few days to test their sales processes.
- 3) Nick had been considering this Retailer for the OE Tool - in speaking with him, we've agreed that we will use March to test their sales process before making the suggestion to make Star Satellite a candidate for this tool.

I'll provide another update once we make the sales calls early next week.

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

From: DeFranco, Jim

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JA008967
007811

Confidential/

SLC_DNC_Investigation_0010310

TX 102-008229

Sent: Friday, February 18, 2005 3:23 PM
To: Origer, Robb
Cc: Carlson, Erik; Jessen, Nicholas
Subject: FW: Authorized Dish retailers and illegal sales tactics

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Robb,
Please have this investigated and let us know what your team finds as well as what action you recommend.
Jim

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

From: DeFranco, Jim
Sent: Friday, February 18, 2005 3:20 PM
To: 'David Hyde'
Cc: Rudd, Michael
Subject: RE: Authorized Dish retailers and illegal sales tactics

David,
I apologize that you have not been able to get anyone at Echostar to respond to your issue. I assure you that we do take any customer complaints seriously. I have copied the management of our Executive Customer Service group in case you have any further problems getting the service you deserve. While our retailers are independent and not affiliated with Echostar, therefore not under our control, we do want them to market by customer friendly means. I will personally follow up with our retailer management group to try to determine who this retailer is and that they are using appropriate sales techniques. Thank you for your understanding, patience and continued support as a Dish Network customer.
Jim

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

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

To anyone who might still care:

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

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

My concerns are:

- 1) The call is a recorded message that ends with instructions to press a key to hear more or order the product. It is my understanding that it is illegal to make unsolicited prerecorded calls.
- 2) The company identifies itself as Dish Network, but will disconnect your call if you ask anymore questions (such as business name, address, contact number). I believe you are required to identify yourself, at least to the extent of providing a business name and contact information.
- 3) The operators will hang-up if you ask for their name, or their supervisor. One operator even challenged me to "go ahead, try to report me. Good Luck!" before she hung up.
- 4) The caller ID is either blocked or spoofed (caller ID shows 1-111-111-1111).

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

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

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JA008068
007812

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

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

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

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

David Hyde

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JA008969
007813

Confidential/Privileged

SLC_ DNC_Investigation_0010312

TX 102-008231

EXHIBIT 280

EXHIBIT 280

CONFIDENTIAL

Message

From: Oberbillig, Mike [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=MIKE OBERBILLIG]
Sent: 8/2/2005 8:30:10 PM
To: Ahmed, Amir [amir.ahmed@echostar.com]; Fiedler, Leslie [leslie.fiedler@echostar.com]; Keller, Steven [steven.keller@echostar.com]
CC: Mills, Mike [mike.mills@echostar.com]
Subject: RE: more marketing games

Team,

talked with Jacque our main contact at United. They are purchasing phone leads that have been scrubbed for the no-call list on a Federal level. The calling is all opt-in to talk to a sales representative. Jacque will be going over with his team & managers the importance of not representing themselves as Dish. They monitor calls daily & have not had this issue come up before.

They are also doing a 2 million piece a week test with ADVO starting next week, and are doing additional advertising with Novis.

Thanks
MJO

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

From: Ahmed, Amir
Sent: Tuesday, August 02, 2005 7:31 AM
To: Fiedler, Leslie; Oberbillig, Mike; Keller, Steven
Cc: Mills, Mike
Subject: RE: more marketing games

are they cold calling customers without regards to the no-call list. Oberbillig, please call United this morning.

From: Fiedler, Leslie
Sent: Tuesday, August 02, 2005 8:29 AM
To: Ahmed, Amir
Subject: RE: more marketing games

Like Jeff said, this is United Satellite out of Aliso Viejo, CA. When I called the second number, a sales agent named Jeff answered the phone and when I asked, he told me that he was representing United Satellite.

Leslie Fiedler
Key Account Manager - Order Entry Retailers
Echostar Satellite LLC
(720) 514-5865
leslie.fiedler@echostar.com

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

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

From: Ahmed, Amir
Sent: Monday, August 01, 2005 9:06 PM
To: Fiedler, Leslie
Subject: FW: more marketing games

Leslie,

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JA008971
007815

Confidential

SLC_ DNC_Investigation_0005969

TX 102-008233

CONFIDENTIAL

Please call the numbers below and try to figure out who the retailers might be cold calling customers.

Thanks,

From: jeff lichtenstein [mailto:jlichtenstein@hotmail.com]
Sent: Monday, August 01, 2005 4:19 PM
To: Ahmed, Amir
Subject: more marketing games

CUSTOMER(WOMAN) IRATE FROM #973-699-1293
THIS ALLEGED DEALER CALLED AND LEFT 2 DIFFERENT NUMBERS
888-282-4775 SHE SPOKE TO A BRIAN WHO REFUSED TO IDENTIFY DEALER NAME...
866-387-5365

THE CALLERS CONCERN WAS THAT THIS COMPANY REPRESENTED THEMSELVES AS
DISH NETWORK CORPORATE BY ELUDING QUESTIONS OF WHO THEY ARE.
I DID PHONE NUMBER SEARCH AND IT IS UNITED SATELLITE BASED IN CALIFORNIA

I AM SORRY TO BOTHER YOU WITH THIS SILLY STUFF, BUT THESE ACTIONS BY
RETAILERS GIVE ALL OF US A BAD NAME

1-800-TECHNOSTORES
a National Installations company
JEFF LICHTENSTEIN
85 Franklin Road Building 9B
Hamilton Business Park
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TX 102-008234

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Ann L. Blum
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13 *Corporation*

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 PLUMBERS LOCAL UNION NO. 519 PENSION
17 TRUST FUND and CITY OF STERLING
18 HEIGHTS POLICE AND FIRE RETIREMENT
19 SYSTEM, derivatively on behalf of nominal
20 defendant DISH NETWORK CORPORATION,

21 Plaintiffs,

22 v.

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

Defendants,

26 DISH NETWORK CORPORATION, a Nevada
27 corporation,

Nominal Defendant

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

**VOLUME 12 OF APPENDIX TO
THE REPORT OF THE SPECIAL
LITIGATION COMMITTEE OF
DISH NETWORK CORPORATION**

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01:23903530.1

JA008973

<u>Ex.</u>	<u>Date</u>	<u>Description</u>	<u>Page No.</u>
281	08/23/2005	Email from E. Carlson to B. Pecham, et al.	7817
282	10/26/2005	Email from A. Ahmed to C. Willis, et al.	7819
283	2006	OE Tool Overview and Setup Procedures	7823
284	04/04/2006	Email from Candy Ergen to Charlie Ergen	7829
285	04/13/2006	Email from A. Stallone to D. Steele	7833
286	05/05/2006	Email from M. Metzger to B. Werner	7839
287	05/15/2006	Retailers Associated with TCPA Consumer Complaints	7843
288	05/18/2006	Email from B. Werner to R. Origer	7848
289	06/19/2006	AG Joint Civil Investigative Demand	7851
290	06/22/2006	Excerpt from Dealer Communication Memo "Fax Blast" from EchoStar, LLC to its dealers	7882
291	06/28/2006	Email from D. Moskowitz to C. Ergen	7884
292	07/23/2006	Managing Reports of Telemarketing Violations	7886
293	08/02/2006	Email from D. Moksowitz to C. Ergen, et al.	7893
294	08/02/2006	EchoStar Communications Audit Committee Update	7896
295	08/07/2006	Amended and Restated Charter of The Audit Committee	7909
296	08/07/2006	EchoStar Minutes of Regular Board Meeting	7915
297	08/08/2006	Email from D. Moskowitz to C. Ergen, et al.	7929
298		Intentionally Omitted	7932
299	08/14/2006	Risk Summary of TCPA/Do Not Call Allegations Progress	7934
300	08/15/2006	Email from R. Origer to B. Werner	7937
301	08/17/2006	Letter from D. Steele to J. Hughes	7939

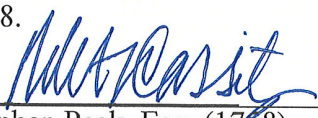
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302	08/23/2006	Email chain between C. Vogel to C. Kulig, et al.	7943
303	08/23/2006	Audit and Risk Accomplishments	7946
304	09/14/2006	Email from R. Origer to C. Voorhies and M. Mills	7948
305	09/20/2006	"Do Not Call" Complaint – Escalation Process	7950

DATED this 28th day of November 2018.

By 
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November 2018, a true and correct copy of the foregoing **VOLUME 12 OF APPENDIX TO THE REPORT OF THE SPECIAL LITIGATION COMMITTEE OF DISH NETWORK CORPORATION** was served by the following method(s):

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

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Attorneys for Defendants

By: Valentin Clausen
An Employee of Holland & Hart, LLP

CONFIDENTIAL

EXHIBIT 281

EXHIBIT 281

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JA008977
007817

To: Carlson, Erik[Erik.Carlson@echostar.com]
Cc: Peckham, Bruce[Bruce.Peckham@echostar.com]; Origer, Robb[Robb.Origer@echostar.com]
From: Werner, Bruce
Sent: Tue 8/23/2005 1:06:25 PM
Subject: RE: Federal Trade Commission -Civil Investigative Demand -URGENT

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REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

I am unable to locate records but from memory there was only one retailer we terminated who was named Advantage Satellite. Termination was for outbound auto dialer violations. The main issue came when they tied up an entire hospital's phone lines for a couple of days with messages.

Chris Fischer was the principle of Advantage Satellite. His Father Richard Fischer owned Sky Team Satellite. I have documentation covering Co-op audits for these two retailers but have no specifics regarding the auto dialer violations.

Bruce M. Werner
General Manager of Risk Retail Services
Office 720.514.5745

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

From: Carlson, Erik
Sent: Tuesday, August 23, 2005 8:59 AM
To: Peckham, Bruce; Werner, Bruce
Cc: Origer, Robb; Williams, Elizabeth
Subject: FW: Federal Trade Commission -Civil Investigative Demand -URGENT
Importance: High

Bruce&Bruce,

Please dig up what is available.

I don't recall terminations except for one retailer which was a son/father duo I think. I do know we have/had something posted on the site and we sent out a facts blast.

Thanks,
Erik

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

From: Williams, Elizabeth
Sent: Monday, August 22, 2005 6:03 PM
To: Carlson, Erik
Subject: Federal Trade Commission -Civil Investigative Demand -URGENT
Importance: High

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-

Would your group have these materials?

Thanks,
Beth

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007818

SLC_ DNC_Investigation_0010313
TX 102-008240

EXHIBIT 282

EXHIBIT 282

CONFIDENTIAL

Message

From: Ahmed, Amir [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=AHMEAMI]
Sent: 10/26/2005 11:46:59 AM
To: Willis, Chris [chris.willis@echostar.com]; Mills, Mike [mike.mills@echostar.com]; Fiedler, Leslie [leslie.fiedler@echostar.com]
CC: Jessen, Nicholas [nicholas.jessen@echostar.com]
Subject: FW: DISH Network Telemarketing Issues

Please keep on file under Star Satellite

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

From: Steele, Dana
Sent: Tuesday, October 25, 2005 2:39 PM
To: Ahmed, Amir; Gowland, Jim
Subject: FW: DISH Network Telemarketing Issues

FYI

- Dana
303-723-1621 direct
303-723-2571 fax

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

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

From: Conley, Amy
Sent: Tuesday, October 25, 2005 2:37 PM
To: Steele, Dana
Subject: RE: DISH Network Telemarketing Issues

AC/WP they settled a TCPA case with Jay Connor for \$2300.00 through indemnification -- complaint was filed July 21, 2005

Amy Conley
Corporate Paralegal
Phone: (303) 723-1603
Fax: (303) 723-2065

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

From: Steele, Dana
Sent: Tuesday, October 25, 2005 2:29 PM
To: Conley, Amy
Subject: FW: DISH Network Telemarketing Issues

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

- Dana
303-723-1621 direct
303-723-2571 fax

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

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

From: Ahmed, Amir
Sent: Tuesday, October 25, 2005 12:16 PM
To: Gowland, Jim
Cc: Novak, Scott; Steele, Dana
Subject: RE: DISH Network Telemarketing Issues

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TX 102-008242

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**REDACTED-ATTORNEY-CLIENT
PRIVILEGED/WORK-PRODUCT**

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

From: Gowland, Jim
Sent: Tuesday, October 25, 2005 12:09 PM
To: Ahmed, Amir
Cc: Novak, Scott; Steele, Dana
Subject: RE: DISH Network Telemarketing Issues

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

Jim Gowland
Associate Corporate Counsel
EchoStar Satellite L.L.C.
303-723-2130 (direct)
720-514-8429 (facsimile)
jim.gowland@echostar.com

This electronic message is from EchoStar Satellite L.L.C.'s legal department.
It may contain confidential or privileged information.
If you received this transmission in error, please reply to the sender to advise of the error and delete this transmission and any attachments.

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

From: Ahmed, Amir
Sent: Tuesday, October 25, 2005 11:42 AM
To: Gowland, Jim
Cc: Novak, Scott
Subject: FW: DISH Network Telemarketing Issues

Jim,

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

AC/WP

Amir

STAR SATELLITE LLC
5250 EDGEWOOD DR
STE 150
Provo, UT 84606

Walter (Eric) Meyers - Member
Daniel R. Meyers - Member

Office:(866) 918-3474
Eric's Mobile: (801) 427-0391
Email: emyers@starsatllc.com

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

From: Lieberman, Ross <Ross.Lieberman@echostar.com>
To: Carlson, Erik <Erik.Carlson@echostar.com>; Ahmed, Amir <Amir.Ahmed@echostar.com>
CC: Moskowitz, David <David.Moskowitz@echostar.com>
Sent: Mon Oct 24 17:47:27 2005
Subject: FW: DISH Network Telemarketing Issues

Can you look into the issue below? This problem was brought to my attention by Congressman Upton (R-MI), and should be taken very seriously. Can we figure out which DISH retailer is causing all the problems?

