

**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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A-17-763397-B

**JOINT APPENDIX**  
**Vol. 41 of 85**  
**[JA009397-JA009578]**

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

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

# EXHIBIT 346

# EXHIBIT 346





## Order Entry Retailers

### Executive Summary

Updated: 9/8/2008

JA009398  
008231

## Aerowave

**Recommend: No Action.**

OE Retailer Name: Aerowave  
 AR# 12379127  
 AP# 530767  
 Sales ID: AEROWAVE  
 Seller ID: 1207355  
 Address 18002 Irvine Blvd Suite 207  
 Tustin, CA 92780  
 Main Phone: 951-265-1278

Contacts:

**Mark Ladd**

Title: IT/ Primary

Email: [MLadd@aerowavegroup.com](mailto:MLadd@aerowavegroup.com)

Phone: 951-265-1278

Responsibilities: Manages sales reporting and new marketing initiatives

On the OE Tool Since: March 2006

Total OE Activations: 11,741  
 2004 Activations: N/A  
 2005 Activations: N/A  
 2006 Activations: 5,136  
 2007 Activations: 4,865  
 2008 Activations (YTD): 2,305

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.66%	77.91%	22.97%	10.07%	48.20%	43.53%
Feb	2.14%	69.68%	22.97%	65.12%	54.45%	39.15%
Mar	2.77%	81.43%	17.92%	52.27%	51.89%	48.48%
Apr	2.88%	81.90%	19.54%	16.36%	55.39%	46.84%
May	2.97%	79.94%	24.92%	16.55%	55.63%	51.41%
Jun	2.94%	81.99%	19.09%	52.55%	52.16%	49.80%
Jul	N/A	90.38%	26.15%	69.91%	64.47%	49.28%

Phase 21 CRI – 2.04%  
 Primary Marketing Methods: Door to Door and Yellow Pages  
 Business Plan on File - No  
 Use of Third Party Call Centers – No  
 National Account Manager Responsible for the Account:  
 Chris Taber

## Aloha Communications

**Only does business with 3<sup>rd</sup> Parties. On a payment plan for duplicates in 2007. They have an internal call center coming online.**

**Recommendation: Require them to quit using 3<sup>rd</sup> parties domestic or foreign.**

OE Retailer Name: ALOHA COMMUNICATIONS LLC  
 AR# 1993056  
 AP# 267656  
 Sales ID: ALOHA  
 Seller ID: 1265556  
 Address: 1832 N 1120 W  
           Provo, UT 84604  
 Main Phone: 801-373-2600

Contacts:  
**Paul Mugerian**  
 Title: Primary/Sales  
 Email: [Paul.Mugerian@alohacommunications.net](mailto:Paul.Mugerian@alohacommunications.net)  
 Phone: 801-623-2464

On the OE Tool Since: December 2005

Total OE Activations: 4,250  
 2004 Activations: 0  
 2005 Activations: 8  
 2006 Activations: 352  
 2007 Activations: 2,389  
 2008 Activations (YTD): 1,501

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.49%	69.00%	54.00%	83.57%	11.43%	73.57%
Feb	1.83%	72.35%	54.00%	73.13%	11.94%	75.37%
Mar	1.72%	74.01%	60.45%	71.52%	6.33%	82.91%
Apr	2.01%	80.54%	54.47%	43.37%	15.06%	77.71%
May	1.55%	76.60%	49.65%	66.84%	10.36%	78.76%
Jun	2.11%	76.20%	49.29%	40.17%	12.82%	70.94%
Jul	N/A	71.63%	58.43%	26.24%	15.59%	71.86%

Phase 21 CRI - 1.72%  
 Primary Marketing Methods: Outbound Telemarketing  
 Business Plan on File - No  
 Use of Third Party Call Centers – Yes  
 National Account Manager Responsible for the Account:  
 David Garza

**Altitude Marketing**

**Recommend: No Action**

OE Retailer Name: Altitude Marketing  
 AR# 14855265  
 AP# 689601  
 Sales ID: Altitude  
 Seller ID: 1232453  
 Address: 6523 Transit Road  
 Lockport, NY 14094  
 Main Phone (716) 625-8555

Contacts:

**Jim Stephen**

Title: President

Email: [jimstephen@intertechdigital.com](mailto:jimstephen@intertechdigital.com)

Phone: 716-625-8555 x 300 or 716-913-4677 (Mobile)

On the OE Tool Since: January 2005

Total OE Activations: 102,509

2004 Activations: N/A

2005 Activations: N/A

2006 Activations 16,154

2007 Activations 42,042

2008 Activations 44,313

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.56%	77.88%	21.91%	75.59%	42.18%	60.64%
Feb	1.16%	81.10%	21.91%	82.86%	45.84%	50.50%
Mar	1.35%	83.42%	18.45%	78.08%	45.02%	56.30%
Apr	1.77%	85.33%	18.84%	74.67%	47.64%	58.38%
May	1.96%	84.70%	19.67%	71.27%	47.86%	57.47%
Jun	2.07%	84.03%	19.08%	72.49%	49.21%	57.48%
Jul	N/A	85.79%	22.64%	74.88%	51.72%	56.73%

Phase 21 CRI - 1.40%

Primary Marketing Methods: Direct mail

Business Plan on File - No

Use of Third Party Call Centers – Yes (inbound only)

National Account Manager Responsible for the Account:

Richard Brilli

**American Satellite**

JA009401  
008234

**Recommend: No Action. Increase economics to \$200.  
\$175**

OE Retailer Name: American Satellite  
AR# 13375148  
AP# 597908  
Sales ID: AMERICAN  
Seller ID: 1180949  
Address 2667 Camino Del Rio S Suite 201  
San Diego, CA 92108  
Main Phone: 1-866-512-8545

**Contacts:**

**Todd DiRoberto**

Title: President

Email: [tmdiroberto@aol.com](mailto:tmdiroberto@aol.com)

Phone: 858-699-7161

Responsibilities: Focuses on marketing initiatives and driving the overall business

On the OE Tool Since: December 2005

Total OE Activations: 77,135  
2004 Activations: N/A  
2005 Activations: 1,276  
2006 Activations: 47,950  
2007 Activations: 14,485  
2008 Activations (YTD): 15,525

**2008 Metrics Summary:**

<b>2008</b>						
<b>Month</b>	<b>Churn Rate</b>	<b>DVR Take Rate</b>	<b>HD Take Rate</b>	<b>CCA Take Rate</b>	<b>Incentivized DDA</b>	<b>Premium Customer</b>
<b>Jan</b>	2.82%	70.57%	29.66%	12.39%	34.04%	61.20%
<b>Feb</b>	2.22%	77.88%	29.66%	9.94%	31.25%	56.33%
<b>Mar</b>	2.78%	81.54%	23.38%	6.19%	28.30%	54.01%
<b>Apr</b>	3.04%	82.68%	22.53%	5.28%	27.52%	46.76%
<b>May</b>	3.11%	79.85%	24.47%	11.82%	28.46%	53.24%
<b>Jun</b>	3.36%	78.36%	23.41%	36.30%	29.51%	52.06%
<b>Jul</b>	N/A	79.80%	24.33%	39.17%	30.26%	49.97%

Phase 21 CRI - 1.87%

Primary Marketing Methods: Online lead generation

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account

Chris Taber

**Better TV**

**Recommend: No Action**

**\$175**

OE Retailer Name: Better TV, Inc.  
 AR# 15909409  
 AP# 750957  
 Sales ID: BETTERTV  
 Seller ID: 1268069  
 Address: 138 Citation Court  
 Homewood, AL 35209  
 Main Phone: (877)-643-3474

Contacts:

**Matt Hottle**

Title: VP of Sales

Email: [matt.hottle@suidish.com](mailto:matt.hottle@suidish.com)

Phone: 205-823-8515

On the OE Tool Since: October 2006

Total OE Activations: 26,780  
 2004 Activations: N/A  
 2005 Activations: N/A  
 2006 Activations: 2,001  
 2007 Activations: 17,707  
 2008 Activations (YTD): 7,072

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.58%	81.81%	34.98%	62.69%	49.40%	64.81%
Feb	0.91%	90.45%	34.98%	72.91%	53.26%	56.05%
Mar	1.45%	92.02%	23.88%	80.06%	50.32%	58.91%
Apr	1.71%	91.92%	24.73%	82.84%	53.60%	61.53%
May	1.98%	91.77%	26.05%	81.66%	53.28%	65.83%
Jun	1.78%	90.13%	24.82%	76.08%	58.53%	63.32%
Jul	N/A	89.93%	26.14%	70.65%	52.45%	59.24%

Phase 21 CRI - 1.61%

Primary Marketing Methods: Direct (Solo) Mail, Installer Referrals

Business Plan on File - Yes

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Josh Slater

**Brandvein**

**Recommend:** That we give ultimatum to stop using Touchstone . They also use Xplor-tech out of India who has good reputation as AllSat and Dish Pronto have both used them in the past with no issues.

OE Retailer Name: Brandvein Companies Inc DBA Discount Communications  
 AR# 504600  
 AP# 61553  
 Sales ID: BRAND  
 Seller ID: 1155038  
 Address: 315 W. Dalton Ave  
 Coeur D'Alene, ID 83814  
 Main Phone: 208-292-2244

**Contacts:**

**Allan Brandvein**

Title: President

Email: [abrandvein@buymydish.com](mailto:abrandvein@buymydish.com)

Phone: 208-929-2026

Responsibilities: Focuses on marketing initiatives and driving the overall business

On the OE Tool Since: July 2004

Total OE Activations: 44,450

2004 Activations: 4,000

2005 Activations: 15,797

2006 Activations: 12,092

2007 Activations: 7,909

2008 Activations (YTD): 4,652

200 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.25%	72.02%	15.84%	7.28%	25.49%	43.42%
Feb	2.15%	67.69%	15.84%	25.66%	49.88%	35.97%
Mar	2.08%	71.84%	15.22%	28.06%	34.47%	36.87%
Apr	2.15%	73.46%	17.35%	24.06%	27.99%	34.75%
May	2.34%	71.34%	14.84%	34.97%	35.28%	36.35%
Jun	2.43%	68.23%	14.67%	67.75%	35.36%	34.62%
Jul	N/A	74.80%	16.83%	77.16%	43.23%	35.30%

Phase 21 CRI - 2.57%

Primary Marketing Methods: Yellow Pages, Newspaper, Radio, Outbound

Business Plan on File - No

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account

### Cascade Callworks

**Recommend:** No Action.

JA009404  
008237

OE Retailer Name: CASCADE CALLWORKS, INC.  
 AR# 476074  
 AP# 59990  
 Sales ID: 1156832  
 Seller ID: CASCADE  
 Address: 7200 NE 41<sup>ST</sup> St. #202  
 Vancouver, WA 98662  
 Main Phone: 360-892-6151

Contacts:

**John Kelley**

Title: General Manager

Email: [john.kelley@cascadecallworks.com](mailto:john.kelley@cascadecallworks.com)

Phone: ext. 114

Responsibilities: Oversee operations of entire call center

On the OE Tool Since: September 2004

Total OE Activations: 11,334  
 2004 Activations: 582  
 2005 Activations: 3929  
 2006 Activations: 2832  
 2007 Activations: 2523  
 2008 Activations (YTD): 1,468

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.78%	88.24%	12.65%	43.43%	28.79%	56.06%
Feb	1.48%	84.69%	12.65%	75.97%	29.18%	55.79%
Mar	1.77%	86.32%	15.31%	90.91%	30.58%	52.48%
Apr	1.84%	79.73%	13.62%	89.72%	39.72%	62.62%
May	1.93%	80.23%	10.65%	87.70%	40.11%	49.73%
Jun	2.06%	81.90%	12.22%	80.30%	35.61%	52.27%
Jul	N/A	84.86%	23.85%	85.00%	45.71%	60.00%

Phase 21 CRI - 2.19%  
 Primary Marketing Methods – Outbound telemarketing  
 Business Plan on File - No  
 Use of Third Party Call Centers – No  
 National Account Manager Responsible for the Account:

## Defender

**Recommend: NO ACTION**

OE Retailer Name: Defender Security



AR# 10867148  
 AP# 415901 (old) & 751008 (new)  
 Sales ID: 1157243  
 Seller ID: DEFENDER  
 Address: 6100 N. Keystone Ave  
 Indianapolis, IN 46240  
 Main Phone: 800-860-0303

Contacts:

**Terrance S. Arney**  
 Title: VP of Leadership & Development  
 Phone: 317.682.7171

OE Tool Since: August 2004

Total OE Activations: 331,371  
 2004 Activations: 1,250  
 2005 Activations: 42,569  
 2006 Activations: 123,001  
 2007 Activations: 100,361  
 2008 Activations (YTD) 64,190

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	3.30%	53.97%	23.78%	60.97%	17.61%	59.86%
Feb	2.82%	64.46%	23.78%	62.47%	19.97%	49.23%
Mar	2.37%	67.89%	18.90%	68.28%	21.23%	55.14%
Apr	2.50%	68.79%	19.11%	71.75%	21.42%	55.32%
May	2.53%	69.62%	18.74%	72.36%	21.50%	54.67%
Jun	2.79%	69.58%	18.22%	75.62%	24.38%	53.29%
Jul	N/A	70.79%	21.45%	75.99%	25.31%	54.87%

Phase 21 CRI – 1.69

Primary Marketing Methods: Direct Mail, Radio, Shared

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:  
 Will Walker  
[Will.Walker@Echostar.com](mailto:Will.Walker@Echostar.com)  
 832.723.3843

### Digicom DBA Channel Choice

**Recommend:** We give ultimatum to stop using 3<sup>rd</sup> party call center  
**Dynamic Impact.**

OE Retailer Name: Digicom Inc DBA Channel Choice  
 AR# 398060  
 AP# 55389  
 Sales ID: CHOICE  
 Seller ID: 1170922  
 Address: 7551 14<sup>th</sup> Ave suite D  
 Sacramento, CA 95823  
 Main Phone: 800-540-9337

Contacts:

**Dave Johnson**  
 Title: President  
 Email: [Davejohnson@wildblue.net](mailto:Davejohnson@wildblue.net)  
 Phone: 800-540-9337 (office)  
 916-416-7499 (cell)

On the OE Tool Since: December 2005

Total OE Activations: 5,423  
 2004 Activations N/A  
 2005 Activations N/A  
 2006 Activations 1134  
 2007 Activations 1840  
 2008 Activations (YTD) 2,442

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.74%	69.37%	53.15%	15.66%	30.12%	80.72%
Feb	1.65%	79.89%	53.15%	5.11%	19.71%	75.91%
Mar	1.94%	84.12%	22.82%	8.36%	9.55%	78.21%
Apr	1.76%	82.76%	17.63%	25.85%	2.83%	80.38%
May	2.03%	81.26%	22.52%	29.94%	5.50%	84.52%
Jun	2.64%	77.93%	26.54%	37.10%	8.06%	84.84%
Jul	N/A	73.20%	57.73%	52.44%	25.61%	75.61%

Phase 21 CRI - 1.14%

Primary Marketing Methods: DTD, Web Search (Google Ingenio), Direct Mail

Business Plan on File - No

Use of Third Party Call Centers – Yes.

National Account Manager Responsible for the Account:

Will Walker

### Direct Promotions

**We are currently investigating their 3<sup>rd</sup> party call center as we are unfamiliar with them. On payment plan for duplicate accounts in 2007**

**Recommend: Review in 30 days.**

OE Retailer Name: DIRECT PROMOTIONS

AR# 14233225

AP# 650584

Sales ID DIRECTPROM

Seller ID 1265557

Address 515 Congress Avenue Suite 2420

Austin, TX 78701

Main Phone 800-913-9042

Contacts:

Steve Rad

Title: CEO

Email [steve@infiltrationpictures.com](mailto:steve@infiltrationpictures.com)

Phone: 949-279-3456

On the OE Tool Since: September 2006

Total OE Activations: 8,508

2004 Activations 0

2005 Activations 0

2006 Activations 665

2007 Activations 6,675

2008 Activations (YTD) 1,168

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.42%	76.96%	12.57%	2.63%	35.09%	42.11%
Feb	1.67%	76.76%	12.57%	0.00%	46.55%	43.97%
Mar	2.41%	81.82%	7.95%	0.00%	63.64%	57.58%
Apr	2.89%	81.20%	11.97%	0.00%	33.75%	48.75%
May	2.54%	93.10%	13.79%	2.78%	13.89%	44.44%
Jun	3.25%	84.34%	6.02%	0.00%	0.00%	10.00%
Jul	N/A	87.82%	5.45%	10.00%	3.33%	23.75%

Phase 21 CRI - 2.44%

Primary Marketing Methods: Outbound Telemarketing, Internet, Email

Business Plan on File – No

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account

David Garza:

### DISH 4 U

**On payment plan for duplicate accounts in 2007.**

**Have terminated their association with all 3<sup>rd</sup> parties,**

**Recommend: No Action.**

OE Retailer Name: DISH 4 U

AR# 7901

AP# 10786  
 Sales ID: DISH4U  
 Seller ID: 1166091  
 Address: 4802 Old Hickory Blvd  
 Hermitage, TN 37076  
 Main Phone: 615-456-0093

Contacts:

**Jim Turner**  
 Title: President  
 Email: [ccdish1@hotmail.com](mailto:ccdish1@hotmail.com)  
 Phone: 615-456-3474

On the OE Tool Since: March 2005

Total OE Activations: 13,596  
 2004 Activations: N/A  
 2005 Activations: 1,102  
 2006 Activations: 4,223  
 2007 Activations: 4,650  
 2008 Activations (YTD): 3,621

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.94%	26.26%	27.32%	1.45%	14.68%	62.90%
Feb	2.03%	37.93%	27.32%	0.00%	21.43%	37.43%
Mar	2.73%	32.71%	41.10%	4.26%	15.78%	61.83%
Apr	2.67%	38.70%	32.72%	6.83%	17.77%	56.95%
May	3.36%	38.40%	32.08%	7.44%	19.26%	54.49%
Jun	3.24%	38.14%	37.50%	10.09%	19.27%	59.02%
Jul	N/A	40.87%	47.17%	10.73%	24.70%	63.36%

Phase 21 CRI - 2.83%  
 Primary Marketing Methods: Shared Mail, Newspaper  
 Business Plan on File - No  
 Use of Third Party Call Centers – No  
 National Account Manager Responsible for the Account:  
 Josh Slater

### Dish Factory Direct

**Recommend:** Kick off of the OE tool program due to churn.  
**Phase 21 CRI:** 6.17%

OE Retailer Name: Dish Factory Direct  
 AR# 10848618  
 AP# 415829  
 Sales ID: FACTORY

Seller ID: 1156353  
 Address 710 S Ash, Suite 100  
 Glendale, CO 80246  
 Main Phone: (720) 524-0250

**Contacts:**

**Scott Larson**

Title: President

Email: [scott.larson@dishfactorydirect.com](mailto:scott.larson@dishfactorydirect.com)

Phone: 720-838-8898

Responsibilities: Focuses on new business opportunities and marketing initiatives

On the OE Tool Since: August 2004

Total OE Activations: 18,817  
 2004 Activations: 1,843  
 2005 Activations: 10,987  
 2006 Activations: 3,178  
 2007 Activations: 1,222  
 2008 Activations (YTD): 1,587

**2008 Metrics Summary:**

<b>2008</b>						
<b>Month</b>	<b>Churn Rate</b>	<b>DVR Take Rate</b>	<b>HD Take Rate</b>	<b>CCA Take Rate</b>	<b>Incentivized DDA</b>	<b>Premium Customer</b>
<b>Jan</b>	2.56%	89.08%	16.16%	1.11%	25.00%	22.22%
<b>Feb</b>	1.93%	84.89%	16.16%	3.87%	29.28%	27.62%
<b>Mar</b>	1.97%	86.84%	17.29%	11.21%	36.64%	32.33%
<b>Apr</b>	2.92%	83.89%	10.58%	2.99%	25.37%	20.90%
<b>May</b>	3.06%	87.67%	10.00%	4.89%	23.11%	26.67%
<b>Jun</b>	3.13%	81.04%	12.27%	28.40%	20.71%	25.44%
<b>Jul</b>	N/A	84.30%	17.77%	21.01%	37.68%	31.88%

Phase 21 CRI - 6.17%

Primary Marketing Methods: Outbound Telemarketing

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Chris Taber

**DISH Installation, Inc.**

**Recommend:**      **No Action they have agreed to term 3<sup>rd</sup> party call center.**

OE Retailer Name: DISH Installation, Inc.

AR# 10819085

AP# 412706

Sales ID: DISHINSTALLS

Seller ID: 1267496

Address: 2650 S Falkenburg Rd

Riverview, FL 33569  
Main Phone: 800-974-4724

Contacts:

**Kevin Moran**

Title: President,

Email: [kevin@dishinstallation.net](mailto:kevin@dishinstallation.net)

Phone: 813-601-2434

On the OE Tool Since: March 2006

Total OE Activations: 26,375

2004 Activations: N/A

2005 Activations: N/A

2006 Activations: N/A

2007 Activations: 14,223

2008 Activations (YTD): 12,152

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.76%	62.26%	30.69%	69.56%	26.11%	63.61%
Feb	1.83%	70.68%	30.69%	73.75%	27.04%	53.99%
Mar	2.17%	72.58%	23.93%	80.67%	26.09%	54.44%
Apr	2.17%	71.21%	22.45%	78.50%	27.29%	51.41%
May	2.43%	69.24%	21.93%	86.29%	29.85%	55.60%
Jun	2.83%	68.61%	19.57%	89.85%	36.31%	54.82%
Jul	N/A	70.14%	21.08%	86.39%	35.85%	52.85%

Phase 21 CRI - 2.33%

Primary Marketing Methods: Shared Mail

Business Plan on File - Yes

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account:

Josh Slater

## DISH North America

**Recommend: No Action**

OE Retailer Name: Dish North America

AR# 18803546

AP# 884967

Sales ID: DNA

Seller ID: 1363372

Address: 22687 Old Canal RD

Yorba Linda, CA 92887

Main Phone: 800-211-8544

Contacts:

JA009411  
008244

**Mick Treadway**

Title: President

Email: mtreadway@satex.com

Phone: 714-608-0662

Responsibilities: Focuses on marketing initiatives and driving the overall business

On the OE Tool Since: August 2007

Total OE Activations: 5,003

2004 Activations: N/A

2005 Activations: N/A

2006 Activations: N/A

2007 Activations: 1,190

2008 Activations (YTD): 3,813

## 2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.08%	89.24%	15.79%	0.00%	36.31%	52.51%
Feb	0.81%	91.35%	15.79%	0.23%	34.19%	43.56%
Mar	1.33%	91.33%	11.90%	0.76%	32.57%	51.24%
Apr	2.21%	89.68%	9.81%	0.93%	46.74%	54.42%
May	3.34%	91.03%	12.27%	1.11%	46.10%	50.72%
Jun	2.70%	91.49%	10.35%	9.11%	48.84%	53.49%
Jul	N/A	92.36%	12.22%	46.36%	57.27%	57.27%

Phase 21 CRI - 1.84%

Primary Marketing Methods: Direct mail inserts

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Chris Taber

**DISH Pronto****Recommend: No Action**

OE Retailer Name: DP Enterprises, Inc – Dish Pronto

AR# 10361275

AP# 380748

Sales ID: 1152835

Seller ID: PRONTO

Address: 350 5<sup>th</sup> Ave 59<sup>th</sup> Floor

New York, NY 10118

Main Phone: 646-706-7340

Contacts:

**Mike Trimarco**

Title: President  
 Responsibilities: Sales, Marketing, Business Development  
 646-706-7340 x 14 or 516-848-3388 (Mobile)  
[mike@dishpronto.com](mailto:mike@dishpronto.com)

On the OE Tool Since: July 2004

Total OE Activations: 159,762  
 2004 Activations: 9,641  
 2005 Activations: 44,654  
 2006 Activations: 53,479  
 2007 Activations: 34,043  
 2008 Activations: 17,945

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.72%	40.33%	18.16%	10.47%	15.37%	4.66%
Feb	2.31%	54.20%	18.16%	7.45%	14.89%	6.16%
Mar	2.67%	57.36%	14.66%	23.69%	13.99%	14.36%
Apr	2.91%	57.55%	15.22%	71.71%	15.93%	34.44%
May	3.22%	57.05%	14.52%	66.48%	17.07%	38.00%
Jun	3.31%	56.13%	15.29%	70.68%	15.57%	38.54%
Jul	N/A	57.35%	17.34%	75.23%	17.51%	42.24%

Phase 21 CRI - 2.56%  
 Primary Marketing Methods: Affiliate marketing, Internet  
 Business Plan on File - No  
 Use of Third Party Call Centers – Yes  
 National Account Manager Responsible for the Account:  
 Richard Brilli

### DISH Satellite TV, Inc.

**Recommend: No Action. Account Manager believes he can correct Churn. Re-evaluate in 90days.**

OE Retailer Name: Dish Satellite TV, Inc  
 AR# 14544125  
 AP# 669261  
 Sales ID 1235850  
 Seller ID DISHSAT  
 Address 110 East Main St., Ravenna, OH 44266  
 Main Phone 330-298-9280

Contacts:  
**Ted Mathia**  
 Title: President



Phone: 330-221-0150 or 330-673-2327 (Mobile)  
 Email: [ted@weknowdish.com](mailto:ted@weknowdish.com)  
 Responsibilities: Sales and marketing campaigns

On the OE Tool Since: June 2006

Total OE Activations 16,691  
 2004 Activations: N/A  
 2005 Activations: N/A  
 2006 Activations: 2,413  
 2007 Activations: 8,041  
 2008 Activations: 6,237

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	3.15%	82.16%	26.50%	5.32%	54.94%	51.04%
Feb	2.51%	75.48%	26.50%	15.14%	50.62%	38.76%
Mar	2.58%	79.53%	19.78%	17.62%	50.88%	42.71%
Apr	3.39%	79.04%	18.48%	15.20%	51.86%	41.66%
May	3.73%	77.86%	22.25%	19.29%	46.47%	41.30%
Jun	4.22%	80.21%	19.79%	30.25%	53.28%	41.90%
Jul	N/A	82.59%	21.84%	43.17%	56.00%	44.67%

Phase 21 CRI - 3.28%  
 Primary Marketing Methods: Direct Mail, solo and shared campaigns  
 Business Plan on File - Yes  
 Use of Third Party Call Centers – No  
 National Account Manager Responsible for the Account  
 Richard Brilli

### Dreshery Inc.

**Recommend: No Action. All business is in house.**

OE Retailer Name: Dreshery Inc  
 AR# 17395421  
 AP# 826802  
 Sales ID: DRESHERY  
 Seller ID: Pending  
 Address: 540 Pennsylvania Ave.  
 Fort Washington, PA 19034  
 Main Phone: 215-646-6481

Contacts:  
**Phillip Zhao**  
 Title: President  
 Email: [Phillipzhao1@yahoo.com](mailto:Phillipzhao1@yahoo.com)  
 Phone: 215-360-7811

Responsibilities: Sales and Marketing

On the OE Tool Since: Launching April 2008

Total OE Activations: 1,196

2004 Activations: 0

2005 Activations: 0

2006 Activations: 0

2007 Activations: 0

2008 Activations (YTD): 1,196

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jun	N/A	19.19%	65.12%	35.97%	0.00%	89.93%
Jul	N/A	10.19%	69.17%	49.77%	0.46%	91.71%

Phase 21 CRI – N/A

Primary Marketing Methods: National Chinese Print advertising, National Russian Print advertising, Internet

Business Plan on File - Yes

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:  
Richard Brill

## E-Management

**Recommend: No Action**

OE Retailer Name: E-Management

AR# 620551

AP# 74094

Sales ID: EMANAGE

Seller ID: 1119062

Address: 3350 N/W Boca Raton Blvd.