Thanks: Ross

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

From: Sackley, Ed

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007821

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TX 102-008243

CONFIDENTIAL

To: Lieberman, Ross
Cc: Nordwind, Will
Sent: 10/21/2005 12:59 PM
Subject: DISH Network Telemarketing Issues

Hi, Ross!

Thanks for spending a few minutes with me about our concerns on DISH Network telemarketing.

Our interest began a couple of months ago when we began hearing from constituents about DISH Network calls to their homes. We verified that they were on the National Do Not Call Registry and had no existing business relationship. Repeated attempts by the constituents to get off the calling tree were ignored and they turned to us. Here's one who had all the details:

Jim Coppinger
2917 Duchess Drive
Kalamazoo, MI 49008
(269) 345-3718

Date of Call: 9/6/2005 @ 8 p.m.
Caller's Phone Number: (877) 232-7766
Name of Caller: DISH Network, Fort Lauderdale, FL - Joe

Earlier this week, we received a flurry of robo calls that began "If you would like to save [big money] on your cable bill, press 1." Pressing "1" connected to a live operator who asked "How many TV's would you like to hook up?" and "Do you have a major credit or debit card?" I took one call from "Scott" and told him he was calling a congressional office and asked for his supervisor. I was connected to "Nate" who told me there was no problem calling us because politicians could call him. Then he hung up.

Our caller ID showed "Michigan Call" or "231-224-2000" with these calls.
The 224 exchange in Area Code 231 is located in Fremont, MI northwest of Grand Rapids.

Yesterday, I received a call on my private line. I played along and now have an appointment to install DISH Network service for 4 TVs at my home. Here's my info:

Ed Sackley
10314 Archwood Drive
Portage, MI 49002
(269) 323-8119 - NOTE: The number called by the telemarketer was (269)
385-2408

Date of Call: 10/20/2005 @ 10:36 a.m.
Caller's Phone Number: "Michigan Call"
Name of Caller: "Claire" who transferred to "Ryan" at DISH Network (866) 504-DISH X 7323 and confirmed by supervisor "Brent"

I have an installation appointment scheduled for Friday, 11/11/2005 at 8 a.m. My Visa card has been charged \$49.99, which will be subtracted from my first bill. I was told that an advance copy of the 18-month agreement would be provided on the appointment date, but not in advance. When I asked, I was told the agreement was available online. Ryan was very pleasant and professional, as was Brent.

Ross, it looks like you may have telemarketers that are not your employees feeding into your system. As soon as they encounter resistance, they hang up. Based on constituent and personal experience, they are not receptive to requests to be dropped from call lists. This is very troubling to us and, as you indicated, to Echostar. Thank you for looking into this matter. I would like to cancel my installation appointment, but will hold off doing so until I hear back from you so I don't disturb the "evidence."

Ed

Ed Sackley, District Representative | U.S. Representative Fred Upton
(MI-06) | 269.385.0039 | 157 S. Kalamazoo Mall, Suite 180 | Kalamazoo, MI
49007

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007822

SLC_DNC_Investigation_0005912
TX 102-008244

EXHIBIT 283

EXHIBIT 283

order entry

TOOL**OE TOOL OVERVIEW AND SETUP PROCEDURES****OE Tool Overview****:: OE Tool Overview and Setup Procedures ::****What is the OE Tool?**

The order entry tool is an easy way to place customer orders for DISH Network equipment and services by simply entering the URL into a web browser such as Internet Explorer

Who are OE Retailers?

OE Retailers are Dish Network retailers that market in the continental US
They are not geographically limited since they do not have to complete their own installations

What are the Benefits of using the OE Tool?

- * No equipment to purchase or inventory – DISH fulfills on equipment
- * No need to have your own installation network – Licensed, bonded, uniformed DISH Network Service (DNS) employee installs all of your customers
- * No handling of money – All OE Tool transactions are between DISH Network and the customer
- * No customer returns
- * No return authorizations
- * Simplified promotional message – DHA, DHA18 and FFA
- * Consistent offerings across the board

What are the Marketing Tactics of OE Tool Retailers?

OE Retailers utilize a number of marketing methods

Print

Direct Mail

Shared Mail

Newspaper Inserts

Internet

Websites

Pay-Per-Click (Search Engines)

E-mail Campaigns



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OE Tool Overview

:: OE Tool Overview and Setup Procedures ::

Why can't I sign up my best retailer?

The OE Program requires a great deal of "bandwidth" which consists of IT, DNS, CSC, Operation and Sales. We also have to be cognizant of the number of retailers marketing Dish and the methods they use to avoid over saturation. We are very selective of the retailers that are allowed to become OE Partners, and need to be sure we have a set infrastructure and ability for expansion and provide regional support. This is an "elite" program only for those retailers that can excel with national activations.

Who manages the OE Retailers?

We have a dedicated team responsible for the sales and account management of the OE retailers

Title	Name	Responsibilities
National Sales Manager	Mike Mills	Oversees OE program nationally
Business Development Manager	Chris Willis	Maintains & develops retailer base on the OE program
Key Account Manager	Leslie Fiedler	In office support – regional account maintenance
Operations Analyst	Chris Bye	In office contact for sales reporting issues/concerns

What kind of OE Retailer Support do we provide?**Departmental Support**

- Customer Service Centers
 - Orange (Philippines): Exceptions
 - Overflow to El Paso and Harlingen
 - Thornton: Win-back
 - Riverfront: SP escalations, ERT, DNS
- Provides detailed reporting on installation capacity to maximize retailers' marketing dollars - ???
- Regional Echosphere Offices
 - Provide Overall Direction for Business
 - Offer Localized Support
- Field Sales Development
 - Provide Sales Training on Promotions, Programming & Equipment
 - Offer Localized Support
- IT
 - Provide 24/7 Maintenance of OE Tool Performance and Operations
 - Responsible for Creation, Development and Maintenance of the OE Tool

Communication

- Dedicated Support Box: POESupport@echostar.com
 - Built for Immediate Response on Issue Resolution
 - Overview of Changes or Enhancements
 - All communications are copied to FSDM and above via internal distribution lists (i.e. #FSD LSM, etc.)
 - OE Program Related Updates
 - Promotional Training Guides
 - Hot/Cold DNS Report
 - Sales Tools and Competitive information



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OE Prospect Requirements

:: OE Tool Overview and Setup Procedures ::

To be considered as a potential retailer for the OE Program, a prospect must submit a comprehensive business plan to provide a detailed description of the Sales and Marketing strategy to increase sales and activation activities. Included in this plan, the prospect must provide a projection of sales over the next 6 months, marketing expenditures over that time period and what forms of advertising they intend to use. The retailers business plan needs to show that the retailer has the plan / process / resources & personnel in place to ramp up to a minimum of 1,000+ activation per month within (4) months. Once the OE business plan has been reviewed, the region must create and submit a regional support action plan.

The OE Prospect must meet or provide the follow:

- * Retailer must have a proven track record of satellite sales
- * From an IT and operational perspective, the prospect must have the following:
 - * Redundant internet connection (T-1/DSL). *A back up, secondary connection is encouraged
 - * IT support ONSITE. Full-time, onsite IT support is required.
- * Volume commitment of 1000 activations after 90 days 2000 after 180 days
- * Call center either onsite or established through a reputable third party
- * Call center must have a PC and business phone for each CSR
- * Call center must meet or exceed minimum hours of operation, 10AM-8PM in their time zone
- * Adequate liquidity to cover a minimum marketing spend of 100,000 per month
- * FTP address
- * Company Website
- * PGP key (4096B Encryption DH/DSS format)(sent as an .ascii attachment)
- * Company Logo (108x96 approx.)

If the retailer needs to ramp of their sales staff, call center or advertising, we will not launch the retailer until the retailer is ready to come out of the gates with activations.

The OE prospect must generate a concise summary of the business. At minimum, this needs to include:

- * How long they have been in business
- * History of the company
- * How they currently market
- * Current satellite activation volume
- * Sales Plan for OE Tool Sales

OE Prospect call monitoring:

In our joint efforts to provide a world class customer experience, we require the following call monitoring. To engage in a "real time" exchange with the consumer, EchoStar will apply a dual approach:

- * First, EchoStar will require call-in access in order to listen to live inbound and outbound calls by internal or external vendor centers.
- * Secondly, Echostar will send Field Sales Development Representative to the OE Retailers call centers on a regular basis to observe live calls.
- * Thirdly, we will expect OE Retailers to upload a requisite number of recorded calls to the ftp site on a weekly basis.



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Region OE Prospect Requirements

:: OE Tool Overview and Setup Procedures ::

The Region must provide a Regional Support Plan with each OE Prospect application. This action Plan should detail who their contact will be at the regional office. It should list a schedule that sets-up confirmed once a week conference calls with the OE Retailer. The action plan should list which key accounts managers from the OE Team will participate and what support the retailer is going to receive from the field (RSM, BDM ASM, FSDR, etc).

New OE Retailer Setup Process (Flow)

:: OE Tool Overview and Setup Procedures ::

Step 1: Region identifies or is contacted by a potential OE Prospect

Step 2: If the OE Prospect is not a current Echosphere Retailer, the OE Prospect completes all new standard retailer paperwork.

Step 3: OE Prospect submits thorough business plan, with contacts, photos, marketing plan and projections

Step 4: RSM, BDM or RD visit OE Prospects corporate office and call center to verify that the retailer meets the established requirements of an OE Partner.

Step 5: Region submits OE Prospect Form, Business Plan and Regional Support Plan to the OE National Sales Manager for review and consideration

Step 6: OE National Sales Manager calls the RD and RSM to review the OE Prospect

Step 7: OE National Sales Manager presents all of the regions OE Prospects the Vice President of Sales on the **X-Day of each month.**

Step 8: Once approved, the OE National Sales Manager will provide the region with the OE Prospects Incentive Payment Rate Sheet.

Step 9: RSM and OE National Sales Manager setup an OE Role-Out meeting with the prospect to train the Retailer.



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New OE Prospect Checklist

:: OE Tool Overview and Setup Procedures ::

- ▣ Retailer Application
- ▣ OE Business Plan
- ▣ Regional Visit To Prospects Call Center
- ▣ Regional Support Plan
- ▣ OE Prospect Form
- ▣ Copy of Prospects "Do Not Call" Policy
- ▣ Sample Call File (mp3, wav, avi)

OE Prospect FAQ's

:: OE Tool Overview and Setup Procedures ::

Are we looking for new OE partners?

Yes, As long as it is a retailer that meets the requirements for quality incremental activations.

What requirements must they meet?

The parameters in document above

What is the process of getting an OE partner setup?

Retailer Number → Commissions Setup with Retail Services → IT Setup for the OE Tool

What is the timeframe of launching someone on the tool once they are issued an OE number?

After they have an OE Number , received approval, and have provided FTP/PGP information, setup takes approx. 4 weeks

Where are we on the OE agreement?

OE Amendment is part of the 2007 retailer agreement. This has been posted for all current OE Retailers. Business Rules are completed for all new OE Retailers and are being provided at approval.

What is the approval process for outsourced call centers in the US?

Per the Facts Blast, retailers must submit these to Vendor Inquiries.

Can an OE Partner use their call centers that they own and operate outside the US?

If it is not a 3rd party it does not violate the retailer agreement. However, these call centers make it difficult for training and QA.



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EXHIBIT 284

EXHIBIT 284

CONFIDENTIAL

Message

From: Ergen, Candy [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=CANTEY ERGEN]
Sent: 4/4/2006 11:05:30 AM
To: Ergen, Charlie [charlie.ergen@echostar.com]
Subject: FW: Feedback on Robert Greenlee
Attachments: Robert F. Greenlee Resume.doc

Here is his resume....see below for the trail of what we've done so far
c

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

From: Heyroth, Angela
Sent: Monday, April 03, 2006 5:59 PM
To: Ergen, Candy
Subject: FW: Feedback on Robert Greenlee

Just an update on Robert Greenlee - we thought we had a potential position in the Bay area (Robert's preference) under Ellis Wood, but his salary expectations are quite high (see below). We will continue to look for potential placements for him, but wanted to keep you posted.

From: Wyatt, Erica
Sent: Monday, April 03, 2006 5:23 PM
To: Heyroth, Angela
Cc: Wood, Ellis
Subject: RE: Feedback on Robert Greenlee

So we talked to him and he wants 85-100K. That is way far above what we would pay for any position that we would consider him for. You can take us off the list for consideration for him.

Thanks,
Erica

Erica Wyatt, PHR
Director of Human Resources
EchoStar Satellite L.L.C.
Phone: (303) 706-5644
Fax: (303) 723-2074

The above email is for intended recipient only and may be confidential and protected by attorney/client privilege. If you are not the intended recipient, please advise the sender immediately. Unauthorized use or distribution is prohibited and may be unlawful.

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

From: Heyroth, Angela
Sent: Thursday, March 30, 2006 3:40 PM
To: Wyatt, Erica
Cc: Wood, Ellis
Subject: RE: Feedback on Robert Greenlee

Okay to call Robert. Thanks!

From: Wyatt, Erica
Sent: Thursday, March 30, 2006 12:22 PM
To: Heyroth, Angela

CONFIDENTIAL

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007830

Confidential

SLC_ DNC_Investigation_0014753

TX 102-008252

CONFIDENTIAL

Cc: Wood, Ellis

Subject: RE: Feedback on Robert Greenlee

Angela,

DNS would like to speak with him about a Manager in Training position in the Bay area or LA. Should we go ahead and call him to set up an interview or is there another protocol that we should be following?