Boca Raton, FL 33431

Main Phone: 800-203-0008

Contacts:

**Elliot Lowenstern**

Title: President

Email: [elliot@emanagegroup.com](mailto:elliot@emanagegroup.com)

Phone: 561-251-7254

On the OE Tool Since: January 2004

Total OE Activations: 187,247  
 2004 Activations: 13,589  
 2005 Activations: 27,112  
 2006 Activations: 39,795  
 2007 Activations: 64,491  
 2008 Activations (YTD): 42,260

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.14%	75.80%	31.43%	46.57%	44.88%	54.99%
Feb	1.75%	79.09%	21.49%	59.23%	43.94%	46.85%
Mar	1.99%	81.45%	22.94%	57.59%	44.91%	50.89%
Apr	2.27%	78.15%	20.19%	53.56%	41.65%	49.31%
May	2.47%	77.64%	21.35%	55.48%	39.82%	50.06%
Jun	2.82%	77.18%	20.29%	61.78%	41.87%	46.71%
Jul	N/A	81.05%	26.43%	68.51%	52.44%	46.63%

Phase 21 CRI - 1.84%  
 Primary Marketing Methods: Shared Mail, Direct Mail  
 Business Plan on File - No  
 Use of Third Party Call Centers – No  
 National Account Manager Responsible for the Account:  
 Josh Slater

### EBN Financial DBA DISH Systems

**Recommend:**      **No Action. Uses domestic 3<sup>rd</sup> parties with good Controls.**

OE Retailer Name: EBN Financial DBA Dish Systems  
 AR# 696797  
 AP# 101072  
 Sales ID: EBN  
 Seller ID: 1149656  
 Address: 3053 Edinger  
             Tustin, CA 92780

Main Phone: 949-777-0100

Contacts:  
**Scott Chruch**  
 Title: Sales Manager  
 Email: [schurch@dish-systems.com](mailto:schurch@dish-systems.com)  
 Phone: 949-777-0100

Responsibilities: Focuses on marketing initiatives and driving the overall business

On the OE Tool Since: June 2004

Total OE Activations: 69,571

2004 Activations: 4,349

2005 Activations: 10,001

2006 Activations: 17,541

2007 Activations: 24,366

2008 Activations (YTD): 13,314

2008 Metrics Summary:

<b>2008</b>						
<b>Month</b>	<b>Churn Rate</b>	<b>DVR Take Rate</b>	<b>HD Take Rate</b>	<b>CCA Take Rate</b>	<b>Incentivized DDA</b>	<b>Premium Customer</b>
<b>Jan</b>	2.14%	59.58%	27.86%	65.11%	41.99%	54.77%
<b>Feb</b>	1.82%	64.30%	27.86%	71.04%	38.55%	45.36%
<b>Mar</b>	2.09%	64.36%	27.01%	67.58%	40.71%	56.10%
<b>Apr</b>	2.30%	71.04%	26.22%	75.81%	49.75%	52.75%
<b>May</b>	2.44%	70.72%	25.45%	74.05%	49.10%	55.45%
<b>Jun</b>	2.53%	71.55%	24.11%	76.67%	51.25%	54.93%
<b>Jul</b>	N/A	72.53%	30.87%	77.70%	49.58%	51.12%

Phase 21 CRI - 2.19%

Primary Marketing Methods: Online lead generation, Direct Mail, Shared Mail, Newspaper

Business Plan on File - Yes

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account:

Chris Taber

### **Eclipse Interactive**

**Recommend:**      **Require that they term their third party, review in 90 days.**

OE Retailer Name: Eclipse Interactive

AR#20805521

AP# 999804

Sales ID: ECLIPSE

Seller ID: 1469768

Address: 65 Enterprise Suite 255

Aliso Viejo, CA 92656

Main Phone: 949-295-7334

Contacts:

Scott Sparks

Title: President

Email: [clear4dish@aol.com](mailto:clear4dish@aol.com)

Phone: 949-295-7334

On the OE Tool Since: 2008

Total OE Activations: 7436  
 2004 Activations N/A  
 2005 Activations N/A  
 2006 Activations N/A  
 2007 Activations N/A  
 2008 Activations (YTD) 7436

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jun	N/A	77.99%	14.38%	3.28%	41.36%	34.79%
Jul	N/A	82.62%	21.90%	14.65%	66.10%	33.03%

Phase 21 CRI – N/A  
 Primary Marketing Methods: Outbound Telemarketing  
 Business Plan on File - Yes  
 Use of Third Party Call Centers – Yes  
 National Account Manager Responsible for the Account:  
 Chris Taber

### Flat Rock Communications

**They are starting to perform. 202 June, July 336, August 313.**  
**Recommend: No Action**

OE Retailer Name: Flat Rock Communication  
 AR#14642216  
 AP# 1463552  
 Sales ID:  
 Seller ID: FLATROCK  
 Address: 3611 Soncy  
 Amarillo, TX 79121  
 Main Phone: 806 359 3476

Contacts:  
**Bently Dye**  
 Title: General Manager  
 Email: [Sales@flatrock.tv](mailto:Sales@flatrock.tv)  
 Phone: 214.205.2844

On the OE Tool Since: September 2006

Total OE Activations 1,066  
 2004 Activations N/A  
 2005 Activations N/A  
 2006 Activations 53  
 2007 Activations 89  
 2008 Activations (YTD) 924

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.70%	85.71%	0.25%	0.00%	28.57%	25.00%
Feb	2.01%	71.43%	0.00%	0.00%	20.00%	0.00%
Mar	1.99%	66.67%	0.00%	0.00%	0.00%	0.00%
Apr	1.32%	80.00%	0.00%	16.67%	33.33%	66.67%
May	3.21%	85.23%	0.00%	2.70%	0.00%	54.05%
Jun	2.97%	82.62%	0.00%	0.54%	0.50%	63.98%
Jul	N/A	87.14%	0.00%	0.30%	0.30%	72.26%

Phase 21 CRI – 2.27  
 Primary Marketing Methods: TV  
 Business Plan on File - Yes  
 Use of Third Party Call Centers – Yes (inbound only)  
 National Account Manager Responsible for the Account:  
 Will Walker

## GO DISH

**Recommend: No Action.**

OE Retailer Name: GO DISH COM LTD.  
 AR#20121  
 AP#8348  
 Sales ID: SAT TODAY  
 Seller ID: 1119061  
 Address: 10041 Regal Row Suite #100  
 Houston, TX 77040  
 Main Phone: 866-694-3474 or 281-550-4040 (local direct line)

Contacts:  
**Damon Diamantaras**  
 Title: CEO  
 Email: [damon.ceo@godish.com](mailto:damon.ceo@godish.com)  
 Phone: 281-550-4040

On the OE Tool Since: January 2004

Total OE Activations 242,124  
 2004 Activations 14,645

2005 Activations 30,373  
 2006 Activations 45,346  
 2007 Activations 94,747  
 2008 Activations (YTD) 57,013

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.93%	80.98%	26.53%	81.03%	35.75%	59.76%
Feb	1.57%	87.91%	26.53%	82.16%	41.95%	50.07%
Mar	1.79%	90.01%	20.83%	78.53%	42.20%	55.94%
Apr	1.98%	88.42%	21.58%	81.65%	43.98%	55.40%
May	2.08%	88.26%	20.86%	83.93%	45.45%	55.85%
Jun	2.20%	87.75%	22.14%	81.18%	48.68%	54.18%

Phase 21 CRI - 1.70%

Primary Marketing Methods: Shared Mail, Solo Mail

Business Plan on File - No

Use of Third Party Call Centers – Yes (Dish Network for overflow)

National Account Manager Responsible for the Account

David Garza

### HD Satellite Sales Dot Com

**Recommend: No Action. Still trying to get this account ramped up. Just getting overflow from Direct TV business. Expect account to increase Dish Activations in 4<sup>th</sup> quarter.**

OE Retailer Name: HD Satellite Sales Dot Com

AR# 20505854

AP# 967579

Sales ID: HDSATSALES

Seller ID: 1437775

Address: 1088 N Tustin Ave  
 Anaheim, CA 92807

Main Phone: 714-876-2519

Contacts:

**David Saenz**

Title: Member

Email: [dave.saenz@comscape.com](mailto:dave.saenz@comscape.com)

Phone: 714.981.2900

Responsibilities: Focuses on new marketing initiatives and increasing profitability

On the OE Tool Since: March 2008

Total OE Activations: 134  
 2004 Activations: N/A  
 2005 Activations: N/A  
 2006 Activations: N/A  
 2007 Activations: N/A  
 2008 Activations (YTD): 134

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Apr	N/A	85.71%	28.57%	0.00%	50.00%	0.00%
May	N/A	69.57%	4.35%	0.00%	50.00%	33.33%
Jun	N/A	57.69%	23.08%	4.76%	47.62%	28.57%
Jul	N/A	82.35%	35.29%	0.00%	40.00%	40.00%

Phase 21 CRI – N/A  
 Primary Marketing Methods: Direct mail, Shared Mail  
 Business Plan on File - Yes  
 Use of Third Party Call Centers – No  
 National Account Manager Responsible for the Account:  
 Chris Taber

## Hunts Communications

**Recommend: No Action**

OE Retailer Name: Hunts Communications  
 AR# 2562996  
 AP# 407790  
 Sales ID: HUNTS  
 Seller ID: 1265558  
 Address: 801 PCA Road  
           Warrensburg, MO 64093  
 Main Phone: 866-493-5928

Contacts:  
**Brent Hunt**  
 Title: Vice President  
 Email: [brent.hunt@huntsllc.com](mailto:brent.hunt@huntsllc.com)  
 Phone: 660-580-0262

On the OE Tool Since: October 2006

Total OE Activations: 3,360  
 2004 Activations: N/A  
 2005 Activations: N/A



2006 Activations: 265  
 2007 Activations: 2384  
 2008 Activations (YTD): 600

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.60%	30.43%	8.70%	33.33%	20.00%	40.00%
Feb	0.95%	71.43%	8.70%	75.00%	50.00%	25.00%
Mar	0.92%	100.00%	0.00%	33.33%	66.67%	33.33%
Apr	1.54%	81.12%	1.29%	5.31%	3.54%	57.52%
May	2.12%	85.62%	0.00%	3.15%	1.57%	64.57%
Jun	1.65%	86.36%	9.09%	21.05%	36.84%	52.63%
Jul	N/A	83.33%	0.00%	77.78%	44.44%	44.44%

Phase 21 CRI – 1.11  
 Primary Marketing Methods: Internet, Newspaper  
 Business Plan on File - No  
 Use of Third Party Call Centers – No  
 National Account Manager Responsible for the Account:  
 Josh Slater

## I-DISH

**Recommend: No Action**

OE Retailer Name: I DISH COM LLC DBA CLEARLINK TECHNOLOGIES  
 AR#1466088  
 AP#207268  
 Sales ID: BLUKIWI  
 Seller ID: 1089935  
 Address: 5202 Douglas Corrigan Way Ste. 300  
 Salt Lake City, UT 84116  
 Main Phone: (801) 424-0018

Contacts:  
**Phil Hansen**  
 Title: CEO  
 Email: [phansen@clear-link.com](mailto:phansen@clear-link.com)  
 Phone: 801-937-6963

On the OE Tool Since: August 2004

Total OE Activations: 90,560  
 2004 Activations 2,332  
 2005 Activations 18,892

2006 Activations 30,987  
 2007 Activations 23,984  
 2008 Activations (YTD) 14,365

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.52%	61.07%	21.32%	31.89%	48.25%	50.13%
Feb	1.94%	67.13%	21.32%	27.60%	48.11%	42.08%
Mar	2.30%	75.25%	19.91%	21.07%	47.13%	48.15%
Apr	2.91%	74.46%	22.99%	15.37%	47.04%	50.05%
May	3.00%	74.02%	25.36%	18.14%	47.14%	52.05%
Jun	3.26%	73.00%	23.59%	31.16%	46.31%	50.63%
Jul	N/A	74.87%	27.30%	32.52%	47.49%	57.08%

Phase 21 CRI - 2.27%

Primary Marketing Methods: Internet lead generation, Affiliate, Email

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

David Garza

## IDT Telecom

**Recommend: No Action**

OE Retailer Name IDT Telecom

AR# 16344258

AP# 776617

Sales ID: 1274469

Seller ID: IDT

Address: 520 Broad Street  
 Newark, NJ 07102

Main Phone:

Contacts:

**Esti Witty**

Title: VP Consumer Services

Responsibilities: Marketing and Advertising

973-438-4404

[Esti.Witty@exchange.idt.net](mailto:Esti.Witty@exchange.idt.net)

On the OE Tool Since: October 2006

Total OE Activations: 995

2004 Activations: 0

2005 Activations: 0

2006 Activations: 247

2007 Activations: 687

2008 Activations: 61

## 2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.34%	25.00%	0.00%	0.00%	N/A	50.00%
Feb	1.19%	20.00%	0.00%	0.00%	25.00%	50.00%
Mar	3.13%	28.57%	0.00%	0.00%	14.29%	75.00%
Apr	2.76%	14.29%	0.00%	50.00%	0.00%	100.00%
May	4.08%	75.00%	0.00%	0.00%	0.00%	100.00%
Jun	4.73%	16.67%	0.00%	75.00%	0.00%	50.00%
Jul	N/A	33.33%	0.00%	0.00%	33.00%	100.00%

Phase 21 CRI – 2.21

Primary Marketing Methods: Outbound Telemarketing to IDT Customers, offering a triply play package

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Richard Brilli

**I-Satellite**

**Recommend:**      **Require them to quit using 3<sup>rd</sup> Party Call Centers or Kick them off the tool.**

OE Retailer Name: I-SATELLITE

AR#712127

AP#139555

Sales ID: ISATELLITE

Seller ID: 1167153

Address: 251 W River Park Drive #200

Provo, UT 84604

Main Phone: (801) 221-0222

Contacts:

**Jason Borup**

Title: CEO

Email: [Jason@isattv.com](mailto:Jason@isattv.com)

Phone: (801) 221-0222

Business Plan on File - No

Use of Third Party Call Centers – No

On the OE Tool Since: April 2005

Total OE Activations: 67,717

2004 Activations: 0

2005 Activations: 5,587

2006 Activations: 3,805  
 2007 Activations: 11,896  
 2008 Activations (YTD): 46,429

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	3.90%	40.00%	0.00%	10.00%	10.00%	40.00%
Feb	3.28%	84.08%	0.00%	0.69%	11.39%	22.43%
Mar	3.12%	85.55%	3.40%	0.27%	26.34%	22.95%
Apr	3.01%	84.03%	4.03%	1.59%	24.92%	22.50%
May	3.96%	83.01%	4.21%	4.37%	25.90%	28.78%
Jun	4.88%	82.63%	5.14%	11.44%	22.90%	32.27%
Jul	N/A	86.37%	7.30%	11.94%	20.47%	35.41%