Thanks,
Erica

Erica Wyatt, PHR
Director of Human Resources
EchoStar Satellite L.L.C.
Phone: (303) 706-5644
Fax: (303) 723-2074

The above email is for intended recipient only and may be confidential and protected by attorney/client privilege. If you are not the intended recipient, please advise the sender immediately. Unauthorized use or distribution is prohibited and may be unlawful.

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

From: Heyroth, Angela

Sent: Wednesday, March 29, 2006 12:40 PM

To: Wyatt, Erica; Vigil, James; Christie, Katherine

Subject: RE: Feedback on Robert Greenlee

Business development or quality assurance

.

From: Wyatt, Erica

Sent: Tuesday, March 28, 2006 11:34 AM

To: Heyroth, Angela; Vigil, James; Christie, Katherine

Subject: RE: Feedback on Robert Greenlee

All that I would have open in the Bay Area would be Operations oriented and his resume doesn't read that way. Do we know what he is truly interested in?

Thanks,
Erica

Erica Wyatt, PHR
Director of Human Resources
EchoStar Satellite L.L.C.
Phone: (303) 706-5644
Fax: (303) 723-2074

From: Heyroth, Angela

Sent: Monday, March 27, 2006 3:01 PM

To: Christie, Katherine; Garrelts, Gary; Vigil, James; Wyatt, Erica

Cc: Morris, Jeff

Subject: FW: Feedback on Robert Greenlee

Importance: High

Katie and Gary - Do we have any business development type positions that may be a good fit?

James - Any international positions that may work?

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Confidential//

SLC_ DNC_Investigation_0014754

TX 102-008253

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Erica - Anything in the Bay Area that may be a good fit?

This candidate was sourced by Candy & I while at USC in early February. He is very strong and we would like to find a place for him if possible.

From: Morris, Jeff
Sent: Monday, March 27, 2006 2:40 PM
To: Beggs, Timothy
Cc: Heine, Raquel; Heyroth, Angela
Subject: RE: Feedback on Robert Greenlee

Thanks Tim –

We truly appreciate your time and the feedback.

Jeff
46459

From: Beggs, Timothy
Sent: Monday, March 27, 2006 2:11 PM
To: Morris, Jeff
Subject: Feedback on Robert Greenlee

Jeff:

I conducted a phone interview with Robert several weeks ago and interviewed him in person today. Here are some impressions:

- He scores very high in energy, intelligence and need for achievement.
- Very professional appearance and demeanor.
- He's had some excellent internships, but his potential is more impressive than his prior work experience.
- He's currently interviewing with multiple employers and is expecting several offers in the near future.
- His interest is in the following areas: international business & asset management (from the business development side rather than the investment side.)
- I didn't see a passion for traditional corporate finance work.
- Seemed excited about the prospect of moving back to San Francisco to take a job.
- Money doesn't appear to be the primary motivating force when he accepts an employment offer.

I discussed the unique opportunities offered by EchoStar—i.e., the ability to interface with Sr. level management, the ability to make high-impact decisions, fast-paced environment, high growth, high energy, etc. He did seem interested, but I know he definitely wants to weigh his options when he receives some more offers.

That being said, I think he'd be successful in any position we'd offer him. However, he seemed the most passionate when he talked about international travel and working in a business development role for an asset management company, so I don't think working in a Corporate Accounting environment is a great fit for what he wants to do.

Tim Beggs
EchoStar Satellite, LLC - Corporate Accounting
Sr. Accounting Project Manager
Phone: 720-514-5293
Cell: 303-378-9966

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TX 102-008254

EXHIBIT 285

EXHIBIT 285

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Message

From: Stallone, Antonella [/O=ECHOSTAR COMMUNICATIONS
CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=ANTONELLA.STALLONE]
Sent: 4/13/2006 12:24:14 PM
To: Steele, Dana [/o=echostar communications corp/ou=echostar/cn=recipients/cn=dana.steele]; DeFranco, Jim
[/o=echostar communications corp/ou=echostar/cn=recipients/cn=jim defranco]; Dodge, Stanton [/o=echostar
communications corp/ou=echostar/cn=recipients/cn=dodge stanton]
CC: Carlson, Erik [/o=echostar communications corp/ou=echostar/cn=recipients/cn=erik.carlson]
Subject: RE: Do Not Call list//File #9514//3-16-06

I was able to move this to tomorrow at 1PM

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

From: Stallone, Antonella
Sent: Thursday, April 13, 2006 10:11 AM
To: Steele, Dana; DeFranco, Jim; Dodge, Stanton
Cc: Carlson, Erik
Subject: RE: Do Not Call list//File #9514//3-16-06

The soonest everyone was available is Friday, April 28th. I sent out the meeting request.

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

From: Steele, Dana
Sent: Thursday, April 13, 2006 9:57 AM
To: DeFranco, Jim; Dodge, Stanton
Cc: Stallone, Antonella; Carlson, Erik
Subject: RE: Do Not Call list//File #9514//3-16-06

Thanks. Jim Gowland and Robb Origer.

- Dana Steele
303-723-1621 direct
303-723-2571 fax

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

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

From: DeFranco, Jim
Sent: Thursday, April 13, 2006 9:48 AM
To: Dodge, Stanton; Steele, Dana
Cc: Stallone, Antonella; Carlson, Erik
Subject: Re: Do Not Call list//File #9514//3-16-06

Ok ann will set up the meeting. Who else do you believe we need to participate?

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

From: Dodge, Stanton
To: Steele, Dana; DeFranco, Jim
Sent: Thu Apr 13 08:04:21 2006
Subject: Re: Do Not Call list//File #9514//3-16-06

Dana,

Please include me in the meeting. Thanks,

Stanton

R. Stanton Dodge
SVP, Deputy General Counsel & Asst. Secretary
Direct: 303.723.1611
Fax: 303.723.2050
Mobile: 303.884.1909

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TX 102-008256

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ATTY / CLIENT AND WORK PRODUCT PRIVILEGES APPLY

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

From: Steele, Dana
To: DeFranco, Jim
CC: Dodge, Stanton
Sent: Thu Apr 13 08:00:59 2006
Subject: Re: Do Not Call list//File #9514//3-16-06

I agree completely. I will set something up ASAP.

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

Dana E. Steele
Director & Senior Corporate Counsel
EchoStar Satellite L.L.C.
P.O. Box 6655 (for regular mail)
Englewood, Colorado 80155

9601 S. Meridian Blvd. (for FedEx/UPS)
Englewood, Colorado 80112

Phone (303) 723-1621
Fax (303) 723-2571
E-mail: dana.steele@echostar.com

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

From: DeFranco, Jim
To: Steele, Dana
CC: Dodge, Stanton
Sent: Thu Apr 13 07:37:36 2006
Subject: Fw: Do Not Call list//File #9514//3-16-06

Dana,
We need a process for how to handle these false complaints. Let's discuss.
Jim

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

From: Aditya Kapoor
To: Gutierrez, Michael
CC: donotcall@fcc.gov; Charles.Ergen@echostar.com; Moskowitz, David; dncconsumerinquiry2@ftc.gov; greg.abbott@oag.state.tx.us; Dugan, Mike; Steven.Schaver@echostar.com; Jackson, Mark (Denver); DeFranco, Jim; Kelly, Michael (EVP); ExecutiveCustomerService; Daines, Nolan; Rayner, David; Strickland, Robert; Vogel, Carl (Vice Chairman)
Sent: Wed Apr 12 19:02:36 2006
Subject: Re: Do Not Call list//File #9514//3-16-06

Michael:
I have received another call from your company this evening again, at 7:50PM Central. I will be reporting this violation it to the FTC shortly. The call from was Caller ID number 718-487-1050. The person identified themselves as calling on behalf of Dish Network, and hung up the phone.

Clearly your company and company's agents are using dirty tactics, changing your Caller ID information randomly, preventing me from screening calls. This harassment has been going on for several months and has reached well past boiling point.

You will be hearing from me everytime your company contacts me. I hope that the FCC, FTC and my state's Attorney General prosecutes your company for criminal behavior, including harassment and verbal threats, per my email on March 7th. I soon plan to report your company to the Houston Police Department, and also report you to the Houston FBI office.

Aditya Kapoor

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JA008995
007835

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SLC_ DNC_Investigation_0005862

TX 102-008257

CONFIDENTIAL

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

From: Aditya Kapoor <mailto:aditya_kapoor@hotmail.com>
To: Gutierrez, Michael <mailto:Michael.Gutierrez@echostar.com>
Cc: donotcall@fcc.gov ; Charles.Ergen@echostar.com ; David.Moskowitz@echostar.com ;
dnccconsumerinquiry2@ftc.gov ; greg.abbott@oag.state.tx.us ; Michael.Dugan@echostar.com ;
Steven.Schaver@echostar.com ; Mark.Jackson@echostar.com ; James.DeFranco@echostar.com ;
Michael.Kelly@echostar.com ; executivecustomerservice@echostar.com ; Nolan.Daines@echostar.com ;
David.Rayner@echostar.com ; Robert.Strickland@echostar.com <mailto:Robert.Strickland@echostar.com> ;
Carl.Vogel@echostar.com
Sent: Tuesday, April 11, 2006 7:39 PM
Subject: Re: Do Not Call list/File #9514//3-16-06

Michael:

Your company, or someone representing your company, has yet again called my home this evening at 7:20PM. The caller ID was clearly masked, as it showed 1-999-999-1234. The person hung up the phone on further questioning. Your company or your agents are using illegal methods to solicit business, and are hiding behind internet phone lines to harrass consumers.

I have reported this incident to the FTC's web site, 2nd time.

Your company continues to violate federal law. I hope at least one of your company's executives will be responsible enough to take control of the situation and stop this form of terrorism and harrasment on me and my family.

Aditya Kapoor

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

From: Aditya Kapoor <mailto:aditya_kapoor@hotmail.com>
To: Gutierrez, Michael <mailto:Michael.Gutierrez@echostar.com>
Cc: dnccconsumerinquiry2@ftc.gov ; donotcall@fcc.gov ; greg.abbott@oag.state.tx.us ;
Charles.Ergen@echostar.com ; David.Moskowitz@echostar.com
Sent: Thursday, April 06, 2006 8:23 PM
Subject: Re: Do Not Call list/File #9514//3-16-06

Michael:

I continue to receive solicitation phone calls every other day or so either from your company or "retailers" that sell your product/service. I hold Dish Network responsible for making these calls either way. I may be wrong, but it is my understanding that it is Dish Network's responsibility to ensure that any agent acting on behalf of you must respect the State and Federal do not call lists.

On past instances since my last complaint, the phone calls come from untraceable numbers (also illegal), and the callers put the phone down on any questioning. This evening at 8PM Central, I received a phone call from someone identifying themselves as "Jay", and claiming to be from Dish Network. On further questioning, he identified himself as working for Sterling Satellite, based in California, with telephone number 877-447-9662. I have no way of authenticating the information given to me.

I have reported this evening's incident to the FTC. I plan to escalate my concerns with my state's Attorney General, to help me deal with this situation, and protect my rights.

Aditya Kapoor

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

From: Gutierrez, Michael <mailto:Michael.Gutierrez@echostar.com>
To: aditya_kapoor@hotmail.com
Sent: Thursday, March 16, 2006 12:25 PM
Subject: FW: Do Not Call list/File #9514//3-16-06

Aditya,

Your complaint indicates that a telephone call was received at your residence soliciting DISH Network services. Your number was not found in a search of DISH Network's internal call logs, which captures all calls placed, whether connected or otherwise. Therefore, it is not possible that these calls originated from DISH Network. Although your number likely was previously included on our internal No Call list, in an abundance of caution, DISH Network has submitted it again.

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TX 102-008258

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DISH Network does conduct business with thousands of independent retailers, any one of which may have placed the call in question on its own behalf, without DISH Network's knowledge or approval. However, the complaint does not provide identifying information that would be sufficient to identify which particular retailer may have placed this phone call, specifically the caller identification phone number. If additional information is available, please forward it to my attention and DISH Network will assist your investigation in any way it is able.

Thank you,
Michael Gutierrez
Dispute Resolution Specialist
DISH Network

Houston@fbi.gov
press@echostar.com

From: Aditya Kapoor [mailto:aditya_kapoor@hotmail.com]
Sent: Tuesday, March 07, 2006 8:07 PM
To: greg.abbott@oag.state.tx.us; KJMWEB@fcc.gov; enforcement@sec.gov;
Cc: FeedBack; Charles.Ergen@dishnetwork.com; David.Moskowitz@dishnetwork.com;
Subject: Fw: Do Not Call list

FORWARD TO ESCALATIONS
JOE A 5CP

FCC Chairman Kevin J. Martin,
Texas Attorney General Greg Abbott,
Securities and Exchange Commission,
Federal Bureau of Investigation, Houston Office:

I would like to report the activities and behavior of Dish Network (Echostar Satellite LLC) to you. I have been receiving phone calls at my home daily, sometimes twice a day, from representatives of Dish Network. Each time I had asked them to take me off their calling list and to respect the Federal Do Not Call list. The activity has continued for almost 2 months now.

This evening, I again received a phone call from a Dish Network representative named "Rithik" and asked to speak to their manager. The phone was transferred to a different person "Sam" who claimed to be the manager. The person started abusing me, both in "Hindi" language and "English".

Their business practices are unlawful, and they have now resorted to abuse. Their phone representatives feel they are untraceable and are thus resorting to indecent actions without accountability. I feel threatened that Dish Network representatives may increase their phone attacks against me or may cause harm to me or my family in some way. The company obviously has my name and phone number, but may have other information about me as well.

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SLC_DNC_Investigation_0005864

TX 102-008259

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I emailed the CEO and Legal Consul of Dish Network one month back (below email), but this company has taken no action. I feel helpless at this point. Please protect me from this irresponsible company.

Respectfully,

Aditya Kapoor

Home: 713-868-1004

Houston, TX

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

From: Aditya Kapoor <mailto:aditya_kapoor@hotmail.com>

To: Charles Ergen <mailto:Charles.Ergen@dishnetwork.com> ; David Moskowitz
<mailto:David.Moskowitz@dishnetwork.com>

Sent: Monday, February 06, 2006 5:37 PM

Subject: Do Not Call list

Charlie:

Either your company or an agency representing Dish Network calls my home telephone number almost daily. My home number has been registered with the National Do Not Call list for almost a year. I am tired of receiving these phone calls, and have told the callers numerous times to take me off their calling list, but the calls have not stopped.

If I continue to receive phone calls from your company or any foreign company representing you, I will report Dish Network to the FTC. My home number is 713-868-1004.

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007838

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SLC_ DNC_Investigation_0005865

TX 102-008260

EXHIBIT 286

EXHIBIT 286

To: Metzger, Marciedes[Marciedes.Metzger@echostar.com]
From: Werner, Bruce
Sent: Fri 5/5/2006 3:39:26 PM **CONFIDENTIAL**
Subject: RE: Wallace TCPA Complaint (via telephone to D. Moskowitz)

Marcie no. I have yet to finalize changes agreed to last week with Jim D. The mail box has not been approved yet.

Bruce M. Werner
General Manager of Risk in Retail Services
720.514.5745

*Have you registered for TEAM Summit?
We hope to see you in Denver, Colorado June 7 - 11!*

From: Metzger, Marciedes
Sent: Friday, May 05, 2006 7:57 AM
To: Werner, Bruce
Subject: FW: Wallace TCPA Complaint (via telephone to D. Moskowitz)

Bruce,

Do we have a completed procedure including the mail box that we can forward retail TCPA issues?

Marcie

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

From: Werner, Bruce
Sent: Wednesday, May 03, 2006 06:59
To: Metzger, Marciedes
Subject: FW: Wallace TCPA Complaint (via telephone to D. Moskowitz)

Marcie this issue was raised yesterday. I don't believe Denise forwarded a copy to you. In keeping with our new process flow, for tracking purposes I wanted to include you. I'll keep you in the loop regarding resolution.

Thanks

Bruce M. Werner
General Manager of Risk in Retail Services
720.514.5745

*Have you registered for TEAM Summit?
We hope to see you in Denver, Colorado June 7 - 11!*

From: Hargan, Denise
Sent: Tuesday, May 02, 2006 3:54 PM
To: Medina, Jeff; Holcomb, Elizabeth
Cc: Bangert, Russell; Werner, Bruce; Peckham, Bruce
Subject: RE: Wallace TCPA Complaint (via telephone to D. Moskowitz)

Jeff: Excellent...and in keeping with the current process.

Liz: Would you please assign this matter to someone at your earliest convenience? I'd rather not have Ms. Wallace contact Mr. Moskowitz again.

Thanks much.

Denise

Denise L. Hargan, Paralegal
EchoStar Satellite L.L.C.

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SLC_DNC_Investigation_0010314
TX 102-008262

9601 S. Meridian Blvd.
Englewood, CO 80112
Direct Line: 720-514-5449
Direct Fax: 303-723-3928

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From: Medina, Jeff
Sent: Tuesday, May 02, 2006 3:53 PM
To: Hargan, Denise; Holcomb, Elizabeth
Cc: Bangert, Russell; Werner, Bruce; Peckham, Bruce
Subject: RE: Wallace TCPA Complaint (via telephone to D. Moskowitz)

I believe that this contact would likely be best facilitated by Beth. I can facilitate any retailer contact/investigation of information.

Jeff Medina
Retail Escalation Team Supervisor
RetailerEscalation@Echostar.com

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

From: Hargan, Denise
Sent: Tuesday, May 02, 2006 3:51 PM
To: Medina, Jeff; Holcomb, Elizabeth
Cc: Bangert, Russell; Werner, Bruce; Peckham, Bruce
Subject: RE: Wallace TCPA Complaint (via telephone to D. Moskowitz)

Jeff: The only telephone number Ms. Wallace provided is her call back/contact number. Discovery of additional information would have to come from Ms. Wallace. Her contact information is: Melissa Wallace, 801-619-0208. Will you be handling the investigation and complaint from this point forward? Thanks much. Denise

Denise L. Hargan, Paralegal
EchoStar Satellite L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112
Direct Line: 720-514-5449
Direct Fax: 303-723-3928

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From: Medina, Jeff
Sent: Tuesday, May 02, 2006 3:47 PM
To: Hargan, Denise; Holcomb, Elizabeth
Cc: Bangert, Russell; Werner, Bruce; Peckham, Bruce
Subject: RE: Wallace TCPA Complaint (via telephone to D. Moskowitz)

Denise,

Has she provided any of the phone numbers that she has been contacted from?

Jeff Medina
Retail Escalation Team Supervisor
RetailerEscalation@Echostar.com

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

From: Hargan, Denise
Sent: Tuesday, May 02, 2006 3:45 PM
To: Holcomb, Elizabeth; Medina, Jeff

CONFIDENTIAL

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007841

Confidential,

SLC_ DNC_Investigation_0010315

TX 102-008263

Cc: Bangert, Russell; Werner, Bruce
Subject: Wallace TCPA Complaint (via telephone to D. Moskowitz)
Importance: High

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Liz and Jeff: David Moskowitz received a telephone message this morning from a consumer in Utah alleging that we made (8) eight unlawful calls to her telephone number in violation of TCPA laws. She's threatening to file (8) separate lawsuits at \$7,500 a pop. She also indicates that she has all the calls on audiotape so there's no contesting it's "us" – and then she goes on to invite us to discuss settlement.

I've confirmed based on our DNC Database that we did not contact the consumer at 801-619-0208. We suggest that the telephone solicitations received by the consumer were made by retailers or individuals posing as Dish Network retailers, etc. I suggest contacting the consumer and requesting that she assist us in our internal investigation. Would she provide us with telephone numbers and other "Dish Network" information?

I understand based on our new evolving Retailer TCPA policy that someone from Retail Services will contact any retailer involved in a TCPA allegation. I also understand that as Jeff has been handling these types of issues in the past, Liz's team would need to pass along any information gained with regard to possible retailer involvement to Jeff. Jeff would then need to continue the investigation. Check with Bruce Werner for further clarification on the process.

The consumer has given us to the end of the week to respond to her allegations before she files suit.

Here's her information:

Melissa Wallace
801-619-0208

I'll let Mr. Moskowitz know that it will not be necessary for him to contact the consumer.

Thanks...and let me know if you have any questions.

Denise

Denise L. Hargan, Paralegal
EchoStar Satellite L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112
Direct Line: 720-514-5449
Direct Fax: 303-723-3928

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SLC_DNC_Investigation_0010316
Docket 81704 Document 2021-09034
TX 102-008264

EXHIBIT 287

EXHIBIT 287

JA009003
007843

TX 102-008265



Retailers Associated with TCPA Consumer Complaints

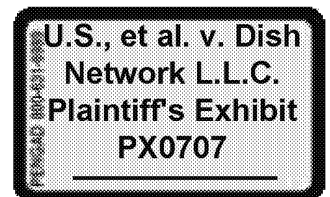
Vendor Inquiries - May 15, 2006 - Present

- *Total Number of TCPA Complaints sent to Retail Services: 824
- *Total Number of TCPA Complaints received week ending 10/2/06: 70
- *Total Number of Consumer Complaints linked to Retailers identified: 42
- *Total Number of Complaints linked to Retailers identified w/e 10/2/06: 11 (3 companies)
- *Total Number of "Stings": 10

Companies identified to date by Retail Services:	Number of Consumer Complaints tied to Retailer:	Open	Closed	TCPA Violation Y/N	Action(s) taken to date against companies identified:	Further action(s) taken to date:
I Dish Com LLC/Blu Kiwi Com LLC	2	2	0	t/b/d	Notice letter sent from Retail Services to retailer 08/01/06. Letter pending for 2 nd complaint	Rec'd response from letter on 08/18/06. Sufficiency of documentation to be determined.
Jeff Hughes d/b/a Sterling Satellite	1	0	1	1 (sting)	Notice letter sent from Retail Services to retailer 08/17/06	Meeting held on 09/08/06. Retailer is working with Echostar to correct problems.

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Produced Over Defendant's Privilege Designation Consistent With Court Order

DISH9-0000274



PX0707-001

JA009004
007844

SLC_ DNC_Investigation_0011278
TX 102-008266

Companies identified to date by Retail Services:	Number of Consumer Complaints tied to Retailer:	Open	Closed	TCPA Violation Y/N	Action(s) taken to date against companies identified:	Further action(s) taken to date:
Marketing Guru	10	10	0	2 (stings)	Notice letters sent from Retail Services to retailer on 08/15/06 regarding (5) complaints; (5) additional complaints/letters pending.	Retail services working with Marketing Guru.
National Satellite Systems	1	1	0	1 (sting)	Notice letter to be sent to retailer.	Retail services to review sting details and contact retailer.
Dish Factory Direct Inc.	1	1	0	t/b/d	Notice letter sent from Retail Services to retailer 09/01/06	Retailer response was due 9/7/06.
Dish Pronto Inc.	5	5	0	1 (sting)	Notice letter to be sent to retailer.	Three complaints will be combined in one letter. 4 th complaint has been handled through legal sting.

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2

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DISH9-0000275

PX0707-002

JA009005
007845

SLC_ DNC_Investigation_0011279
TX 102-008267

Companies identified to date by Retail Services:	Number of Consumer Complaints tied to Retailer:	Open	Closed	TCPA Violation Y/N	Action(s) taken to date against companies identified:	Further action(s) taken to date:
AllSat	6	5	1	1 (sting)	Notice letter regarding one (1) complaint sent from Retail Services to retailer on 08/14/06; (5) additional complaints/letters pending.	The 6 th complaint with Melissa Wallace was settled 9/18/06. Draft letter sent to legal for additional complaints 9/26/06. Approval from legal 10/2.
DISHTV Inc.	1	1	0	TBD	Notice letter to be sent to retailer.	t/b/d
Satellite Systems Now	1	1	0	1 (sting)	Notice letter sent from Retail Services to retailer on 08/29/06.	Retailer response was due 9/12/06. Response was not received. Retail Services will contact.
United Satellite	2	0	2	2 (stings)	Notice letter sent from Retail Services to retailer on 08/17/06.	Retailer was termed 9/8/06.
American Satellite	1	1	0	1 (sting)	Notice letter to be sent to retailer.	Draft letter sent to legal 9/26/06. Approval from legal 10/2.
Jerry Dean Grider d/b/a/ JSR Enterprises	1	1	0		Notice letter to be sent to retailer.	

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3

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Produced Over Defendant's Privilege Designation Consistent With Court Order

DISH9-0000276

PX0707-003

JA009006
007846

SLC_ DNC_Investigation_0011280
TX 102-008268

Companies identified to date by Retail Services:	Number of Consumer Complaints tied to Retailer:	Open	Closed	TCPA Violation Y/N	Action(s) taken to date against companies identified:	Further action(s) taken to date:
Defender Securities	1	1	0	0	Notice letter to be sent to retailer	
Brandvein Discount Communications	9	9	0	1 – Yes 8 - TBD	Notice letter to be sent to retailer	

CONFIDENTIAL - ATTORNEY/CLIENT PRIVILEGE

4

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Produced Over Defendant's Privilege Designation Consistent With Court Order

DISH9-0000277

PX0707-004

JA009007
007847

SLC_ DNC_Investigation_0011281

TX 102-008269

EXHIBIT 288

EXHIBIT 288

CONFIDENTIAL

Message

From: Werner, Bruce [/O=EHOSTAR COMMUNICATIONS CORP/OU=EHOSTAR/CN=RECIPIENTS/CN=BRUCE.WERNER]
on behalf of Werner, Bruce [/o=echostar communications corp/ou=echostar/cn=recipients/cn=bruce.werner]
Sent: 5/18/2006 6:43:06 PM
To: Origer, Robb [robb.origer@echostar.com]
Subject: FW: Final TCPA
Attachments: TCPA.doc; TCPA.ppt; TCPA.doc

Latest version. Visio document is complete except defining criteria Marcie will use to determine that EchoStar made the call.

Bruce M. Werner
General Manager of Risk in Retail Services
720.514.5745

Have you registered for TEAM Summit?

We hope to see you in Denver, Colorado June 7 - 11!

From: Metzger, Marciedes
Sent: Thursday, May 18, 2006 1:05 PM
To: Werner, Bruce
Cc: Hargan, Denise; Steele, Dana; Rose, Suzanne; Valentine, Joshua; Dye, Rachel; Holcomb, Elizabeth
Subject: FW: Final TCPA

This is the final training documentation.

We are not going to use the word vendor in place of 3rd party and retailer. It is unnecessarily vague and confusing. For example: AFNI is a vendor. They are not a private 3rd party. They make collection calls to customers that we direct them to call.

Denise,

Can you provide an ETA on the consumer letters? We still need to add these to the training and get the template up on the web before we can roll out the training. I will need a few days lead time to get it on the web. (Communications is not in on the weekends.) I need to schedule the training in advance. Will we be ready to roll the training out the week of June 3rd?