Phase 21 CRI - 5.80%  
 Primary Marketing Methods: Outbound Telemarketing, Email  
 Business Plan on File - No  
 Use of Third Party Call Centers – Yes  
 National Account Manager Responsible for the Account  
 David Garza

### Liberty Bell Telecom LLC

**Recommend: No Action**

OE Retailer Name: Liberty Bell Telecom LLC  
 AR# 17321200  
 AP# 823434  
 Sales ID: LIBERTY  
 Seller ID: 1311468  
 Address 2460 W. 26th Ave, Suite 380-C  
 Denver, CO 80211  
 Main Phone: 720-482-0962

Contacts:  
**Jay Weber**  
 Title: President  
 Email: [jweber@libertybelltelecom.com](mailto:jweber@libertybelltelecom.com)  
 Phone: 303-618-6351  
 Responsibilities: Focuses on new marketing initiatives and sales training

On the OE Tool Since: February 2007

Total OE Activations: 1,090  
 2004 Activations: N/A  
 2005 Activations: N/A  
 2006 Activations: N/A  
 2007 Activations: 673  
 2008 Activations (YTD): 417

2008 Metrics Summary:

JA009425  
 008258

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	0.16%	88.64%	6.82%	2.17%	47.83%	71.74%
Feb	0.00%	91.94%	6.82%	7.55%	49.06%	81.13%
Mar	0.82%	87.27%	21.82%	15.00%	30.00%	80.00%
Apr	0.78%	84.72%	18.06%	2.99%	29.85%	73.13%
May	1.21%	60.66%	26.23%	23.21%	33.93%	75.00%
Jun	0.80%	72.73%	27.27%	59.09%	34.09%	86.36%
Jul	N/A	90.32%	37.10%	47.92%	33.33%	70.83%

Phase 21 CRI - 0.46%

Primary Marketing Methods: Inserts in existing customer phone bills, Radio

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Chris Taber

[Chris.taber@echostar.com](mailto:Chris.taber@echostar.com)

303-725-6188

### Marketing Guru (Elephant Group)

**Issues:** Not telling us the truth about outbound Latino focused call center which we believe to be at least 10% of their business.

**Recommend:** Executive meeting with them to discuss.

**OE Retailer Name:** Elephant Group

AR# 17140488

AP#: 813824

Sales ID

Seller ID

Address: 3303 COMMERCIAL BLVD  
FORT LAUDERDALE, FL 33309

Main Phone: (908) 755-9008

Contacts:

**Benny Aboud**

Title: Principal

Email: [baboud@elephantgroup.com](mailto:baboud@elephantgroup.com)

Primary Owner and Decision Maker

On the OE Tool Since: March 2004

Total OE Activations: 820,450

2004 Activations: 48,479

2005 Activations: 244,306

2006 Activations: 333,356

2007 Activations: 140,221

2008 Activations (YTD): 54,088

2008 Metrics Summary:

JA009426  
008259

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.59%	53.05%	19.53%	37.98%	21.48%	5.80%
Feb	2.12%	71.55%	17.16%	59.71%	25.50%	1.56%
Mar	2.45%	77.02%	15.50%	60.95%	23.23%	17.58%
Apr	2.63%	75.98%	14.39%	55.16%	23.96%	51.52%
May	2.60%	76.61%	12.70%	56.33%	21.77%	51.91%
Jun	2.86%	77.43%	13.05%	58.75%	76.25%	52.58%
Jul	N/A	79.19%	17.41%	56.53%	24.58%	52.74%

Phase 21 CRI – 2.21

Primary Marketing Methods: Internet, Affiliate, Solo Mail, Shared Mail, Lead Generation, New Mover's Programs

Business Plan on File - No

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account:

Contact Info (Email and Cell)

Rob Calbert/Chris Cognetta

## Metro 25

Activations have spiked from 900 in January to almost 6000 in august.

Uses 8 different 3<sup>rd</sup> party call centers, all domestic.

**Recommend: Monitor and review every month. Have personal visit scheduled with the owner on October 7<sup>th</sup>.**

OE Retailer Name: Metro25 of Detroit Inc.

AR# 183486

AP#62890

Sales ID: METRO

Seller ID: 183486

Address: 13832 Van Dyke  
Detroit MI 48234

Main Phone 800-807-0837

Contacts:

**Claude Greiner**

Title: President

Phone: 313-365-6006

313-304-1741 (Cell)

Email: [metro25@dishretailer.com](mailto:metro25@dishretailer.com)

On the OE Tool Since: May 2007

Total OE Activations: 16,732

2004 Activations: N/A

2005 Activations: N/A

2006 Activations: N/A  
 2007 Activations: 4290  
 2008 Activations (YTD): 12,242

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.67%	66.29%	21.82%	5.72%	30.76%	53.63%
Feb	2.55%	80.96%	21.82%	7.20%	32.90%	43.01%
Mar	2.46%	85.35%	10.31%	5.35%	27.45%	41.45%
Apr	2.55%	81.99%	7.58%	4.31%	20.37%	36.92%
May	3.04%	86.33%	10.59%	8.53%	20.75%	36.82%
Jun	3.51%	84.35%	11.05%	20.42%	42.97%	37.21%
Jul	N/A	81.93%	10.32%	18.65%	25.32%	35.42%

Phase 21 CRI - 3.11%

Primary Marketing Methods: Yellow Pages, Print, Internet, Outbound Telemarketing, Direct Mail

Business Plan on File - Yes

Use of Third Party Call Centers – Yes

## Moorehead Communications DBA DISH Activations

**Recommend: No Action**

OE Retailer Name: MOOREHEAD COMMUNICATIONS DBA DISH ACTIVATIONS

AR# 21238

AP# 8337

Sales ID: MOOREHEAD

Seller ID: 1157244

Address: 2749 W. 2<sup>nd</sup> St

Marion, IN 46952

Main Phone: 765-651-2001

Contacts:

**Bob Lynn**

Title: President

Email: [blynn@mooreheadcomm.com](mailto:blynn@mooreheadcomm.com)

Phone: 765-651-2001 x 109 or 765-730-3333 (cell)

On the OE Tool Since: September 2004

Total OE Activations: 22,400

2004 Activations: 105

2005 Activations: 4,984

2006 Activations: 6,469

2007 Activations: 6,270

2008 Activations (YTD) 4,272

## 2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.80%	65.13%	25.66%	2.16%	31.75%	57.02%
Feb	1.32%	70.82%	25.66%	2.43%	35.36%	39.86%
Mar	1.69%	76.51%	13.08%	1.09%	40.44%	46.35%
Apr	1.75%	80.15%	16.99%	1.29%	41.14%	47.42%
May	2.12%	79.88%	14.83%	18.50%	44.30%	45.61%
Jun	2.04%	78.72%	16.17%	85.61%	51.15%	52.04%
Jul	N/A	80.45%	19.13%	87.53%	47.05%	51.42%

Phase 21 CRI - 1.35%

Primary Marketing Methods: Direct , Yellow Pages, Print, Radio

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Will Walker

**National Satellite Systems****Uses a foreign call center that is wholly owned.****Recommend: No Action.**

OE Retailer Name: National Satellite Systems

AR# 14969364

AP# 694929

Sales ID: NATIONALSAT

Seller ID: 1235853

Address: 19720 Ventura Blvd. Suite C  
Woodland Hills, CA 91364

Main Phone: 818-998-9995

Contacts:

**Kobi Levi**

Title: President

Email: [kobi@afreedish.com](mailto:kobi@afreedish.com)

Phone: 818-974-4800

Responsibilities: Focuses on new marketing initiatives and increasing profitability

On the OE Tool Since: November 2006

Total OE Activations: 18,011

2004 Activations: N/A

2005 Activations: N/A

2006 Activations: 137

2007 Activations: 6,327

2008 Activations (YTD): 11,547

## 2008 Metrics Summary:

2008
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<u>Month</u>	<u>Churn Rate</u>	<u>DVR Take Rate</u>	<u>HD Take Rate</u>	<u>CCA Take Rate</u>	<u>Incentivized DDA</u>	<u>Premium Customer</u>
<b>Jan</b>	2.36%	67.93%	21.33%	64.86%	30.56%	46.99%
<b>Feb</b>	2.21%	82.87%	21.33%	33.60%	24.08%	40.63%
<b>Mar</b>	1.99%	84.75%	20.84%	16.87%	27.71%	44.84%
<b>Apr</b>	2.66%	86.17%	20.00%	18.74%	33.10%	40.35%
<b>May</b>	3.25%	84.65%	15.47%	19.48%	27.01%	39.81%
<b>Jun</b>	3.85%	83.41%	14.74%	31.25%	27.80%	38.87%
<b>Jul</b>	N/A	86.35%	20.55%	38.38%	33.53%	44.97%

Phase 21 CRI - 2.35%

Primary Marketing Methods: Online lead generation, Affiliate

Business Plan on File - Yes

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account:

Chris Taber

### **National Programming Service, LLC d/b/a All American Dish**

**Recommend: No Action**

OE Retailer Name: National Programming Service, LLC d/b/a All American Dish

AR# 2586873

AP# 322501

Sales ID: 1113755

Seller ID: NPS

Address: 7999 Knue Road, Suite 200

Indianapolis, IN 46250

Main Phone: 317.558.3809

Contacts:

**Mike Mountford**

Title: CEO

Email: [mmountford@allamericandirect.com](mailto:mmountford@allamericandirect.com)

Phone: (317) 558-3806

On the OE Tool Since: December 2003

Total OE Activations: 113,905

2004 Activations: 13, 283

2005 Activations: 32,549

2006 Activations: 33,838

2007 Activations: 22,854

2008 Activations (YTD) 11,381

2008 Metrics Summary:

<b>2008</b>
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<u>Month</u>	<u>Churn Rate</u>	<u>DVR Take Rate</u>	<u>HD Take Rate</u>	<u>CCA Take Rate</u>	<u>Incentivized DDA</u>	<u>Premium Customer</u>
Jan	2.25%	67.84%	28.01%	2.02%	32.31%	50.13%
Feb	1.72%	71.55%	28.01%	2.39%	28.69%	39.09%
Mar	2.14%	76.86%	22.60%	2.17%	40.42%	42.59%
Apr	2.42%	73.13%	19.00%	6.79%	33.87%	41.23%
May	2.61%	73.11%	18.43%	28.74%	29.60%	42.65%
Jun	2.66%	75.15%	18.93%	46.16%	33.19%	43.52%
Jul	N/A	76.61%	21.36%	41.06%	35.89%	44.01%

Phase 21 CRI - 2.54%

Primary Marketing Methods: Print, Radio, TV, Direct Mail, Shared Mail

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for Account:

Will Walker

### Orbit Satellite

**Recommend: No Action**

OE Retailer Name: RNB INC DBA ORBIT SATELLITE

AR#49585

AP#25236

Sales ID: ORBIT

Seller ID: 1265557

Address: 11875 West Little York #501

Houston, TX 77041

Main Phone: (713) 644-3474

Contacts:

**Buddy Polk**

Title: President,

Email: [buddyp@transtate.com](mailto:buddyp@transtate.com)

Phone: (713) 644-3474

On the OE Tool Since: October 2004

Total OE Activations: 22,233

2004 Activations: 321

2005 Activations: 5,666

2006 Activations: 8,861

2007 Activations: 5,603

2008 Activations (YTD): 1,782

2008 Metrics Summary:

<b>2008</b>						
<u>Month</u>	<u>Churn Rate</u>	<u>DVR Take Rate</u>	<u>HD Take Rate</u>	<u>CCA Take Rate</u>	<u>Incentivized DDA</u>	<u>Premium Customer</u>
Jan	1.72%	81.18%	20.24%	61.37%	41.64%	55.34%

<b>Feb</b>	1.45%	78.73%	20.24%	55.24%	42.34%	45.56%
<b>Mar</b>	1.55%	86.08%	19.60%	53.52%	44.34%	52.60%
<b>Apr</b>	1.68%	88.76%	22.48%	40.17%	51.71%	58.12%
<b>May</b>	1.75%	87.65%	20.59%	32.08%	38.99%	55.35%
<b>Jun</b>	1.95%	88.84%	23.90%	67.14%	47.14%	58.57%
<b>Jul</b>	N/A	92.65%	20.10%	74.57%	51.45%	59.54%

Phase 21 CRI - 1.40%

Primary Marketing Methods: Solo Mail

Business Plan on File - No

Use of Third Party Call Centers – Yes (Trost – Inbound Only)

National Account Manager Responsible for the Account:

David Garza

### Prime One Prime Direct Inc.

**Recommend: No action**

OE Retailer Name: Prime One Prime Direc Inc.

AR#19383

AP#9165

Sales ID: PRIMEONE

Seller ID: 1372383

Address: 7450 River Road #3

Oakdale, CA 95361

Main Phone: (209) 848-3804

Contacts:

**Dominic Carmelich**

Title: Operations

Email: [dcarmelich@primedirec.com](mailto:dcarmelich@primedirec.com)

Phone: (209) 848-9200 x7022

On the OE Tool Since: November 2007

Total OE Activations: 377

2004 Activations N/A

2005 Activations N/A

2006 Activations N/A

2007 Activations: 106

2008 Activations (YTD) 271

2008 Metrics Summary:

<b>2008</b>						
<b>Month</b>	<b>Churn Rate</b>	<b>DVR Take Rate</b>	<b>HD Take Rate</b>	<b>CCA Take Rate</b>	<b>Incentivized DDA</b>	<b>Premium Customer</b>
<b>Jan</b>	1.64%	29.03%	19.35%	6.67%	26.67%	50.00%
<b>Feb</b>	2.18%	23.33%	16.67%	0.00%	4.55%	50.00%

<b>Mar</b>	2.13%	39.53%	13.95%	2.50%	17.50%	40.00%
<b>Apr</b>	2.07%	50.00%	30.00%	10.26%	30.77%	53.85%
<b>May</b>	1.68%	45.65%	17.39%	10.00%	15.00%	47.50%
<b>Jun</b>	1.82%	23.33%	16.67%	0.00%	4.55%	50.00%
<b>Jul</b>	N/A	50.00%	26.09%	29.41%	41.18%	52.94%

Phase 21 CRI - 1.63%

Primary Marketing Methods: Yellow, White Pages, Shared Mail, Direct Mai

Business Plan on File - Yes

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Will Walker –

### **Progressive Training Institute**

**Recommend: No Action. Just added to tool, training next week.**

OE Retailer Name Progressive Training Institute

AR# 21177810

AP# 1041471

Sales ID

Seller ID PRI

Address 139 South 11 ST. Lindenhurst, NY 11757

Main Phone 631-957-6634

Contacts (Including Title, Email, Phone and responsibilities)

**Michael Spano**

Title: President

703-206-1175

mspano@jdirectfunding.com

On the OE Tool Since: August 2008

Total OE Activations 0 (New)

2008 Metrics Summary: N/A

Phase 21 CRI – N/A

Primary Marketing Methods: Direct Mail, solo and shared, Outbound telemarketing.