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

From: Rose, Suzanne
Sent: Thursday, May 18, 2006 12:58
To: Metzger, Marciedes
Subject: Final TCPA

Here is the material for the TCPA Policies/Procedures.

Training:



TCPA.doc

PPT:

CONFIDENTIAL

JA009009
007849

Confidential

SLC_ DNC_Investigation_0010317
TX 102-008271

CONFIDENTIAL



TCPA.ppt

Web:



TCPA.doc

*Thank you,
Suzie Rose
Expert Trainer
Executive Resolution Team
Suzanne.Rose@Echostar.com
Phone: 720-514-8727
Fax: 303-723-2063*

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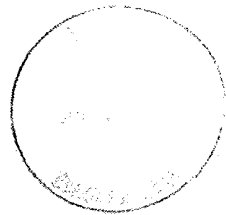
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EXHIBIT 289

EXHIBIT 289

JA000011

TX 102-008273



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

900 Fourth Avenue #2000 • Seattle WA 98164-1012

June 19, 2006

COPY

Legal Department
EchoStar Satellite Corporation
9601 South Meridian Blvd.
Englewood, CO 80112

Re: EchoStar Satellite Corporation d/b/a DISH Network

To Whom It May Concern:

A multi-state group has formed to investigate the trade practices of DISH Network. The group presently includes the States of Alaska, Arizona, Arkansas, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, and West Virginia.

*also
NRGraska*

Enclosed you will find a Civil Investigative Demand ("Demand") issued by Washington on behalf of the multi-state group. Pursuant to the provisions of RCW 19.86.110 (7), the Demand is to be kept confidential.

Please produce the requested documents by July 24, 2006.

If you have any questions, please contact me at (206) 389-3974. Thank you for your

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TX 102-008274

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5
6 **OFFICE OF THE ATTORNEY GENERAL**
7 **STATE OF WASHINGTON**
8

9 IN THE MATTER OF:

10 **EchoStar Satellite Corporation d/b/a**
11 **DISH Network**

12 Respondent.
13
14

**CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY
ANSWERS AND PRODUCTION
OF DOCUMENTS**

15 **THE STATE OF WASHINGTON TO:**

EchoStar Satellite Corporation d/b/a DISH Network
Legal Department
9601 South Meridian Blvd.
Englewood, CO 80112

18 **GREETINGS:**

19 **DEMAND IS HEREBY MADE** upon you by the Consumer Protection Division, Office
20 of the Attorney General, State of Washington, to produce documentary material and to permit
21 inspection and copying of that material and answer, in writing and under oath, the Interrogatories
22 contained in this Civil Investigative Demand ("Demand"). The Attorney General believes you
23 may be in possession, custody or control of certain items, as described below, and have
24 knowledge of information which the Attorney General believes is relevant to the subject matter
25 of a current investigation into possible violations of RCW 19.86.020, Unfair Business Practices-

26 **CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS**

1

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009013

DNC_Investigation_0004484

TX 102-008275

1 Consumer Protection. Specifically, the Division has information indicating that there is reason to
2 believe that EchoStar Satellite Corporation d/b/a DISH Network ("Echostar") may have violated
3 the Consumer Protection Act or other laws by engaging in unfair or deceptive acts or practices in
4 the conduct of its business, including, but not limited to:

5
6 Failing to fully and accurately disclose EchoStar's policies and procedures relating to
7 electronic fund transfers;

8 Failing to ensure that its third-party re-sellers, dealers, and installers do not engage in
9 unfair and deceptive business practices;

10 Entering into long-term programming agreements with consumers that allow-EchoStar to
11 alter the agreement's terms without the consent of the consumer;

12 Failing to honor consumer do-not-call requests and/or failing to ensure that third parties
13 that contract with EchoStar are complying with do-not-call requests; and

14 Failing to disclose material terms of the relationship between EchoStar and consumers in
15 advertising or at the point of sale.
16

17
18 **I. TIME AND PLACE OF PRODUCTION**

19 1.1 The requested responses and documents are to be produced to Mary Beth Haggerty-
20 Shaw, Investigator, at the Office of the Attorney General, 900 4th Avenue, Suite 2000, Seattle, WA
21 98164, no later than July 24, 2006, or at such other time and place as is agreed to by the parties.

22 **II. COMMUNICATIONS**

23 2.1 All notices, questions or communications concerning this Demand should be
24 directed to Katherine M. Tassi, Assistant Attorney General, Office of the Attorney General, 900 4th
25 Avenue, Suite 2000, Seattle, WA 98164
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

2

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

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TX 102-008276

1 **III PRIVILEGE AND OTHER OBJECTIONS**

2 3.1 For any document called for by this Demand that you refuse to produce based on a
3 claim of privilege or for any document that is no longer in your possession, custody, or control, (or
4 in the possession, custody or control of your accountants, consultants, attorneys or other agents
5 wherever located), identify each such document by date, author, recipient, title of such persons,
6 person who has custody of the document, subject matter of document, reason for not producing it,
7 and the identity of each person having knowledge of the factual basis, if any, on which the objection
8 or claim of privilege is asserted.

9
10 **IV. AUTHORITY**

11 4.1 This Demand is issued pursuant to the powers vested in the Attorney General of the
12 State of Washington by RCW 19.86.110 of the Consumer Protection Act.

13 **V. DEFINITIONS**

14 As used in this Demand, unless the context requires otherwise, the following terms should
15 have the following meanings:

16 5.1 "AFFILIATE" means a person, as that term is defined in paragraph 5.7, that is in
17 a business relationship with you, including, but not limited to, agents, co-venturers, third-party
18 sellers, dealers, and installers.

19 5.2 "COMPLAINT" means any verbal or written inquiry, statement, or comment
20 heard or received by you that raises issues, concerns or questions regarding your business
21 activities or those of any of your affiliates.

22 5.3 "CONSUMER" or "CUSTOMER" means and includes any person, as that term is
23 defined in paragraph 5.7.

1 5.4 "ECHOSTAR" or "YOU" or "YOUR" means EchoStar Satellite Corporation
2 d/b/a DISH Network, and any merged or acquired predecessors, successors, divisions, parents,
3 subsidiaries, affiliates, and any other organization in which you have a management or
4 controlling interest.

5
6 5.5 "DOCUMENT" or "DOCUMENTS" means all computer files and written,
7 recorded, and graphic materials of every kind in the possession, custody or control of the
8 respondent. The term "documents" includes electronic correspondence and drafts of documents,
9 copies of documents that are not identical duplicates of the originals, and copies of documents
10 the originals of which are not in the possession, custody or control of the respondent. The term
11 "computer files" includes information stored in, or accessible through, computer or other
12 information retrieval systems. Thus, the respondent should produce documents that exist in
13 machine-readable form, including documents stored in personal computers, portable computers,
14 workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and
15 tapes, and other forms of offline storage, whether on or off respondent's premises. Electronic
16 mail messages should also be provided, even if only available on backup or archive tapes or
17 disks. Computer files shall be printed and produced in hard copy or produced in machine-
18 readable form (provided that representatives of the Office of the Attorney General determine
19 prior to submission that it would be in a format that allows the agency to use the computer files),
20 together with instructions and all other materials necessary to use or interpret the data.
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1 5.6 "IDENTIFY" means the following:

2 a. when used in reference to a *natural person* means to state (1) the
3 person's full name; (2) the person's present or last known address; (3) the person's present
4 or last known telephone number;

5 b. when used in reference to an *artificial person* or entity such as a
6 corporation or partnership means to state (1) the organization's full name and trade name,
7 if any; (2) the address and telephone number of its principal place of business; and (3) the
8 names and titles of those officers, directors, managing agents or employees who have
9 knowledge of, and under Washington Superior Court Civil Rule 30(b)(6), would be
10 designated to testify with respect to, the matters involved in the interrogatory;
11

12 c. when used in reference to a *document* means to (1) state the type of
13 document (e.g., letter, memorandum, print-out, report, newspaper, etc.); (2) state the title
14 and date, if any, of the document; (3) state the author's name and address; (4) state the
15 addressee's name and address; (5) provide a brief description of its contents; (6) indicate
16 the present location of the document; and (7) provide the name and address of the person
17 or persons having custody over the document. This permission, however, shall in no way
18 prejudice the State's right to require production and allow inspection of all records in your
19 possession;
20

21 d. with respect to *oral communications* means to set forth the following
22 information: (1) the substance of the communication; (2) the date and time of the
23 communication; (3) the place of origin of the communication; and if different, as in the case
24 of telephone communications, the place at which the communication was received; (4)
25
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

5

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

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1 identification of each originator and recipient of the communication; and (5) identification
2 of all persons present at the place of origin, and if different, the place of receipt of the
3 communication at the time the communication took place; and

4
5 e. when used in reference to a *factual situation or allegation* means to state with
6 particularity and specificity all facts known which bear upon or are related to the matter
7 which is the subject of the inquiry, using the simplest and most factual statements of which
8 you are capable.

9 5.7 "PERSON" means any natural person, individual, proprietorship, governmental
10 agency or entity, corporation, firm, partnership, group, association, community, agency,
11 institution, joint venture, or any other legal or commercial entity, however organized.

12 5.8 "RELATING TO" or "REFLECTS" or "REFLECTING" means in whole or in
13 part constituting, containing, concerning, discussing, describing, analyzing, identifying,
14 pertaining to, or stating.

15 5.9 "STATES" means and includes the States of Alaska, Arizona, Arkansas,
16 Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan,
17 Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada,
18 North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas,
19 Vermont, Washington, and West Virginia.

22 VI. INSTRUCTIONS

23 1. The information demand should always be interpreted to be inclusive rather than
24 exclusive, including interpreting the following as appropriate: the singular form of a word as
25
26

1 plural, and vice versa; "and" to include "or", and vice versa; the past tense to include the present
2 tense, and vice versa.

3 2. Copies of documents requested may be submitted in lieu of originals, provided
4 that all originals are preserved until written notice from this Office of the completion of this
5 investigation. This permission, however, shall in no way prejudice the States' right to require
6 production and allow inspection of all records in your possession.
7

8 3. In responding to this Demand, preface each answer or document by the number of
9 the request to which it is addressed. If you are unable to answer an Interrogatory fully, submit as
10 much information as is available, explain why your answer is incomplete, and state the source or
11 sources from which a complete answer may be obtained. If an accurate answer cannot be
12 obtained from books and records, your best estimate, so identified, should be submitted
13 indicating the source of the estimate.
14

15 4. If any of the documents or information provided in response to a specific Request
16 are not applicable to a specific State of States, include that information in your response. For
17 example, if a specific print advertisement is only used in certain States, your response should
18 include an identification of those States in which it is, or is not, used.
19

20 5. Provide all information and documents for the period from January 2003 through
21 the date of your response, unless otherwise specifically indicated. If it is necessary to refer to a
22 prior time to fully answer an interrogatory or respond to a request for production of documents,
23 you should do so.
24

25 6. If any responsive document is available in electronic format, in addition to a hard
26 copy, the document shall also be provided in an electronic format in addition to the hard copy.

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

7

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2200
Seattle, WA 98164-1012
(206) 464-7744

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1 Electronic documents shall be produced in ASCII text format and shall include all file, record,
2 instructions, codes or other information necessary to retrieve the data. Electronic data should be
3 produced in Microsoft Access 95, 97, 2000 (MDB) format, Dbase (DBF) format, Excel (xls)
4 format or ASCII comma delimited or fixed length format (txt) and shall include all file, record
5 and field format definitions and instructions, codes or information necessary to retrieve the data.
6 In the case of electronic mail, please use the (PST) format. Such electronic records or data
7 should be provided in the form of a CD ROM unless otherwise agreed upon.
8

9 7. All information and document requests are continuing in nature so as to require
10 you to supplement your answers or responses if you obtain further responsive information or
11 documents.
12

13 8. In order for your response to this Demand to be complete, submit with your
14 response the attached certification form, as executed by the official supervising your compliance
15 with this Demand.
16

17 **VII. INTERROGATORIES AND REQUESTS FOR PRODUCTION**

18 **A. CORPORATE INFORMATION**

19 **INTERROGATORY NO. 1**

20 Identify EchoStar's corporate structure, including all officers, directors, managers, board
21 members and senior management personnel.
22

23 **RESPONSE:**
24
25
26

1 **INTERROGATORY NO. 2**

2 Identify your employee(s) responsible for advertising and promotional activities conducted by
3 EchoStar.
4

5 **RESPONSE:**
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9 **INTERROGATORY NO. 3**

10 Identify any company that is currently or has been the parent company of EchoStar.
11

12 **RESPONSE:**
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16 **INTERROGATORY NO. 4**

17 Identify any company that is currently or has been a subsidiary of EchoStar and the geographical
18 market or areas served by each subsidiary.
19

20 **RESPONSE:**
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25 **INTERROGATORY NO. 5**

26 Identify the supervising employee of each of your subsidiaries, if any.

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

9

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009021

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TX 102-008283

1 **RESPONSE:**

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6 **INTERROGATORY NO. 6**

7 Identify all in-house EchoStar sales/customer service positions that are fully or partially
8 commission- or incentive based. In your response, explain the commission/incentive structure at
9 EchoStar for those sales/customer service positions identified.

10 **RESPONSE:**

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15 **B. ELECTRONIC FUND TRANSFER (EFT) DISCLOSURES AND PRACTICES**

16 **INTERROGATORY NO. 7**

17 Describe EchoStar's policies and practices regarding informing customers of EchoStar's use of
18 electronic fund transfers to obtain payment for goods or services. Please include in your
19 response at what point such information is given, e.g., at point of sale, at the time of the
20 electronic transfer, etc., and whether such information is given orally or in writing.