Business Plan – Yes

Use of Third Parties - No

National Account Manager Responsible for the Account

Contact Info (Email and Cell)

Richard Brilli

[Richard.brilli@echostar.com](mailto:Richard.brilli@echostar.com)

516-312-6031

### RPM Technologies

**Is using domestic 3<sup>rd</sup> Party Call Center that is outsourcing overseas.  
Recommend: Research affiliate list further and review in 60 days.**

OE Retailer Name: RPM TECHNOLOGIES AND SATELLITE

AR#1771051

AP#241970

Sales ID: RPMSAT

Seller ID: 1236557

Address: 990 N. Bowser RD Suite 900

Richardson, TX 75081

Main Phone: 1-888-397-3474

Contacts:

**Manny Olivarez**

Title: Partner

Email: [molivarez@rpmsatellite.net](mailto:molivarez@rpmsatellite.net)

Phone: (972) 235-5003

On the OE Tool Since: May 2006

Total OE Activations: 19,017

2004 Activations: 0

2005 Activations: 0

2006 Activations: 4,666

2007 Activations: 7,256

2008 Activations (YTD): 7,095

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.78%	63.79%	19.39%	4.44%	21.27%	51.75%

**CONFIDENTIAL**

<b>Feb</b>	1.35%	63.80%	8.48%	3.83%	10.40%	57.12%
<b>Mar</b>	1.90%	73.46%	4.80%	11.22%	7.26%	69.76%
<b>Apr</b>	2.07%	75.45%	3.02%	7.58%	4.71%	77.81%
<b>May</b>	2.74%	70.71%	5.98%	4.55%	7.23%	75.72%
<b>Jun</b>	3.05%	73.68%	5.17%	11.23%	14.33%	69.28%
<b>Jul</b>	N/A	72.79%	7.57%	15.70%	10.97%	

Phase 21 CRI - 1.32%

Primary Marketing Methods: Outbound Calls (affiliate assistance), Shared/Solo Mail

Business Plan on File - No

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account

David Garza

### Satellite Country

**Recommend: No Action**

OE Retailer Name: SATELLITE COUNTRY

AR#459522

AP#59045

Sales ID: COUNTRY

Seller ID: 1159134

Address: 1714 Fortview Rd, Suite 104

Austin, TX 78704

Main Phone: 866-914-3474

Contacts:

**Lynn Jenkins**

Title: Owner

Email: [lynn@satellitecountry.com](mailto:lynn@satellitecountry.com),

Phone: 512-751-4888

On the OE Tool Since: October 2004

Total OE Activations: 40,184

2004 Activations: 1,580

2005 Activations: 8,560

2006 Activations: 7,799

2007 Activations: 14,555

2008 Activations (YTD): 7,690

2008 Metrics Summary:

<b>2008</b>						
<b>Month</b>	<b>Churn Rate</b>	<b>DVR Take Rate</b>	<b>HD Take Rate</b>	<b>CCA Take Rate</b>	<b>Incentivized DDA</b>	<b>Premium Customer</b>
<b>Jan</b>	1.92%	80.15%	30.21%	21.38%	40.19%	57.78%
<b>Feb</b>	1.49%	81.61%	20.51%	23.44%	36.03%	47.21%
<b>Mar</b>	2.02%	85.94%	16.71%	27.33%	39.28%	49.41%
<b>Apr</b>	2.23%	84.47%	19.41%	27.98%	38.76%	50.11%

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**JA009435**  
008268

Confidential

SLC\_ DNC\_Investigation\_0009672

**TX 102-008697**

<b>May</b>	2.34%	83.44%	20.51%	35.11%	38.52%	51.55%
<b>Jun</b>	2.37%	84.47%	21.55%	55.10%	43.95%	51.43%
<b>Jul</b>	N/A	85.05%	19.49%	53.42%	43.66%	44.86%

Phase 21 CRI - 1.94%

Primary Marketing Methods: Direct Mail Solo Mail, Shared Mail, Radio, Flyers

Business Plan on File - No

Use of Third Party Call Centers – Yes (Trost – Inbound Only)

National Account Manager Responsible for the Account

David Garza

### Satellite Solutions

**On payment plan for Duplicate Accounts in 2007, \$280k owed.**

**Bulk of their business is from a foreign based 3<sup>rd</sup> party call center.**

**Recommend: Give them ultimatum to cease using foreign call center.**

OE Retailer Name: Satellite Solutions

AR# 439693

AP# 57651

Sales ID: SOLUTIONS

Seller ID: 1169571

Address: 5324 Van Dyke Road

Lutz, FL 33549

Main Phone: 813-751-1020

Contacts:

**Bill Smith**

Title: President

Email: [bsmith@cutcable.tv](mailto:bsmith@cutcable.tv)

Phone: 813-751-1020 x101

On the OE Tool Since: May 2005

Total OE Activations: 19,864

2004 Activations: N/A

2005 Activations: 1,116

2006 Activations: 637

2007 Activations: 9,190

2008 Activations (YTD): 8,921

2008 Metrics Summary:

2008						
<u>Month</u>	<u>Churn Rate</u>	<u>DVR Take Rate</u>	<u>HD Take Rate</u>	<u>CCA Take Rate</u>	<u>Incentivized DDA</u>	<u>Premium Customer</u>
<b>Jan</b>	2.81%	69.11%	5.79%	29.41%	6.23%	61.71%
<b>Feb</b>	2.55%	62.62%	4.31%	33.45%	3.44%	55.52%
<b>Mar</b>	2.77%	54.24%	8.31%	39.60%	6.93%	56.04%

<b>Apr</b>	3.18%	46.77%	8.60%	41.55%	6.91%	50.31%
<b>May</b>	3.13%	44.73%	7.94%	26.05%	7.36%	51.40%
<b>Jun</b>	3.57%	63.70%	9.65%	28.79%	7.63%	45.80%
<b>Jul</b>	N/A	77.90%	12.48%	32.04%	9.81%	47.89%

Phase 21 CRI - 2.90%

Primary Marketing Methods: Affiliate Program, Internet (40%), Outbound Telemarketing

Business Plan on File - No

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account:

Josh Slater

## Satellite Systems Network

**Recommend: No Action**

OE Retailer Name: Satellite Systems Network

AR# 821970

AP# 694929

Sales ID: SATSYS

Seller ID: 1137169

Address: 9831 Irvine Center Dr  
Irvine, CA 92618

Main Phone: 800-615-1621

Contacts:

**Alex Tehranchi**

Title: President

Email: [alex@yourdish.tv](mailto:alex@yourdish.tv)

Phone: 818-974-4800

Responsibilities: Focuses on new marketing initiatives and increasing profitability

On the OE Tool Since: May 2004

Total OE Activations: 43,576

2004 Activations: 3,044

2005 Activations 25,190

2006 Activations: 6,210

2007 Activations: 6,145

2008 Activations (YTD): 2,987

2008 Metrics Summary:

<b>2008</b>						
<b>Month</b>	<b>Churn Rate</b>	<b>DVR Take Rate</b>	<b>HD Take Rate</b>	<b>CCA Take Rate</b>	<b>Incentivized DDA</b>	<b>Premium Customer</b>
<b>Jan</b>	2.19%	82.78%	18.89%	16.96%	86.03%	66.58%
<b>Feb</b>	1.73%	85.29%	16.70%	16.62%	78.95%	61.22%
<b>Mar</b>	1.87%	87.77%	16.13%	18.26%	77.61%	56.74%
<b>Apr</b>	2.12%	88.97%	16.92%	21.15%	77.62%	54.41%
<b>May</b>	2.08%	91.32%	15.85%	24.46%	77.48%	55.69%



<b>Jun</b>	2.07%	89.63%	16.41%	42.20%	80.12%	48.62%
<b>Jul</b>	N/A	89.83%	21.34%	36.98%	80.00%	37.36%

Phase 21 CRI - 1.61%

Primary Marketing Methods: Outbound Telemarketing

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:  
Chris Taber

### **Sterling Commerce Group (DBA Sterling Satellite)**

**Past use of 3<sup>rd</sup> party call centers, was about 40% of their business. Has ceased all business with 3<sup>rd</sup> party call centers.**

**Recommend: Monitor and review in 60 days.**

OE Retailer Name: Sterling Commerce Group, (DBA: Sterling Satellite)

AR# 10039650

AP# 346687

Sales ID: STERLING

Seller ID: 1166094

Address: 56 W 13365 Silver Spring Dr,  
Menomonee Falls, WI 53051

Main Phone: 800-847-8660

Contacts:

**Jeff Hughes**

Title: President

Email: [jhughes@sterlingcgc.com](mailto:jhughes@sterlingcgc.com)

Phone: 262-437-2302

On the OE Tool Since: March 2005

Total OE Activations: 96,871

2004 Activations: (Certificate Program)

2005 Activations: 12,816

2006 Activations: 32,094

2007 Activations: 35,701

2008 Activations (YTD): 16,260

2008 Metrics Summary:

<b>2008</b>						
<b>Month</b>	<b><u>Churn</u> Rate</b>	<b><u>DVR Take</u> Rate</b>	<b><u>HD Take</u> Rate</b>	<b><u>CCA Take</u> Rate</b>	<b><u>Incentivized</u> DDA</b>	<b><u>Premium</u> Customer</b>
<b>Jan</b>	3.02%	68.79%	14.63%	9.85%	16.30%	64.82%
<b>Feb</b>	2.68%	78.98%	9.75%	9.12%	11.18%	61.48%

<b>Mar</b>	3.02%	80.55%	8.67%	7.37%	12.47%	63.91%
<b>Apr</b>	2.88%	79.92%	5.70%	7.21%	9.60%	59.34%
<b>May</b>	3.00%	75.32%	6.67%	10.06%	10.81%	63.78%
<b>Jun</b>	3.23%	77.09%	11.57%	23.09%	15.44%	67.66%
<b>Jul</b>	N/A	84.74%	25.89%	46.48%	32.20%	68.52%

Phase 21 CRI - 3.15%

Primary Marketing Methods: Online and Affiliate Marketing, Outbound Telemarketing

Business Plan on File - Yes

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account:

Will Walker

## Teleservices

**New OE partner who will begin to market Dish Network by EOY.**

**No Action recommended.**

OE Retailer Name: Teleservices

AR# 18837561

AP# 885000

Sales ID: TELESERVICES

Seller ID: 1410171

Address: 8344 Clairemont Mesa Blvd Ste 100 – First Floor

San Diego, CA 92111

Main Phone: 800-615-1621

Contacts:

**Martin Smith**

Title: President

Email: [msmith@nationalsatellite.com](mailto:msmith@nationalsatellite.com)

Phone: 858-752-1877

Responsibilities: Focuses on new marketing initiatives and increasing profitability

On the OE Tool Since: January 2008

Total OE Activations: 975

2004 Activations: N/A

2005 Activations: N/A

2006 Activations: N/A

2007 Activations: N/A

2008 Activations (YTD): 975

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
<b>Feb</b>	N/A	62.62%	4.31%	4.17%	34.72%	41.67%
<b>Mar</b>	N/A	54.24%	8.31%	3.55%	34.04%	49.65%

<b>Apr</b>	N/A	46.77%	8.60%	5.80%	36.96%	45.65%
<b>May</b>	N/A	44.73%	7.94%	31.91%	39.72%	51.06%
<b>Jun</b>	N/A	66.48%	12.50%	62.50%	38.33%	55.00%
<b>Jul</b>	N/A	68.57%	16.67%	62.16%	49.32%	54.73%

Phase 21 CRI – N/A

Primary Marketing Methods: Overflow from DTV marketing

Business Plan on File - Yes

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account

Chris Taber

[Chris.taber@echostar.com](mailto:Chris.taber@echostar.com)

303-725-6188

### Tri State Satellite

**Recommend: No Action**

OE Retailer Name: SATELLITE TV CENTER INC DBA TRI STATE SATELLITE

AR# 9237

AP# 2123

Sales ID: TRISTATE

Seller ID:

Address: 5000 Plaza East Blvd  
Evansville, IN 47715

Main Phone: 1-800-225-8876

Contacts:

**Tim Dame**

Title: Vice President of Sales

Email: [tdame@tristatemail.com](mailto:tdame@tristatemail.com)

Phone: 812-477-8611

On the OE Tool Since: August 2007

Total OE Activations: 1,253

2004 Activations: N/A

2005 Activations: N/A

2006 Activations: N/A

2007 Activations: 151

2008 Activations (YTD): 1,112

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer

<b>Jan</b>	1.65%	76.92%	0.00%	0.00%	60.00%	70.00%
<b>Feb</b>	1.38%	88.52%	16.39%	0.00%	71.88%	78.13%
<b>Mar</b>	1.35%	92.93%	14.14%	0.00%	81.17%	80.52%
<b>Apr</b>	1.49%	87.14%	20.36%	2.37%	80.09%	81.04%
<b>May</b>	1.47%	0.00%	100.00%	5.62%	77.53%	76.97%
<b>Jun</b>	1.64%	85.26%	19.12%	12.09%	73.08%	70.88%
<b>Jul</b>	N/A	89.64%	20.72%	26.38%	68.10%	70.55%

Phase 21 CRI - 0.69%

Primary Marketing Methods: Newspaper, Local Advertising, D2D, Outbound Telemarketing

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Josh Slater

[Josh.Slater@echostar.com](mailto:Josh.Slater@echostar.com)

720-480-9057

## Unisat

**Churn is an issue, actively working with them to mitigate.  
No Action recommended.**

OE Retailer Name: Unisat

AR# 10019

AP# 1425

Sales ID: UNISAT

Seller ID: 1167121

Address: 14111 Freeway Drive  
Santa Fe Springs, CA 90670

Main Phone: 800-793-8171

Contacts:

**Ron Zeffer**

Title: President

Email: [ron@infodish.com](mailto:ron@infodish.com)

Phone: 562-572-7164

Responsibilities: Focuses on new marketing initiatives and increasing profitability

On the OE Tool Since: April 2005

Total OE Activations: 55,336

2004 Activations: N/A

2005 Activations 7,846

2006 Activations: 13,465

2007 Activations: 17,600

2008 Activations (YTD): 16,434

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.47%	69.03%	10.26%	11.68%	22.83%	41.49%
Feb	1.91%	50.28%	8.90%	39.50%	23.84%	35.37%
Mar	2.36%	72.01%	9.00%	56.14%	24.67%	42.15%
Apr	2.91%	69.94%	7.33%	47.00%	25.39%	40.05%
May	3.00%	93.90%	21.95%	40.93%	28.97%	39.98%
Jun	3.21%	74.44%	8.61%	44.88%	30.86%	42.36%
Jul	N/A	76.93%	11.18%	41.29%	31.57%	43.33%

Phase 21 CRI - 2.83%

Primary Marketing Methods: Direct Mail, Shared Mail, Digital Conversion

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Chris Taber

[Chris.taber@echostar.com](mailto:Chris.taber@echostar.com)

303-725-6188

### USA Cable DBA Digital TV

**Just started using a 3rd party in California. We are getting information on them.**

**Recommendation:Reevaluate within 30 days.**

OE Retailer Name: USA CABLE DBA DIGITAL TV

AR# 9106

AP# 7604

Sales ID: USA CABLE

Seller ID: 1166093

Address: 100 Water Works Ave

Hillsdale, MI 49242

Main Phone: 517-439-0026

Contacts:

**Raymond J Lauwers**

Title: (GM) Operations

Email: [rlauwers@digitaltvdish.com](mailto:rlauwers@digitaltvdish.com)

Phone: 517.439.0026 x 126, 517-474-6880

On the OE Tool Since: May 2005

Total OE Activations: 10,912  
 2004 Activations N/A  
 2005 Activations: 914  
 2006 Activations: 1,739  
 2007 Activations: 4,851  
 2008 Activations (YTD) 3,408

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	1.84%	77.17%	22.63%	66.92%	42.61%	61.40%
Feb	1.50%	74.42%	22.63%	66.11%	45.02%	50.95%
Mar	1.94%	84.90%	19.27%	68.77%	49.87%	58.01%
Apr	1.73%	85.88%	23.69%	60.27%	50.27%	55.14%
May	3.00%	71.84%	7.83%	46.35%	55.11%	49.27%
Jun	2.19%	81.73%	18.60%	56.44%	56.44%	59.11%
Jul	N/A	87.42%	14.09%	45.25%	51.27%	39.49%

Phase 21 CRI - 1.45%

Primary Marketing Methods: Direct Mail, Outbound Telemarketing

Business Plan on File - No

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account  
 Will Walker  
[Will.Walker@Echostar.com](mailto:Will.Walker@Echostar.com)  
 832.723.3843 (cell)

## VMC Satellite

Uses one 3<sup>rd</sup> party who is domestic with good controls in place  
**Recommendation: No action**

OE Retailer Name: VMC Satellite  
 AR# 555103  
 AP# 66700  
 Sales ID: 1166908  
 Seller ID: VMC  
 Address: 10205 Colvin Run Road  
 Great Falls, VA 22066  
 Main Phone: 703-206-1120

Contacts:

**Terry Hsu**

Title: President

Email: [thus@simplexity.com](mailto:thus@simplexity.com)

Phone: 703-206-1175

On the OE Tool Since: April 2005

Total OE Activations 87,158

2004 Activations

2005 Activations 7,246

2006 Activations 28,498

2007 Activations 33,229

2008 Activations 18,185

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	2.32%	68.36%	23.46%	15.30%	55.46%	47.19%
Feb	1.94%	70.52%	18.29%	35.86%	54.25%	39.12%
Mar	2.13%	76.64%	20.32%	36.44%	56.74%	45.61%
Apr	2.34%	77.77%	18.06%	34.16%	60.39%	39.06%
May	2.51%	75.95%	17.15%	43.04%	59.58%	43.80%
Jun	2.66%	78.64%	17.21%	56.49%	63.69%	44.99%
Jul	N/A	78.28%	17.98%	56.33%	63.33%	42.24%

Phase 21 CRI - 2.11%

Primary Marketing Methods: Affiliate marketing programs, Internet

Business Plan on File - No

Use of Third Party Call Centers – Yes

National Account Manager Responsible for the Account

Richard Brilli

[Richard.brilli@echostar.com](mailto:Richard.brilli@echostar.com)

516-312-6031

## Vision Quest Marketing

**Brand New OE retailer.**

**Recommendation: No Action**

OE Retailer Name: Vision Quest Marketing

AR# 17628064

AP# 838366

Sales ID: 1386868  
 Seller ID: VISION  
 Address: 609 S. Kelly Ste B  
 Edmond, OK 73003  
 Main Phone: 866-876-8259

Contacts:

**Chad Jenkins**  
 Title: President  
 Email: [cjenkins@vqm.net](mailto:cjenkins@vqm.net)  
 Phone: 405-879-0433

On the OE Tool Since: January 2008

Total OE Activations: 18  
 2004 Activations N/A  
 2005 Activations N/A  
 2006 Activations N/A  
 2007 Activations N/A  
 2008 Activations (YTD): 18

2008 Metrics Summary:

2008						
Month	Churn Rate	DVR Take Rate	HD Take Rate	CCA Take Rate	Incentivized DDA	Premium Customer
Jan	N/A	0%	0%	0%	0%	0%
Feb	N/A	0%	0%	0%	0%	0%
Mar	N/A	0%	0%	0%	0%	0%
Apr	N/A	0%	0%	0%	0%	0%
May	N/A	0%	0%	0%	0%	0%
Jun	N/A	82.62%	17.38%	0.00%	33.33%	66.67%
Jul	N/A	50.00%	50.00%	0.00%	33.33%	50.00%

Phase 21 CRI – N/A

Primary Marketing Methods: Outbound Telemarketing

Business Plan on File - No

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:  
 Will Walker  
[Will.Walker@Echostar.com](mailto:Will.Walker@Echostar.com)  
 832.723.3843

## WIRELESS INTERNET PLUS

**Brand New OE partner.**  
**Recommendation: No Action**



OE Retailer Name: WIRELESS INTERNET PLUS  
AR# 20977026  
AP# 1018658  
Sales ID: WIRELESSINTERNET  
Seller ID: 1482275  
Address: 200 Commonwealth Court  
Cary, NC 27511  
Main Phone: (919) 439-2931

Contacts:

**Nathan Cameron**

Title: President

Responsibilities: Sales, Marketing, Business Development

(919) 439-2931 x1001

[nathan@calltoconnect.com](mailto:nathan@calltoconnect.com)

On the OE Tool Since: July 2008

Total OE Activations: 113

2004 Activations: 0

2005 Activations: 0

2006 Activations: 0

2007 Activations: 0

2008 Activations: 113

2008 Metrics Summary: N/A

Phase 21 CRI – N/A

Primary Marketing Methods: Shared Mail, Internet

Business Plan on File - Yes

Use of Third Party Call Centers – No

National Account Manager Responsible for the Account:

Josh Slater

[Joshua.Slater@echostar.com](mailto:Joshua.Slater@echostar.com)

720.480.9057

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Confidential

SLC\_ DNC\_Investigation\_0009684  
TX 102-008709

FILED

NOV 28 2018

*Alvin L. Johnson*  
CLERK OF COURT

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

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

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

28 Plaintiffs,

v.

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

Defendants,

35 DISH NETWORK CORPORATION, a Nevada  
36 corporation,

Nominal Defendant

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

VOLUME 15 OF APPENDIX TO  
THE REPORT OF THE SPECIAL  
LITIGATION COMMITTEE OF  
DISH NETWORK CORPORATION


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

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<u>Ex.</u>	<u>Date</u>	<u>Description</u>	<u>Page No.</u>
347	09/08/2008	Email from S. Petersen to H. Mac Murray, et al.	8281
348	09/15/2008	Important Notice re: Limitations and prohibitions on retailer use of pre-recorded telephone solicitations	8283
349	09/16/2008	Voice Message from C. Ergen to R. Dye, et al.	8285
350	09/17/2008	Email from T. Stingley to L. Kalani	8287
351	09/19/2008	Letter from H. Mac Murray to K. Tassi	8289
352	09/19/2008	Calendar Invitation from K. Berridge to B. Van Emst	8297
353	09/23/2008	Email from T. Stingley to J. DeFranco, et al.	8299
354	09/23/2008	Email from J. DeFranco to B. Han, et al.	8302
355	09/25/2008	DISH Network Retailer Development Forum Presentation	8305
356	09/30/2008	Email from D. Adams to B. Van Emst	8313
357	10/00/2008	Do Not Call Compliance for DISH Network Retailers Distributor Program Overview	8320
358	11/04/2008	Email from D. Moskowitz to K. Culig and B. Ehrhart	8322
359	11/12/2008	Email from D. Laslo to L. Kalani	8324
360	11/18/2008	Email from M. Metzger to L. Kalani	8326
361	11/19/2008	Email from L. Kalani to R. Egan	8331
362	12/02/2008	Email from C. Ergen to L. Sees	8333
363	12/23/2008	Email from L. Rose to J. Blum, et al.	8335
364	12/29/2008	Email from J. Blum to S. Dodge	8337
365	01/21/2009	Letter from L. Rose to J. Leibowitz, et al.	8340
366	01/29/2009	Email from J. Blum to S. Dodge and C. Ergen	8357
367	02/23/2009	DISH Minutes of Regular Audit Committee Meeting	8359
368	02/24/2009	DISH Minutes of Regular Board Meeting	8381

DATED this 28th day of November 2018.

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of November 2018, a true and correct copy of the foregoing **VOLUME 15 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:

  
An Employee of Holland & Hart, LLP

EXHIBIT 347

EXHIBIT 347

JA009451  
008281

TX 102-008713

Message

---

**From:** Shaun Petersen [SPetersen@mcpslaw.com]  
**Sent:** 9/8/2008 9:13:53 AM  
**To:** Helen Mac Murray [hmacmurray@mcpslaw.com]; Kalani, Lori [lori.kalani@echostar.com]; Blum, Jeffrey [jeffrey.blum@echostar.com]  
**Subject:** FW: DISHMultiStateAgreement082508.doc  
**Attachments:** DISHMultiStateAgreement082508.doc

All, here is a word version of the multistate's revised language.

---

**From:** Tassi, Katherine (ATG) [mailto:KatherineT@ATG.WA.GOV]  
**Sent:** Saturday, September 06, 2008 11:50 AM  
**To:** Shaun Petersen  
**Subject:** DISHMultiStateAgreement082508.doc

<<DISHMultiStateAgreement082508.doc>> Shaun – sorry for the delay – I left the office before I received your email. Katherine

JA009452  
008282

SLC\_ DNC\_Investigation\_0014761  
TX 102-008714

EXHIBIT 348

EXHIBIT 348

JA009453  
008283

TX 102-008715



# importantnotice



## LIMITATIONS AND PROHIBITIONS ON RETAILER USE OF PRE-RECORDED TELEPHONE SOLICITATIONS

September 15, 2008

Dear DISH Network® Retailer,

Under your Retailer Agreement(s) with DISH Network L.L.C., formerly known as EchoStar Satellite L.L.C. ("DISH"), you are responsible for compliance with applicable Laws (as defined therein). Certain of these Laws may impact your telemarketing activities, including by prohibiting your use of pre-recorded telephone solicitations in connection with your marketing, promotion and solicitation of orders for DISH Network programming.

Please note that in the event you are authorized by DISH to use any Permitted Subcontractors (as defined in your Retailer Agreement(s)), you are responsible for their acts and omissions to the same extent you are responsible for the acts and omissions of your employees.

As further explained in the Federal Trade Commission (FTC) press release attached to this Important Notice, several amendments to the federal Telemarketing Sales Rule (TSR) will take effect beginning as early as **December 1, 2008**, that will, among other very important requirements, limitations and prohibitions:

- **Prohibit telemarketing sales calls that deliver prerecorded messages**, whether answered in person by a consumer or by answering machine or voicemail service, unless the seller has previously obtained the recipient's signed, written agreement to receive such calls; and
- **Require that sellers and telemarketers provide, at the outset of all prerecorded messages, an automated keypress or voice-activated interactive opt-out mechanism** so that consumers can opt out as easily as they can from a live telemarketing call.

Additionally, effective **September 1, 2009**, telemarketing sales calls that deliver prerecorded messages will be prohibited under the TSR, whether answered in person by a consumer or by an answering machine or voicemail service, unless the seller has previously obtained the recipient's signed, written agreement to receive such calls.

We strongly encourage you to read the attached press release, visit the FTC's website at [www.ftc.gov](http://www.ftc.gov), and to familiarize yourself with all Laws applicable to your performance under your Retailer Agreement(s), including, but not limited to, do-not-call Laws and other Laws related to telemarketing activities and use of prerecorded messages.

Thanks for Supporting DISH Network!

***\*\*This Important Notice should not be construed as legal advice from DISH or any of its Affiliates (as defined in your Retailer Agreement(s)). You should consult a licensed attorney if you have any questions or concerns relating to the issues discussed above.\*\****

retail training & communications

September 15, 2008

Important Notice 091508

JA009454 of 1  
008284

SLC\_DNC\_Investigation\_0008360

TX 102-008716

# EXHIBIT 349

# EXHIBIT 349

**CONFIDENTIAL**

Message

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**From:** Hendricks, Lucy [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=LUCY.HENDRICKS]  
**Sent:** 9/16/2008 11:27:32 AM  
**To:** Dye, Rachel [rachel.dye@echostar.com]; Kalani, Lori [lori.kalani@echostar.com]; Metzger, Marciedes [marciedes.metzger@echostar.com]  
**CC:** Dodge, Stanton [stanton.dodge@echostar.com]  
**Subject:** Voice Message from Charlie Ergen 9:01 a.m. Re: Telemarketing Call

Message from customer. I received your number regarding DISH telemarketing which I am getting calls 24 hours a day 7 days a week. I am tired of this. I have pushed 9 to take my name off the list. It starts at 10:00 in the morning and ends at 9:00 p.m. at night. This is B.S. My number is (734) 266-2476. Remove me PLEASE. The customer did not leave a name.