21
22 **RESPONSE:**

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25
26
CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

10

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 454-7744

JA000022

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TX 102-008284

1 **REQUEST FOR PRODUCTION NO. 1**

2 Provide all documents reflecting the policies and practices described in Interrogatory No. 7 and
3 identify which documents are provided to the customer.
4

5 **RESPONSE:**
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9 **INTERROGATORY NO. 8**

10 Describe EchoStar's policies and practices with regard to electronically transferring funds from
11 its customers' bank accounts to pay for goods or services.
12

13 **RESPONSE:**
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18 **REQUEST FOR PRODUCTION NO. 2**

19 Provide all documents reflecting the policies and practices described in Interrogatory No. 8.

20 **RESPONSE:**
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1 **INTERROGATORY NO. 9**

2 Identify which documents provided in response to Request for Production No. 2 are provided to
3 the customer, if any, and at what point in EchoStar's relationship with the customer the
4 documents are provided.
5

6 **RESPONSE:**
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10 **REQUEST FOR PRODUCTION NO. 3**

11 Provide copies of all documents relating to consumer complaints concerning electronic fund
12 transfers by EchoStar, including, but not limited to, all correspondence between the consumer
13 and EchoStar, all correspondence between the consumer's financial institution and EchoStar, and
14 all correspondence between EchoStar and any State attorney general's office, the Better Business
15 Bureau, or the Federal Trade Commission.
16

17 **RESPONSE:**
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22 **INTERROGATORY NO. 10**

23 Describe EchoStar's policies and practices regarding responding to customer complaints
24 concerning electronic fund transfers, including, but not limited to, consumer complaints
25
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

12

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2600
Seattle, WA 98164-1012
(206) 464-7744

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1 forwarded to EchoStar by State attorney general's offices, the Better Business Bureau, and the
2 Federal Trade Commission.

3 **RESPONSE:**
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8 **REQUEST FOR PRODUCTION NO. 4**

9 Provide copies of all documents reflecting the policies and practices described in Interrogatory
10 No. 10, including, but not limited to, all scripts, manuals, and other documents provided to
11 customer support representatives, and all form letters used to respond to consumer complaints.
12

13 **RESPONSE:**
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16
17

18 **C. BUSINESS RELATIONSHIPS**

19 **INTERROGATORY NO. 11**

20 Identify all of EchoStar's past and present authorized, certified, or approved retailers and
21 installers in the States, including the supervising employee for each one.
22

23 **RESPONSE:**
24
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26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

13

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009025

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TX 102-008287

1 **REQUEST FOR PRODUCTION NO. 5**

2 Provide copies of all past and present agreements, contracts, correspondence and any other
3 documents that describe EchoStar's relationship with the entities identified in Interrogatory No.
4 11.
5

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7 **RESPONSE:**
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12 **REQUEST FOR PRODUCTION NO. 6**

13 Provide all documents, including, but not limited to, all advertisements, contracts, agreements,
14 and correspondence either provided to consumers or published that describe and/or disclose any
15 business relationship identified in Interrogatory No. 11.
16

17 **RESPONSE:**
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19
20

21 **INTERROGATORY NO. 12**

22 Explain fully which entity (e.g., EchoStar, installer, retailer) is responsible for providing refunds
23 or servicing of equipment to consumers in the event of equipment malfunction, customer
24 dissatisfaction, and any other instance in which a refund or service may be requested.
25
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

14

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009026

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TX 102-008288

1 **RESPONSE:**

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6 **REQUEST FOR PRODUCTION NO. 7**

7 Provide all documents, including, but not limited to, contracts or correspondence, that refer to or
8 reflect any agreement between EchoStar and any third-party installers or retailers.

9 **RESPONSE:**

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14 **REQUEST FOR PRODUCTION NO. 8**

15 Provide all documents used to train employees of all of EchoStar's affiliates.

16 **RESPONSE:**

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20
21 **REQUEST FOR PRODUCTION NO. 9**

22 Provide all documents relating to communications between EchoStar and EchoStar's affiliates
23 that currently sell and/or install, or formerly sold and/or installed, EchoStar services and/or
24 equipment in the States, except if a document responsive to this request is a form or standardized
25 document, then multiple copies of the same form or standardized document that are the same
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

15

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900 Fourth Avenue, Suite 2600
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(206) 464-7744

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1 except for the information recorded on the form regarding individual transactions need not be
2 produced.

3 **RESPONSE:**
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8 **REQUEST FOR PRODUCTION NO. 10**

9 Provide all documents relating to any investigation by EchoStar of its affiliates, including, but
10 not limited to, investigation into business practices, reputation, complaint history, background of
11 owners and operators, and operating history.
12

13 **RESPONSE:**
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18 **REQUEST FOR PRODUCTION NO. 11**

19 Provide copies of all documents relating to consumer complaints concerning any of EchoStar's
20 affiliates, including, but not limited to, all correspondence between the consumer and EchoStar,
21 all correspondence between EchoStar and the affiliate, and all correspondence between EchoStar
22 and any State attorney general's offices, the Better Business Bureau, or the Federal Trade
23 Commission.
24
25
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CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

16

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA000028

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TX 102-008290

1 **RESPONSE:**

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6

D. TELEMARKETING VIOLATIONS

7

INTERROGATORY NO. 13

8

Describe your policies and practices regarding your adherence to state and federal telemarketing rules, regulations and laws including, but not limited to, all do-not-call regulations or laws.

9

10

RESPONSE:

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REQUEST FOR PRODUCTION NO. 12

16

Produce all documents reflecting the policies and practices described in Interrogatory No. 13.

17

18

RESPONSE:

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22

INTERROGATORY NO. 14

23

24

Identify all third-party telemarketing firms that solicit business on behalf of EchoStar or on behalf of any of EchoStar's affiliates.

25

26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

17

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009029

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TX 102-008291

1 **RESPONSE:**

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6 **REQUEST FOR PRODUCTION NO. 13**

7 Produce copies of all documents given to the entities identified in Interrogatory No. 14 by
8 EchoStar describing the policies and practices of EchoStar regarding adherence to state and
9 federal telemarketing rules, regulations and laws, and compliance with consumers' requests to be
10 put on internal do-not-call lists.

11 **RESPONSE:**

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16 **REQUEST FOR PRODUCTION NO. 14**

17 Produce copies of all correspondence between EchoStar and any entities identified in
18 Interrogatory No. 14.

19 **RESPONSE:**

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23
24 **INTERROGATORY NO. 15**

25 Identify all of your affiliates that conduct in-house telemarketing on your behalf.
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

18

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA000030

SLC_ DNC_Investigation_0004501

TX 102-008292

1 RESPONSE:

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6 REQUEST FOR PRODUCTION NO. 15

7 Produce copies of all documents given to the affiliates identified in Interrogatory No. 15 by
8 EchoStar describing the policies and practices of EchoStar regarding adherence to state and
9 federal telemarketing rules, regulations and laws and compliance with consumers' requests to be
10 put on internal do-not-call lists.

11 RESPONSE:

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16 REQUEST FOR PRODUCTION NO. 16

17 Produce copies of all correspondence between EchoStar and any affiliates identified in
18 Interrogatory No. 15.

19
20 RESPONSE:

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CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

19

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98154-1012
(206) 464-7744

JA009031

SLC_ DNC_Investigation_0004502

TX 102-008293

1 **REQUEST FOR PRODUCTION NO. 17**

2 Produce all documents reflecting EchoStar's contractual agreement with the telemarketing firms
3 identified in Interrogatory No. 14, including, but not limited to, documents that reflect EchoStar's
4 policies regarding the third party's compliance with all state and federal telemarketing rules,
5 regulations and laws.
6

7 **RESPONSE:**
8
9
10
11

12 **REQUEST FOR PRODUCTION NO. 18**

13 Produce copies of all correspondence or other documents received by EchoStar regarding
14 violations of state and/or federal telemarketing rules, regulations and laws, including, but not
15 limited to, all correspondence between consumers and EchoStar, all correspondence between
16 EchoStar and any of its affiliates or third-party telemarketing entities, and all correspondence
17 between EchoStar and any State attorney general's office, the Better Business Bureau, or the
18 Federal Trade Commission.
19

20 **RESPONSE:**
21
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1 **INTERROGATORY NO. 16**

2 Identify all consumers contacted by telephone by you, and by your affiliates identified in
3 Interrogatory No. 14 and the entities identified in Interrogatory No. 15 on your behalf, in
4 connection with any effort to market or sell any good or service offered by you.
5

6 **RESPONSE:**
7
8
9

10 **REQUEST FOR PRODUCTION NO. 19**

11
12 Produce copies of all past and present telemarketing scripts used by you, and by your affiliates
13 and third-party telemarketing entities on your behalf, in connection with any effort to market or
14 sell any good or service offered by you.

15 **RESPONSE:**
16
17
18
19

20 **E. DISCLOSURE OF MATERIAL TERMS IN ADVERTISING AND AT POINT OF**
21 **SALE**
22

23 **INTERROGATORY NO. 17**

24 Describe the services and goods offered for sale to consumers in each of the States by EchoStar.
25
26 Include in your response:

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

21

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009033
007879

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TX 102-008295

- 1 (A) a list of each package plan offered in each geographical area;
2 (B) a list of channels included in each package plan;
3 (C) the amount charged for each plan when offered at the regular price;
4 (D) the amount charged for equipment in each geographical region;
5 (E) the amount charged for installation in each geographical area;
6 (F) the amount charged for each plan when offered at discounted prices,
7 including discounts such as free installation and rebates;
8
9 (G) the amount charged for equipment when offered at discounted prices;
10 (H) any and all limitations, conditions, or prerequisites on the discounted
11 prices, sales prices, wholesale prices, reduced prices and/or rebates
12
13 (I) a designation of which subsidiary or affiliate offers each package.

14 **RESPONSE:**
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19 **REQUEST FOR PRODUCTION NO. 20**

20 Provide all documentation that reflects the amount charged for each of the goods and services
21 described in response to Interrogatory No. 18 when offered at your regular prices.
22

23 **RESPONSE:**
24
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26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

22

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009034

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TX 102-008296

1 **REQUEST FOR PRODUCTION NO. 21**

2 Provide all documentation reflecting any discounted prices, sales prices, wholesale prices or
3 reduced prices offered to consumers in the States with the purchase of any goods and services
4 described in response to Interrogatory No. 17.
5

6 **RESPONSE:**
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9

10 **REQUEST FOR PRODUCTION NO. 22**

11 Provide a copy of all promotional materials, including, but not limited to, advertisements,
12 brochures, flyers, faxes, and radio and television scripts, that have been used in the States
13 regarding the goods and services offered by EchoStar. This includes promotions on the Internet.
14

15 **RESPONSE:**
16
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18
19

20 **REQUEST FOR PRODUCTION NO. 23**

21 Provide all documents that refer or relate to EchoStar's policies and practices regarding the
22 disclosure in its promotional materials of availability and unavailability of programming in each
23 of the States, including, but not limited to, policies and procedures regarding notice to consumers
24 of the unavailability of programming in their area and notice to existing customers of changes in
25 the availability of programming in their area.
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

23

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(206) 464-7744

JA009035

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TX 102-008297

1 **RESPONSE:**

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6 **REQUEST FOR PRODUCTION NO. 24**

7 Provide all documents that refer or relate to EchoStar's policies and practices regarding
8 disclosure in its promotional materials of its equipment return process after cancellation of
9 service and the cost of equipment if not returned according to the policy.

10 **RESPONSE:**

11
12
13
14
15 **INTERROGATORY NO. 18**

16 Identify all policies and practices for EchoStar customer service representatives to follow in
17 response to consumer complaints relating to advertising or point-of-sale misrepresentations,
18 including, but not limited to, consumer complaints forwarded to EchoStar by State attorney
19 general's offices, the Better Business Bureau, and the Federal Trade Commission.

20
21 **RESPONSE:**

1 **REQUEST FOR PRODUCTION NO. 25**

2 Provide copies of all documents reflecting the policies and practices identified in Interrogatory
3 No. 18, including, but not limited to, all scripts, manuals, and other documents provided to
4 customer support representatives, and all form letters used to respond to consumer complaints.
5

6 **RESPONSE:**
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10 **REQUEST FOR PRODUCTION NO. 26**

11 Produce copies of all correspondence or other documents received by EchoStar relating to
12 complaints about oral or written misrepresentations in advertising or at the point of sale,
13 including, but not limited to, all correspondence between consumers and EchoStar, all
14 correspondence between EchoStar and any of its affiliates, and all correspondence between
15 EchoStar and any State attorney general's office, the Better Business Bureau, or the Federal
16 Trade Commission.
17

18 **RESPONSE:**
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CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

25

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009037

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TX 102-008299

1 F. ALTERATION OF CONTRACT TERMS

2 REQUEST FOR PRODUCTION NO. 27

3 Provide all contracts/service agreements used by you or any person on your behalf in connection
4 with any good or service that you have offered or sold to consumers.
5

6 RESPONSE:

10 INTERROGATORY NO. 19

11 Describe each instance where you have entered into a long-term programming agreement with a
12 consumer and have altered any of the material terms of the agreement prior to the expiration of
13 the expiration of the agreement. Please include in your response: (i) a description of each change
14 made to the agreement; (ii) the effective date of each change to the agreement; (iii) a description
15 of the notification you provided to consumers of the change to the agreement; and (iv) a
16 description of the relief that you provided consumers in connection with the change to the
17 agreement.
18

19 RESPONSE:

1 **REQUEST FOR PRODUCTION NO. 28**

2 Provide all documents that refer or relate to any terms that you have altered or amended in any of
3 your contracts or service agreements used in connection with your offer or sale of goods or
4 services.
5

6 **RESPONSE:**
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10 **REQUEST FOR PRODUCTION NO. 29**

11 Provide all documents reflecting the notice you gave to consumers regarding changes in the
12 terms of their service and/or costs associated with equipment, cancellation of service or any other
13 material change in the terms of the agreement described in Interrogatory No. 19, and indicate
14 whether the notice was given prior to or after the change was made.
15

16 **RESPONSE:**
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21 **REQUEST FOR PRODUCTION NO. 30**

22 Produce copies of all correspondence or other documents received by EchoStar relating to
23 complaints about changes in EchoStar's terms of service, including, but not limited to, changes
24 in the cost of any service or equipment or available programming. Such correspondence and
25 documents should include, but not be limited to, correspondence between consumers and
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

27

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

JA009039

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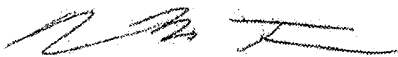
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1 EchoStar, correspondence between EchoStar and any of its affiliates, all correspondence between
2 EchoStar and any State attorney general's office, the Better Business Bureau, or the Federal
3 Trade Commission.
4

5 **RESPONSE:**
6
7
8

9 Dated this 1st day of June 2006.
10
11
12

13 ROB McKENNA
14 Attorney General
15

16 

17 KATHERINE M. TASSI #32908
18 Assistant Attorney General
19 Attorneys for the Plaintiff
20
21
22
23
24
25
26

CIVIL INVESTIGATIVE DEMAND
FOR INTERROGATORY ANSWERS AND
PRODUCTION OF DOCUMENTS

28

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
900 Fourth Avenue, Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

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TX 102-008302

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ US Mail Postage Prepaid via Consolidated Mail Service

☐ ABC/Legal Messenger

☐ State Campus Delivery

☐ Hand delivered by _____

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 19th day of June, 2006, at Seattle, WA.