Bernie and Stanton, we ought to be able to catch these guys and get the customer to accept our deal and try to trace these calls back. I don't care if we need to get outside help. We need to put something that works. If I am getting more and more of these calls lately, we must be getting 10-50 calls elsewhere and so has the attorney generals offices. Please give me the details after you have talked to this customer. This really hurts us. Charlie.

**CONFIDENTIAL**

JA009456  
008286

Confidential.

SLC\_ DNC\_Investigation\_0005905

**TX 102-008718**

# EXHIBIT 350

# EXHIBIT 350

**CONFIDENTIAL**

Message

---

**From:** Stingley, Tom [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=TOM STINGLEY]  
**Sent:** 9/17/2008 11:25:56 AM  
**To:** Kalani, Lori [lori.kalani@echostar.com]  
**Subject:** FW: I Satellite

FYI

Sent by Good Messaging (www.good.com)

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

From: Van Emst, Blake  
Sent: Wednesday, September 17, 2008 08:56 AM Mountain Standard Time  
To: Stingley, Tom; McElroy, Steve; Knight, Kathy; Mills, Mike  
Cc: Werner, Bruce  
Subject: I Satellite

All,

Be aware that we have contacted I Satellite this morning and communicated that based on Churn and TCPA violation that their access to the OE tool has been removed effective immediately. They still have the ability to perform sales/installations through RS&I. This was not a termination of their agreement.

Mike,

Please eliminate their log ins.

**CONFIDENTIAL**

**JA009458**  
008288

Confidential

SLC\_ DNC\_Investigation\_0010645  
**TX 102-008720**

# EXHIBIT 351

# EXHIBIT 351

**CONFIDENTIAL**  
**MAC MURRAY, COOK**  
**PETERSEN & SHUSTER LLP**

HELEN MAC MURRAY  
BRIAN C. COOK  
SHAUN K. PETERSEN  
MICHELE A. SHUSTER  
BETTY D. MONTGOMERY, *of Counsel*

www.mcpslaw.com

6530 WEST CAMPUS OVAL  
SUITE 210  
NEW ALBANY, OHIO 43054  
OFFICE 614 939 9955  
FAX 614 939 9954

September 19, 2008

Katherine M. Tassi  
Assistant Attorney General  
Consumer Protection Division  
Office of the Attorney General  
900 4<sup>th</sup> Avenue  
Suite 2000  
Seattle, WA 98164

**RE: DISH Network L.L.C.**

Dear Katherine:

DISH Network, Shaun and I would like to thank you for your consideration in permitting us to continue the settlement negotiation process and your willingness to review our written comments as we continue this process. I look back on the difficult issues that we have encountered over the last few months and choose to focus on all of the success that we have achieved for our respective clients/offices, but most importantly, for consumers across the country. I hope to build on that success by respectfully outlining DISH's positions and how it will make its case going forward.

During our September 8, 2008 conference call, we were able to agree in principle to the "assurance" provisions of the proposed Assurance of Voluntary Compliance (AVC). DISH has indicated its willingness to change many of its business practices in ways that the states and DISH agree will provide more consumer protections than currently exist. As we have stated from the outset of our settlement discussions, we share a common goal: protecting consumers and making sure they understand the terms and conditions of their DISH television service. I believe that the agreement we reached regarding these changes will accomplish that goal.

Despite our agreement on the "assurance" provisions, the parties were unable to come to resolution on the money provisions. In your draft AVC sent to us on August 25, 2008, the Executive Committee (EC) included a demand for a monetary payment of \$15 million. In our September 8 call, we spent a considerable amount of time discussing the EC's basis for such an excessive demand. The EC had three primary reasons for making that demand: DISH had a previous AVC and is thus a two-time offender; there are a large number of consumer complaints suggesting violations of law; and there are three times the number of states involved in this investigation thus warranting a demand three times that which was reached with the states involved in the 2003 investigation.

**CONFIDENTIAL**

JA009460  
008290

Confidential/

SLC\_DNC\_Investigation\_0002543

TX 102-008722

MAC MURRAY, COOK  
PETERSEN & SHUSTER LLP

September 19, 2008

Page 2

In response to your \$15 million demand, DISH offered to resolve the investigation for \$650,000. The EC rejected that counteroffer and proposed a monetary settlement for \$13 million. We indicated to you at that time that we did not have authority to settle for more than our counteroffer and requested an opportunity to respond, in writing, to the basis provided by the EC for the multimillion dollar demand. We appreciate your willingness to allow us the opportunity to do so.

**Impact of 2003 AVC**

As part of its justification for a multimillion dollar settlement, the EC has stated that it believes DISH has violated the 2003 AVC. As such, the EC is evaluating this case assuming that DISH is a two time offender. That is not accurate. As you know, we have asked the EC repeatedly to provide evidence of violations. Despite these requests, the EC has not provided any evidence to demonstrate how DISH violated that AVC. In fact, it is DISH's firm belief that it has complied with the 2003 AVC and made significant changes to its business practices to do so.

In examining the 2003 AVC, there are three primary areas of concern addressed therein. The first was a requirement for DISH to revamp its disclosures to help minimize any confusion in the consumer's mind. As you know, DISH has made significant changes to its disclosures to clearly and conspicuously disclose the terms and nature of any offer to consumers. These disclosures were provided to you as part of the response to the CID you sent in 2006.

The second primary area addressed by the 2003 AVC was the process for handling cancellation of customer accounts, including for reasons involving catastrophes in the customer's home and for reasons dealing with failure of service. DISH has invested a significant amount of time and resources into its customer service systems, including those that handle cancellations, all with the goal of handling each customer issue in a timely and responsible manner.

The third primary area of concern addressed in the 2003 AVC deals with electronic funds transfers and credit card charges. As you know, for the past year, we have had a difference of opinion as to what the law does and does not require with respect to these transfers and charges. I need not rehash the specifics of those debates only to say that DISH continues to assert that it fully complies with all applicable laws and regulations dealing with electronic funds transfers and credit card charges. DISH interacts with its merchant bank and with the credit card processing companies who have all assured DISH that its practices are compliant with the law.



MAC MURRAY, COOK  
PETERSEN & SHUSTER LLP

September 19, 2008

Page 3

This belief, confirmed by these entities that specialize in this area, suggests that DISH complied with these provisions of the 2003 AVC.

DISH certainly admits that it received consumer complaints after 2003, but this does not mean DISH violated the 2003 AVC. No court would or could reach that conclusion without a thorough analysis of each complaint. Whereas DISH welcomed the process of working with the EC to develop service standards that will improve its customer service, it cannot fathom being punished by a multimillion dollar settlement for past violations of the 2003 AVC to which none of the EC participated, but more importantly, when the EC has not pointed to a single piece of evidence to show any non-compliance therewith.

It is also significant to note that none of the states involved with the 2003 AVC have ever contacted DISH with their belief that DISH is violating the AVC. Paragraph twenty-five (25) of the 2003 AVC provides a specific procedure for the signatory states to inform DISH if those states believed there was a violation of that AVC. To date, not one signatory state to that agreement has sent DISH notice under that provision. It is not logical for the states to have taken the time to include such a provision if they were not going to exercise their rights under that section.

Moreover, the 2003 AVC was negotiated by some of the most well respected and experienced assistant attorneys general in the country. The likes of Debby Hagan (Illinois), Al Sheldon (California) and Mike Ziegler (Ohio) were part of the team that negotiated the settlement. These states and others have not accused DISH of violating the 2003 AVC for over four (4) years.

**Consumer Complaints**

In addition to the EC's position that DISH is a two-time violator, several members of the EC have asserted that the multimillion dollar settlement demand is justified because of the large number of consumer complaints against DISH. Notwithstanding DISH's firm belief that it was fully compliant with the law and the 2003 AVC, DISH has never turned a blind eye to the consumer complaints that it received.

One prominent example of this desire to promptly and fairly resolve consumer complaints can be found in the manner in which DISH handled the number of do not call (DNC) complaints that it began to receive in 2006 due primarily to its third party retailers. DISH immediately began to implement programs designed to reduce these complaints and more

MAC MURRAY, COOK  
PETERSEN & SHUSTER LLP

September 19, 2008

Page 4

effectively monitor third party retailers doing telemarketing. Those programs include such things as conducting DNC compliance audits which produce detailed reports on retailers' DNC complaints and compliance efforts and taking appropriate disciplinary action against retailers who DISH discovered had violated telemarketing laws.

In 2007, DISH was contacted by the Colorado Attorney General's office (CAGO). The CAGO asked DISH to discuss the increased number of consumer complaints it had received. DISH went through each and every complaint that the CAGO provided to examine what the consumer's concern was, how DISH responded thereto, and whether the resolution was satisfactory to the consumer. DISH determined that those complaints were resolved promptly, fairly, and to the consumers' satisfaction. Moreover, there was nothing in that analysis to suggest DISH was violating the law or the 2003 AVC. DISH provided this analysis to the CAGO.

After the CAGO received DISH's analysis, it never contacted DISH again. As the lead state of the multistate and the representative of DISH's home state, the absence of any accusation by the CAGO that DISH violated the 2003 AVC is significant.

In an effort to demonstrate that DISH continues to resolve consumer complaints promptly and fairly, under separate cover, we are sending you binders that contain 1,000 randomly selected consumer complaints by residents of the EC states received by DISH during 2006 and 2008. We have analyzed each and every one of these complaints to determine the nature of the complaint and the resolution thereto.

There are several significant conclusions that can be drawn from this analysis. First, the total number of complaints between 2006 and 2008 has diminished significantly. For example, in the state of Pennsylvania, complaints decreased 30% over that time. The results are more significant in Maryland (more than a 43% decrease) and in Washington (more than a 42% decrease). Given the large number of subscribers in these states, those decreases speak volumes to DISH's efforts to protect its customers.

Second, in reviewing these complaints, it is clear that the complaints are not concentrated around any one particular issue. These complaints express customer concerns involving issues such as signal strength, installers not keeping appointments, confusing billing statements, as well as the issues that the EC has raised such as pricing and cancellation fees. However, no one issue has significantly more complaints than another.

MAC MURRAY, COOK  
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September 19, 2008

Page 5

Finally, DISH resolved each and every one of these complaints promptly and fairly. As we have repeatedly stated, DISH's primary goal is the satisfaction and protection of its customers. This analysis shows that DISH goes out of its way to resolve consumer complaints regardless of the nature of the complaint.

DISH recognizes that its service and promotions can seem complex to some consumers. Having significant choices and options can be a blessing and a curse. In resolving consumer complaints, DISH has recognized there is great value in being flexible and responsive in its complaint handling. Time and time again, DISH has been willing to waive cancellation fees, offer credits, extend free upgrades, exchange equipment, adjust bills, allow penalty free cancellation, provide free premium channels, honor price quotes, send complimentary accessories and remove commitment requirements.

**Settlement Amount Basis**

During our September 8 conference call, some members of the EC indicated that they justified the \$15 million demand on the fact that the current investigation involved three times as many states as the 2003 investigation. At first glance, this may appear to be a valid rationale. It ignores, however, the representative population of the states involved.

The 2003 investigation was conducted by the largest states in the country. Cumulatively, the states involved in the 2003 investigation and subsequent settlement covered a population of approximately 130 million consumers. Those states originally involved in this investigation<sup>1</sup> only represent approximately 140 million consumers. Similarly, the 2003 AVC represented a disproportionately larger group of DISH subscribers. The 2003 AVC covered approximately 5.3 million DISH subscribers and those states originally involved in this investigation represent approximately 6.9 million DISH subscribers.

The EC also uses this rationale to leap to the conclusion that all states have a proportionate number of complaints. Although we recognize that several states do have a large number of complaints, many of the states have an exceptionally small number of complaints. Of the 812 complaints that DISH produced to the EC in response to the CID, fourteen states had *less than ten complaints* notwithstanding the fact that DISH has a total of approximately 2.25 million subscribers in those states. In fact, three of the states in the current multistate had *no* complaints.

---

<sup>1</sup>DISH has made significant effort to encourage states to join the multistate so that one uniform agreement will exist nationally. Thus, I did not include those states in my calculations.

MAC MURRAY, COOK  
PETERSEN & SHUSTER LLP

September 19, 2008

Page 6

DISH deserves credit for reaching out to all fifty states and encouraging them to be part of this agreement. It should not be penalized for not objecting to the inclusion of states with very low complaint levels. This analysis evidences that the \$15 million demand is not appropriate or justified. DISH recognizes that the proposed AVC provides value to every consumer across the country. The EC's evaluation of a settlement must take into account DISH's willingness to be all inclusive and provide benefits to consumers in all fifty states.

**Conclusion**

Unfortunately, in any service industry, there will always be complaints. Despite every effort to achieve it, no business can assure itself of 100% customer satisfaction. DISH has close to 14 million subscribers. If DISH was to achieve 99.5% customer satisfaction each year, it would still receive 70,000 complaints. DISH is proud that it does not receive near that many complaints a year (in 2006 and 2008, DISH's total AG and BBB complaints were 9,979 and 8,385 respectively). In fact, if you take the total AG and BBB complaints that DISH received in 2006 and 2008 for just the EC states and compared those numbers with the total number of subscribers in each of those states, **the customer satisfaction rate with DISH would be 99.9992% in 2006 and 99.9993% in 2008.**

What is significant is that DISH complied with the terms of the 2003 AVC and will comply with the extensive "assurance" provisions that we have agreed to for consumers, which will hopefully apply nationwide. It would be a shame to lose these provisions, which would never be ordered should this matter go to litigation.