Talia Zimmerman

EXHIBIT 290

EXHIBIT 290

Excerpt form June 22, 2006 Dealer Communication Memo “Fax Blast” from Echostar, LLC to its dealers.

- **Telemarketing - Reminder**

- We would like to remind you of EchoStar’s policy on telemarketing. Your Retailer Agreement prohibits you from violating any applicable laws, including without limitation in connection with the telemarketing of DISH Network products and services.
 - Authorized Retailers who engage in telemarketing should familiarize themselves with applicable federal, state, local and other laws, including without limitation state “No-Call” statutes and Telephone Consumer Protection Acts.
- Additionally, your Retailer Agreement provides that your relationship with EchoStar is that of an independent contractor. Retailers are not agents or employees of EchoStar and should not represent that they are agents or employees of EchoStar at any time and for any reason, including without limitation in connection with telemarketing activities.
 - For example, a statement by a phone solicitor that they are calling “on behalf of DISH Network” constitutes a breach of your Retailer Agreement and Trademark License Agreement.
- EchoStar takes telemarketing violations very seriously. We work with law enforcement officials at all levels to identify those in violation of this policy.
- Failure to comply with applicable laws could, among other things, lead to the termination of your Retailer Agreement, subject you to criminal and civil liability, and obligate you to defend and indemnify EchoStar in any civil or criminal lawsuit brought against EchoStar in connection with such activities.
- To report any such activities, please email all pertinent information to vendorinquiries@echostar.com.

You should understand the laws you are breaking. Here is a link to the FCC website that clearly states the use pre-recorded messages and auto-dialers to prospect new customers is illegal.

<http://ftp.fcc.gov/cgb/policy/telemarketing.html>

EXHIBIT 291

EXHIBIT 291

CONFIDENTIAL

Message

From: Moskowitz, David [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=DAVID MOSKOWITZ]
Sent: 6/28/2006 3:12:16 PM
To: Ergen, Charlie [charlie.ergen@echostar.com]
Subject: FW: AG investigation - 31 states
Attachments: Document.pdf

**REDACTED-ATTORNEY-CLIENT PRIVILEGED/
WORK-PRODUCT**

I will let you know how this develops.

From: Steele, Dana
Sent: Wednesday, June 28, 2006 12:00 PM
To: Moskowitz, David
Subject: AG investigation - 31 states

David,

We received a CID from the WA AG on behalf of 31 states to investigate EchoStar's trade practices. The Asst AG heading this investigation, Katherine Tassi, is out of town until tomorrow so I have not had the opportunity to discuss this matter with her.

The CID seeks documents and information related to incentive based sales, practices regarding EFTs, practices regarding refunds and servicing of equipment, customer complaint histories for both EchoStar and retailers, and information regarding EchoStar's telemarketing practices and that of retailers. Based upon the framework of the requests, **REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT**

AC/WP

Ms. Tassi had an issue with a WA retailer last month that was soliciting indicating profits went to a charitable organization. I spoke with her and indicated we would work with her to prosecute the retailer.

I would like to set up a time to discuss this CID and how you would like it handled. Thank you,
- Dana



Document.pdf

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

Dana E. Steele
Director and Senior Corporate Counsel
EchoStar Satellite L.L.C.
P.O. Box 6655 (for regular mail)
Englewood, Colorado 80155

9601 S. Meridian Blvd. (for FedEx/UPS)
Englewood, Colorado 80112

Phone (303) 723-1621
Fax (303) 723-2571
E-mail: dana.steele@echostar.com

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EXHIBIT 292

EXHIBIT 292



Managing Reports of Telemarketing Violations

Roles/Responsibilities

- **ERT –**
 - Manages all consumer communications
 - Ensures compliance with Do Not Call Policy
- **Retail Services**
 - Investigates reports of external activities
 - Administers corrective action to identified Retailers
- **Legal**
 - Advises on communications sent to consumer and Retailer
 - Engages on escalated items with law enforcement, AG, etc.



Confidential and Proprietary

2

Process exists utilizing existing ERT infrastructure for management of customer service issues – ERT manages all communication w/the subscriber or prospect.

Includes Retail Services for investigation and corrective action on any items that are identified to not be a result of any Echostar actions – some Retailer, some other party.

Both take guidance from legal on construction of process – and in the compliance, documentation, and disciplinary actions

Who to Contact

- **Consumers –**

- Call (800) 333 DISH
- Front line agent will route call to ERT

- **Employees, Retailers –**

- Email vendorinquiries@echostar.com
- Retail Services will route through ERT for front end tracking and will research reported activities



Confidential and Proprietary

3

A consumer that wishes to make a report of telemarketing – or any other – action related to the marketing of Dish Network services, should contact (800) 333 DISH. Our front line CSR will manage the call & route to ERT

Retailers have been instructed in multiple Chats and Blasts to send any/all to vendorinquiries@echostar.com – This is managed by Retail Services; we will route initially to ERT so that all are tracked and will then investigate.

Retail Services has established a progressive discipline path – will send notice of complaint letters at 1st offense, at 2nd offense with a penalty, and the 3rd results in termination.

Information Needed

- Phone number of the consumer
- Phone number of the person calling
- Name of business
- Name of caller – individual sales representative
- Nature of complaint
 - DNC violation
 - Abusive language
 - Repeat calls



Confidential and Proprietary

4

We need as much identifying information as is possible –

the data elements are what you would expect

Challenges

- **Unable to identify caller**
 - Disguised callers
 - Spoof Cards
 - Voice over Internet
 - Incomplete information on complaint



Confidential and Proprietary

5

Single largest issue that this process faces today is identifying the caller –

Many reports do not have sufficient detail to make a thorough attempt

Technology allows someone that wants to not be found to quite effectively do so –

Spoof cards – allows a caller to mask their own # the caller ID

Voice over Internet – less likely to be able to trace back to caller

Next Steps

- **Call Monitoring of OE Retailers**
 - Riverfront QA resources
 - Retail Services oversight
 - Live and recorded call monitoring
- **Sting operations**
 - Prepaid debit cards to allow for consumer to make a purchase
- **3rd Party Agreements**
 - Oversight of outsourced centers



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6

Monitoring –

In an effort to provide oversight and to have more control over the customer experience, Retail Services and Call Center have initiated a call monitoring effort on all OE Retailers –

We will monitor OE sellers in the same manner as our own Direct Sales.

Notified all last week via certified; have out-called top 10; are receiving files from Marketing Guru today.

2) Sting –

Green Dot prepaid card & last 4 digits allow for a purchase attempt to map transaction to seller

3) John Doe Lawsuit –

Ability to request legal/law enforcement assistance to identify caller – work w/phone companies, etc

4) 3rd Party –

We will engage 3rd party entities engaged in any sales/service activity with our Retailers into an agreement that allows for oversight and audition provisions, security of data, etc

EXHIBIT 293

EXHIBIT 293

CONFIDENTIAL

Message

From: Moskowitz, David [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=DAVID MOSKOWITZ]
Sent: 8/2/2006 8:57:01 AM
To: Ergen, Charlie [charlie.ergen@echostar.com]; Ergen, Candy [candy.ergen@echostar.com]
CC: Delaney, Marci [marci.delaney@echostar.com]
Subject: FW: Calling the Ergen's Home

FYI

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

From: Steele, Dana
Sent: Tuesday, August 01, 2006 3:20 PM
To: Moskowitz, David
Cc: Blum, Jeffrey; Reid, Denise
Subject: RE: Calling the Ergen's Home

David,

Mr. Starks is a private investigator (he claims that is how he found the Ergen's home number). He is not on any Federal or State DNC lists. EchoStar solicited his home number on 5/16/06 and placed him on our internal DNC list on 5/17/06. We have not contacted him since. Mr. Starks was a former customer who disconnected 2/5/05.

I have provided Mr. Starks with my personal cell phone number to refer subsequent solicitors to. He is willing to work with us to attempt to identify the callers, but would not like to use his own credit card to do so.

Please let me know if you have any questions or concerns. I will keep you updated.

- Dana Steele
303-723-1621 direct
303-723-2571 fax

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

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

From: Moskowitz, David
Sent: Friday, July 28, 2006 9:20 AM
To: Steele, Dana
Cc: Blum, Jeffrey; Reid, Denise
Subject: Fw: Calling the Ergen's Home

Please reort back to me in writing on this by Tuesday.

Thanks

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

From: Delaney, Marci
To: Moskowitz, David
CC: Steele, Dana
Sent: Fri Jul 28 09:10:16 2006
Subject: Calling the Ergen's Home

David -

Candy asked me to forward you this name/number because this is the guy that has called the Ergen's home because he is so fed up with getting telemarketing calls from us. She asked if you could please look into what we can do about it.

James Starks 859-312-5561

CONFIDENTIAL

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TX 102-008316

CONFIDENTIAL

Marci

CONFIDENTIAL

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TX 102-008317

EXHIBIT 294

EXHIBIT 294

Echostar Communications
Audit Committee Update
August 2, 2006

Internal Audit Update

- SOX 404 Update
 - 2006 Overview
 - Summary of Deficiencies
 - Status of Remediation
 - Programming Update
 - 2006 SOX Action Items

- Departmental Update
 - Automation
 - Audit Status
 - Staffing Update

2006 Overview

- Process Owner Certification

- First and second quarter questionnaires distributed
 - Process automated in Sharepoint – 100% compliance 1Q
 - 2Q - 75% complete
 - No significant issues identified

- Executive Team Certification

- Quarterly questionnaires issued address fraud, disclosure issues, and concerns
 - Input used as basis for financial statement disclosures
 - Developing VP/Director questionnaire for implementation 3Q06

- Testing status

- 63% of first round testing complete as of 7/15/06

Summary of 2005 Deficiencies

Process	2004 Def	2005 Def	Total Def	2004/2005 Cleared	2006 Cleared	Open Def
Financial Accounting	36	30	66	60	0	6
Tax	7	5	12	12	0	0
People to Paycheck	13	3	16	13	0	3
Procure to Pay	14	4	18	16	2	0
DNS Payments	6	5	11	7	0	4
Programming Payments	9	6	15	0	4	11
Retailer Commissions	20	2	22	17	1	4
Order to Cash	26	12	38	25	4	9
ITGC	55	26	81	24	7	50
Entity Level Controls	6	10	16	4	1	11
Total	192	103	295	178	19	98

Status of Remediation

- IT Assigned Owners to All Deficiencies
 - Implemented Weekly Audit/IT Meeting to Update Deficiency Status and Discuss Remediation
 - IT Shifting Priorities from VISA to SOX to Clear Significant Deficiencies
- Monthly Status Reviews
 - IA Managers to Meet with Process Owners to Discuss Remediation Status Monthly
 - Remediation Monitored Monthly by CIO and VP-IA
- Retesting of Remediated Items
 - Performed in Conjunction with First Round SOX Testing

Programming Update

- ❑ Payments Calcs Current Since February
- ❑ Work on Revised Terms Sheets in Process
 - Packaging (90% complete, submitted for IA review)
 - Legal Terms in Process
- ❑ Using PPA Subscriber Report since February
- ❑ 85 Payments Issued via PPA for June (55%)
 - Streamlined Review Process in Place for PPA Payments
- ❑ Cleared 3 Control Deficiencies; 6 Additional Deficiencies Remediated but not Retested
- ❑ Several New Hires to Upgrade Programming Payment Function
- ❑ Transitioning International Payment Function to Accounting

2006 SOX Action Items

- Work with process owners to remediate controls - ongoing
- Strengthen control structure for Echostar through required implementation of monitoring controls - ongoing
- Review of financial statements/process mapping to identify any gap areas in process as of 6/30/06 – in process
- Roll-out internal control training to Echostar employees – 1st three sessions complete
- Implement process owner scorecard to measure progress in improving control structure – in process
- Implement SOX workpapers into TeamMate – in process
- Coordinate testing schedule with KPMG – ongoing
- Complete majority of testing by 11/1/06 - ongoing

Departmental Update - Automation

- ❑ TeamMate software purchase – complete
- ❑ Pre-implementation meeting –complete
- ❑ Configuration of system – complete
- ❑ Training – complete
- ❑ Web server – complete
- ❑ Software deployed to staff – complete
- ❑ LDAP functionality deployed – incomplete
 - ✱ Awaiting IT support

Departmental Update – Audit Status

- Operational Audits Completed YTD
 - Scrap
 - Capitalized IT Labor
 - IT Contractor Management
 - SNG Conversion Bonus
 - Account Packing
- Operational Audits Underway
 - Customer Adjustments
 - Supply Chain Management
 - Contract Manufacturing Security Review

Departmental Update – Audit Status

- IT Audits Completed YTD
 - ❑ Generic Oracle IDs
 - ❑ IT Capitalized Wages
 - ❑ Release of Sensitive Data
 - ❑ P2P, IM, WebBrowser
 - ❑ Backup Media Integrity
 - ❑ Encryption Keys
 - ❑ Oracle GL Baseline
 - ❑ Oracle A/P Baseline
 - ❑ Oracle Purchasing Baseline
 - ❑ Oracle Receivables Baseline

Departmental Update – Audit Status

- IT Audits Underway
 - Oracle Fixed Assets Baseline
 - Oracle Inventory Baseline
 - Oracle Order Management Baseline
 - Personal Information in A/P
 - Security of Credit Card Transmission to Chase

Staffing Update

- Current Openings - 2
 - 4 Openings at Beginning of Year
 - 5 YTD Resignations
 - 7 New Hires (3 Internal, 3 Experienced Hires, 1 College Grad)
- Candidates for Replacement Positions
 - Senior Auditor
 - TCI Experience
 - SOX Experience
 - Public Accounting Experience
 - Quality Manager
 - None as yet; position just advertised

EXHIBIT 295

EXHIBIT 295

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TX 102-008331

**AMENDED AND RESTATED CHARTER OF
THE AUDIT COMMITTEE OF
THE BOARD OF DIRECTORS OF
ECHOSTAR COMMUNICATIONS CORPORATION
(as revised through August 7, 2006)**

The Board of Directors (the "Board of Directors") of EchoStar Communications Corporation (the "Corporation") hereby establishes an audit committee (the "Audit Committee"), as a standing committee of the Board of Directors, which shall have the responsibilities described below and shall use the means described below to carry out such responsibilities.

Statement of Policy

Primary responsibility for the Corporation's financial reporting and internal controls is vested in the management of the Corporation, as overseen by the Board of Directors. The Audit Committee shall provide assistance to the Board of Directors in fulfilling their responsibility to the shareholders, potential shareholders and the investing community relating to corporate accounting, reporting practices, and the quality and integrity of the financial reports of the Corporation. In so doing, it is the responsibility of the Audit Committee to maintain free and open means of communication between the Board of Directors, the independent auditors, the internal auditors and the financial management of the Corporation. The Audit Committee shall provide oversight and review of the Corporation's accounting and financial services, internal operating controls and its ethical standards in consultation with the independent auditors and the General Counsel of the Corporation.

The Audit Committee shall be the Board of Directors' principal agent in ensuring the independence of the independent auditors, the integrity of management, and the adequacy of disclosures to shareholders. In performing its designated functions, described herein, the Audit Committee shall not assume or diminish management's responsibility for the content of the information disseminated by the Corporation.

Composition of the Audit Committee

The Audit Committee shall be comprised of at least three directors determined by the Board of Directors to meet the independence and financial literacy requirements of The NASDAQ Stock Market ("NASDAQ") and applicable federal law, including Section 10A(m)(3) of the Securities Exchange Act of 1934 and the rules and regulations of the Securities and Exchange Commission.

Access, Authority and Funding

The Audit Committee shall have unrestricted access to the Corporation's personnel and records and to the independent auditors and shall have authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

The Corporation shall provide the Audit Committee with the appropriate funding, as determined by the Audit Committee, in its capacity as a committee of the Board of Directors, for payment of (i) compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Corporation, (ii) compensation to any advisers or counsel employed by the Audit Committee and (iii) ordinary administrative expenses of the Audit Committee that are necessary or appropriate in carrying out its duties.

Meetings

The Audit Committee shall meet on a regular basis, but no less than four (4) times per year, and call special meetings, as required. The Audit Committee should meet separately at least semi-annually with management, the head of the internal auditing department and the independent auditors to discuss any

matters that the Audit Committee or any of these persons or firms believe should be discussed privately. The Audit Committee may request any officer or employee of the Corporation or the Corporation's outside counsel or independent auditors to meet with any members of, or consultants to, the Audit Committee. Members of the Audit Committee may participate in a meeting of the Audit Committee by means of conference call or similar communications equipment by means of which all persons participating in the meeting can hear each other.

The members of the Audit Committee shall elect a Chairman to preside at all meetings of the Audit Committee. As necessary or desirable, the Chairman of the Audit Committee may request that members and representatives of the independent auditors, management or others be present at a meeting of the Audit Committee and provide pertinent information as necessary.

Minutes

Minutes of each meeting of the Audit Committee are to be prepared and approved by the Audit Committee. Such minutes shall be filed with the Secretary of the Corporation and retained in the minute book of the Board of Directors.

General Policies and Procedures

In carrying out its responsibilities, the Audit Committee's policies and procedures will remain flexible, to best react to changing conditions and to ensure to the Board of Directors and shareholders that the corporate accounting and reporting practices of the Corporation are in accordance with all requirements and are of the highest quality.

Regular Functions

A. Selection of Independent Auditors.

The Audit Committee in its capacity as a committee of the Board of Directors, shall be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Corporation, and each such registered public accounting firm must report directly to the Audit Committee. In undertaking these obligations, the Audit Committee shall review with the Chief Financial Officer of the Corporation and approve the engagement of the independent auditors for each audit and for non-audit services requested, including the fee, scope and timing of the audit or non-audit services requested, the nature and magnitude of the services actually performed compared to earlier approvals for the procedure (if applicable), the range and proportion of audit and non-audit fees and the effect of any engagement on the independence of the auditors.

The Audit Committee shall be responsible for ensuring that it receives from the independent auditors a formal written statement delineating all relationships between the independent auditors and the Corporation, consistent with Independence Standards Board Standards No. 1, "Independence Discussions with Audit Committees" and the Audit Committee shall further be responsible for actively engaging in a dialogue with the independent auditors with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditors and for taking, or recommending that the full Board of Directors of the Corporation take, appropriate action to oversee the independence of the independent auditor. The audit committee shall be responsible for confirming and assuring the objectivity of the internal auditor.

The independent auditors are ultimately accountable to the Audit Committee, and the Audit Committee shall have the ultimate authority and responsibility to recommend the nomination of the independent auditors by the Board of Directors for shareholder approval in any proxy statement.

B. *Selection of Internal Auditor*

The Audit Committee shall have the following duties and powers with respect to the internal auditing department:

(a) to review and approve the appointment and replacement of the head of the internal auditing department, and

(b) to advise the head of the internal auditing department that he or she is expected to provide to the Audit Committee summaries of and, as appropriate, the significant reports to management prepared by the internal auditing department and management's responses thereto.

(c) to recommend and approve the compensation plan for the head of internal audit in consultation with management.

C. *Financial Reporting Issues and Practices and Internal Audit Controls and Procedures*

The Audit Committee shall have the duty and power to advise management, the internal auditing department and the independent auditors that they are expected to provide to the Audit Committee a timely analysis of significant financial reporting issues and practices and significant internal audit controls and procedures.

D. *Review of Annual Audit Plan.*

The Audit Committee shall review and approve the annual audit plan submitted by the independent auditors. The Audit Committee shall discuss with the independent auditors the overall approach to and scope of the audit examination with particular attention focused on those areas where either the Audit Committee, the Board of Directors, management or the independent auditors believe special emphasis is desirable.

E. *Review Results of the Annual Audit.*

Upon completion of any audit and periodically throughout each fiscal year as requested by the independent auditors or management or as deemed advisable by the Audit Committee, the Audit Committee shall review and discuss the audited financial statements, the results of the audit and the independent auditors' report or opinion on matters related to the performance of such audit.

The following illustrates, but is not an exhaustive list of, the topics which may be discussed with the independent auditors and management:

(a) the quality of the financial statements,

(b) any significant auditor or management adjustments, reclassifications, disclosures, accounting estimates, new or changed accounting policies or principles and disagreements with management,

(c) the reasons for major fluctuations in financial statement balances (current year compared to prior years),

(d) the clarity and adequacy of the Corporation's financial disclosures,

(e) the quality and degree of aggressiveness or conservatism of accounting policies and principles, underlying estimates and other significant decisions made in preparing financial disclosures,

(f) unusual circumstances or situations reflected in the financial statements, including identification of any loss or marginal operation,

- (g) the nature of any unusual or significant commitments or contingent liabilities, together with the underlying assumptions and estimates of management,
- (h) significant differences in format or disclosure from others in the industry,
- (i) significant differences between the annual report and other reports, such as the reports to any regulatory agencies,
- (j) the independent auditors' observations on internal accounting controls presented in the management letter,
- (k) the adequacy of the Corporation's system of internal accounting controls,
- (l) any change in key personnel, operations or systems which may affect the continuing functioning and effectiveness of the Corporation's accounting and operating controls,
- (m) the performance of the independent auditors, and
- (n) to the extent not otherwise covered above, the matters required by Statement on Auditing Standards No. 61, "Communication with Audit Committees."

F. *Review of Other Quarterly and Annual Reports.*

The Audit Committee shall review any other financial statements or reports, as requested by management or determined by the Audit Committee, which are required to be filed with any Federal, State or local regulatory agency prior to filing with the appropriate regulatory body, and the Corporation shall promptly provide the members of the Audit Committee with final copies of all such reports after filing with the appropriate regulatory body. As a part of such review, the following illustrates, but is not an exhaustive list of, the topics which may be covered:

- (a) the accounting principles employed in reporting any large or unusual transactions and the possible need to make specific disclosures of material developments,
- (b) developments in accounting policies and procedures since the previous filing of such financial statement or report and the effect of these developments may have on the Corporation's financial reporting, and
- (c) significant fluctuations in financial statement balances, ratios or statistics.

G. *Review Charter.*

The Audit Committee Shall review and reassess the adequacy of this Charter on an annual basis.

H. *Reports to Board of Directors*

The Audit Committee shall report its activities to the full Board of Directors on a regular basis, making such recommendations the Audit Committee deems necessary or appropriate.

I. *Other Oversight Functions.*

The Audit Committee shall perform such other oversight functions as requested by the Board of Directors. In addition, the Audit Committee is authorized to and shall have the power to perform the following functions:

- (a) conduct or authorize investigations into any matters within the Audit Committee's scope of responsibilities. The Audit Committee shall be empowered to retain independent counsel and other professionals to assist in the conduct of any investigation after consultation with the General Counsel of the Corporation;
- (b) review legal and regulatory matters that may have a material impact on the financial statements, related company compliance policies, and programs and reports received from regulators;
- (c) establish procedures for the (i) receipt, retention, and treatment of complaints received by the Corporation regarding accounting, internal accounting controls, or auditing matters and (ii) the confidential, anonymous submission by employees of the Corporation of concerns regarding questionable accounting or auditing matters.
- (d) discuss Corporation policies with respect to risk assessment and risk management, and review contingent liabilities and risks that may be material to the Corporation; and
- (f) prepare a report each year for inclusion in the Corporation's proxy statement.

Exculpatory Provision

The Audit Committee is responsible for the duties set forth in this charter but is not responsible for either the preparation of the financial statements or the auditing of the financial statements. Management has the responsibility for preparing the financial statements and implementing internal controls and the independent auditors have the responsibility for auditing the financial statements and monitoring the effectiveness of the internal controls. The review of the financial statements by the Audit Committee is not of the same quality as the audit performed by the independent auditors.

EXHIBIT 296

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CONFIDENTIAL

ECHOSTAR COMMUNICATIONS CORPORATION

Regular Meeting of the Board of Directors

August 7, 2006

A regular meeting of the board of directors (the "Board of Directors") of EchoStar Communications Corporation (the "Corporation") was held on August 7, 2006 at 1:00 p.m., prevailing Mountain Time, at the Corporation's headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

The following members of the Board of Directors participated:

James DeFranco (*via teleconference*)
David K. Moskowitz
Carl E. Vogel
Steven R. Goodbarn
C. Michael Schroeder
Gary S. Howard

Mr. Charles W. Ergen, Ms. Cantey M. Ergen and Messrs. Michael T. Dugan and Tom A. Ortolf did not participate in the meeting.

Also participating at various times during the meeting at the invitation of the Chairman of the Board of Directors were: O. Nolan Daines, Executive Vice President - Business Development of the Corporation; R. Stanton Dodge, Senior Vice President, Deputy General Counsel and Assistant Secretary of the Corporation; Robert Rehg, Senior Vice President - Business Development of the Corporation; Daniel G. Dufner, Jr., a partner in White & Case's Mergers & Acquisitions Practice Group; and John M. Reiss, Global Co-head of White & Case's Mergers and Acquisitions Practice Group.

Call to Order

Mr. Carl E. Vogel, Vice Chairman of the Board of Directors, called the meeting to order and presided. Mr. Dodge acted as Assistant Secretary of the meeting.

Notice and Quorum

The Vice Chairman advised that, as each member of the Board of Directors had waived any and all notices that may have been required to be given with respect to a regular meeting of the Board of Directors and a quorum was present, the meeting was properly convened.