This is the background for DISH's analysis of its liability moving forward. It states a compelling case of legal compliance and willingness to go above and beyond the law in not only how it resolves complaints but also in its willingness to be obligated to this conduct. DISH does not question the states' authority and basis for conducting their investigation and recognizes that the EC has invested an extraordinary amount of time and effort into the investigation. With this understanding, DISH is more than willing to reimburse the EC a substantial sum for this work and an amount to each state for its willingness to review and agree to the current AVC. What it cannot do is agree to be penalized for its law abiding actions or agree to a monetary figure that is wholly disproportionate to the facts of this investigation.

DISH has already agreed to the "assurance" provisions that will require DISH to spend millions of dollars to develop and maintain. In developing the written notice program alone,

MAC MURRAY, COOK  
PETERSEN & SHUSTER LLP

September 19, 2008

Page 7

which DISH believes goes far beyond what the law requires, DISH will spend approximately \$1 million dollars to create this system and approximately \$1 million a year in maintenance costs. The costs to develop and maintain the programs required by the "assurance" provisions cannot be ignored.

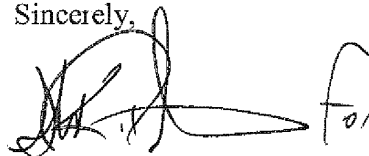
DISH has also agreed to provide restitution to all consumers pursuant to the AVC. DISH is willing to discuss a restitution fund if that may be an appropriate vehicle through which to quantify the dollar value of DISH's agreement to provide that restitution. DISH is also open to discussing other potential alternatives to settle this matter stemming from its unique position as a media provider. DISH has access to various media related tools that may be useful to the states and their mission to educate consumers. DISH would welcome such a partnership and all parties could truly benefit from an appropriate in-kind donation.

All this being said, notwithstanding the significant expense required to comply with the draft AVC and the other creative solutions that could be explored to settle this matter, DISH is willing to increase its previous cash offer and will pay the states \$1 million. Of course, it remains our hope that all fifty states will agree to be signatories.

This offer signifies DISH's good faith willingness to explore resolution of this matter without litigation yet stays faithful to its deeply held belief that it has not violated the law or the 2003 AVC. Our hope is that you consider this counteroffer in this spirit and continue the dialogue which has been so productive over these many months.

Thank you again for the consideration that you have shown me and DISH's negotiating team. It is truly appreciated. We look forward to further discussion.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helen Mac Murray', followed by a large, stylized flourish that extends to the right.

Helen Mac Murray

cc: Jeffrey Blum  
Lori Kalani  
Shaun Petersen

EXHIBIT 352

EXHIBIT 352

JA009467  
008297

TX 102-008729

Appointment

---

**From:** Berridge, Kimberly [/O=ECHOSTAR COMMUNICATIONS  
CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=KIMBERLY.BERRIDGE]  
**Sent:** 9/19/2008 3:42:37 PM  
**To:** Berridge, Kimberly [kimberly.berridge@echostar.com]; Van Emst, Blake [blake.vanemst@echostar.com]; Knight, Kathy [kathy.knight@echostar.com]; Blum, Jeffrey [jeffrey.blum@echostar.com]; Werner, Bruce [bruce.werner@echostar.com]; Musso, Reji [reji.musso@echostar.com]; Pastorius, Emily [emily.pastorius@echostar.com]; Kitei, Brett [brett.kitei@echostar.com]; rolsen@twwlaw.com  
**Subject:** Updated: Meeting to discuss retailer investigations  
**Location:** Durango  
**Start:** 10/3/2008 2:00:00 PM  
**End:** 10/3/2008 3:00:00 PM  
**Show Time As:** Busy  
  
**Required Attendees:** Berridge, Kimberly; Van Emst, Blake; Knight, Kathy; Blum, Jeffrey; Werner, Bruce; Musso, Reji; Pastorius, Emily; Kitei, Brett; rolsen@twwlaw.com

Sorry to reschedule this meeting again but Rick Olson was not going to be able to attend the meeting on the 24th of September. Thanks, Kimberly

JA009468  
008298

SLC\_ DNC\_Investigation\_0014256  
TX 102-008730

CONFIDENTIAL

# EXHIBIT 353

# EXHIBIT 353

CONFIDENTIAL

JA009469  
008299



**To:** DeFranco, Jim[Jim.DeFranco@echostar.com]; Han, Bernie[Bernie.Han@echostar.com]; Van Emst, Blake[Blake.VanEmst@echostar.com]; Werner, Bruce[Bruce.Werner@echostar.com]; Knight, Kathy[Kathy.Knight@echostar.com]; Picchione, Shannon[Shannon.Picchione@echostar.com]; Schneider, Kathy[Kathleen.Schneider@echostar.com]  
**From:** Stingley, Tom  
**Sent:** Tue 9/23/2008 5:53:46 PM  
**Subject:** RE: RE: American Satellite & Fraudulent Transactions

**CONFIDENTIAL**

Shannon

I was pinged by another retailer today stating that American is purchasing AMEX prepaid cards and loading them with \$1 to qualify customers. We should look at American's % of AMEX cards to qualify customers and what % are prepaid. Also, we should look at any reused credit card numbers to determine if they are qualifying customers on the same cards.

Kathy

This retailer also mentioned that some retailers (no specifics) are selling their customer lists at \$60 per customer to offshore centers and offshore centers are in turn flipping them as leads with new addresses to new retailers. It may be worth while to take the original dupped address on the original accounts and reverse append the original retailer or installer of record to see if we have a high % of dup customers coming from a few retailers or reg service providers.

Is this possible to look at?

T

Sent by Good Messaging (www.good.com)

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

**From:** DeFranco, Jim  
**Sent:** Tuesday, September 23, 2008 07:42 AM Mountain Standard Time  
**To:** Han, Bernie; Stingley, Tom; Van Emst, Blake; Werner, Bruce; Knight, Kathy; Blum, Jeffrey; Schneider, Kathy  
**Subject:** RE: RE: American Satellite & Fraudulent Transactions

Yes, we should move them to the top and investigate them.

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

**From:** Han, Bernie  
**Sent:** Tuesday, September 23, 2008 7:19 AM  
**To:** DeFranco, Jim; Stingley, Tom; Van Emst, Blake; Werner, Bruce; Knight, Kathy; Blum, Jeffrey; Schneider, Kathy  
**Subject:** FW: RE: American Satellite & Fraudulent Transactions

this isn't stealing our customers but they are on our near-match list - 1.9% ytd but higher (~4%) during the past 5 months

would we want to investigate to see what we can learn?

would we want to reprioritize our review of near-matches and put them higher?

---

**From:** Gonzalez, Kathie  
**Sent:** Monday, September 22, 2008 4:05 PM  
**To:** Han, Bernie; Stingley, Tom; Van Emst, Blake; Dodge, Stanton  
**Cc:** Mcconachie, Parker  
**Subject:** RE: RE: American Satellite & Fraudulent Transactions

Just passing along something that hit the press mailbox recently in case you wish to investigate the allegations further...

**CONFIDENTIAL**

JA009470  
008300

Confidential/

SLC\_DNC\_Investigation\_0009632

**TX 102-008732**

Kathie Gonzalez

Director, Corporate Communications

**CONFIDENTIAL**

DISH Network Corporation

W: 303.723.2010

C: 720.320.4304

---

From: Mcconachie, Parker  
Sent: Monday, September 22, 2008 11:26 AM  
To: Gonzalez, Kathie  
Subject: FW: RE: American Satellite & Fraudulent Transactions

Thoughts on where to send this?

---

From: Amanda Layana [mailto:ragnaid@sbcglobal.net]  
Sent: Thursday, September 18, 2008 6:28 PM  
To: Press  
Subject: Fw: RE: American Satellite & Fraudulent Transactions

To Kathy Gonzalez,

--- On Thu, 9/18/08, Amanda Layana <ragnaid@sbcglobal.net> wrote:

From: Amanda Layana <ragnaid@sbcglobal.net>  
Subject: RE: American Satellite & Fraudulent Transactions  
To: "executivecustomerservice@echostar.com" <executivecustomerservice@echostar.com>  
Date: Thursday, September 18, 2008, 5:06 PM

I am writing this letter for a couple friends of mine that are working for American Satellite in San Diego, Ca. They are too afraid to contact Dish directly or Directv So they asked me to write this for them regarding the use of Pre-paid Credit Cards to push their deals through for them( American Satellite) . They also violate the FCC regulations on calling customers that are on the DO NOT CALL LISTS . My friends are going to resign from American Satellite for these reasons and due to the fact that Todd DiRoberto the President is a convicted felon, convicted of Securities Fraud from 2004 . Here is also a link for you to see their in house Welcome Page stating the use of Pre-Paid Credit Cards for both Dishnetwork & Directv . I too would like to remain anonymous to all of this but think you will find all of this information to be true and correct . Here's is the link for you to see their in house Welcome Page to all of their employees.

[www.amsatproviders.com/intranet](http://www.amsatproviders.com/intranet)

Thank you , concerned consumer

**CONFIDENTIAL**

JA009471  
008301

Confidential/

SLC\_ DNC\_Investigation\_0009633

**TX 102-008733**

# EXHIBIT 354

# EXHIBIT 354

CONFIDENTIAL

Message

**From:** DeFranco, Jim [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=JIM DEFRANCO]  
**Sent:** 9/23/2008 9:42:03 AM  
**To:** Han, Bernie [bernie.han@echostar.com]; Stingley, Tom [tom.stingley@echostar.com]; Van Emst, Blake [blake.vanemst@echostar.com]; Werner, Bruce [bruce.werner@echostar.com]; Knight, Kathy [kathy.knight@echostar.com]; Blum, Jeffrey [jeffrey.blum@echostar.com]; Schneider, Kathy [kathleen.schneider@echostar.com]  
**Subject:** RE: RE: American Satellite & Fraudulent Transactions

Yes, we should move them to the top and investigate them.

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

**From:** Han, Bernie  
**Sent:** Tuesday, September 23, 2008 7:19 AM  
**To:** DeFranco, Jim; Stingley, Tom; Van Emst, Blake; Werner, Bruce; Knight, Kathy; Blum, Jeffrey; Schneider, Kathy  
**Subject:** FW: RE: American Satellite & Fraudulent Transactions

this isn't stealing our customers but they are on our near-match list - 1.9% ytd but higher (~4%) during the past 5 months

would we want to investigate to see what we can learn?

would we want to reprioritize our review of near-matches and put them higher?

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**From:** Gonzalez, Kathie  
**Sent:** Monday, September 22, 2008 4:05 PM  
**To:** Han, Bernie; Stingley, Tom; Van Emst, Blake; Dodge, Stanton  
**Cc:** Mcconachie, Parker  
**Subject:** RE: RE: American Satellite & Fraudulent Transactions

Just passing along something that hit the press mailbox recently in case you wish to investigate the allegations further...

Kathie Gonzalez  
Director, Corporate Communications  
DISH Network Corporation  
W: 303.723.2010  
C: 720.320.4304

---

**From:** Mcconachie, Parker  
**Sent:** Monday, September 22, 2008 11:26 AM  
**To:** Gonzalez, Kathie  
**Subject:** FW: RE: American Satellite & Fraudulent Transactions

Thoughts on where to send this?

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**From:** Amanda Layana [mailto:ragnaid@sbcglobal.net]  
**Sent:** Thursday, September 18, 2008 6:28 PM  
**To:** Press  
**Subject:** Fw: RE: American Satellite & Fraudulent Transactions

To Kathy Gonzalez,

--- On Thu, 9/18/08, Amanda Layana <ragnaid@sbcglobal.net> wrote:

CONFIDENTIAL

JA009473  
008303

Confidential/

SLC\_ DNC\_Investigation\_0005822

TX 102-008735

**CONFIDENTIAL**

From: Amanda Layana <ragnaid@sbcglobal.net>

Subject: RE: American Satellite & Fraudulent Transactions

To: "executivecustomerservice@echostar.com" <executivecustomerservice@echostar.com>

Date: Thursday, September 18, 2008, 5:06 PM

I am writing this letter for a couple friends of mine that are working for American Satellite in San Diego, Ca. They are too afraid to contact Dish directly or Directv So they asked me to write this for them regarding the use of Pre-paid Credit Cards to push their deals through for them( American Satellite) . They also violate the FCC regulations on calling customers that are on the DO NOT CALL LISTS . My friends are going to resign from American Satellite for these reasons and due to the fact that Todd DiRoberto the President is a convicted felon, convicted of Securities Fraud from 2004 . Here is also a link for you to see their in house Welcome Page stating the use of Pre-Paid Credit Cards for both Dishnetwork & Directv . I too would like to remain anonymous to all of this but think you will find all of this information to be true and correct . Here's is the link for you to see their in house Welcome Page to all of their employees.

[www.amsatproviders.com/intranet](http://www.amsatproviders.com/intranet)

Thank you , concerned consumer

**CONFIDENTIAL**

**JA009474**  
008304

Confidential

SLC\_ DNC\_Investigation\_0005823

**TX 102-008736**

EXHIBIT 355

EXHIBIT 355

JA009475  
008305

TX 102-008737

# DISH Network

## RETAILER DEVELOPMENT FORUM

Atlanta, GA

Sept 25, 2008



JA009476  
008306

# Marketing in a DNC World

- Do Not Call (DNC) Laws effect how DISH and YOU contact:

- Cold Calls
- Referrals
- Customers
- Former Customers
- Direct Inquiries

- Echostar and its DISH Network retailers must comply with a complex and rapidly changing set of rules to avert severe penalties, fines, and brand damage



JA009477  
008307



# Marketing in a DNC World

## Fines and Penalties:

- Federal fines are up to \$11,000 per violation
  - State fines are \$500 - \$25,000
  - Private citizens can bring action
  - Also creates bad publicity
- 
- Relative enforcement against satellite TV providers and retailers:
    - Direct TV fined \$5.3 million for DNC violations (Dec 2005)
    - Direct TV distributor fined \$100,000 for DNC violations (Dec 2006)
    - DISH Network retailers fined \$95,000 (July 2008)



JA009478  
008308

# Marketing in a DNC World

- DNC and telemarketing rules apply to anyone using the telephone for solicitations
- “**BUT**, I don’t do telemarketing...”
- Retailers performing Direct Mail and Online Marketing must look at their business practices to determine if the DNC rules apply
- Bottom Line: If retailers use the phone to reply to direct mail and online requests, the rules do apply



JA009479  
008309

# DNC and Direct Mail & Online Advertising

CONFIDENTIAL

- Good news = Most responses to direct inquiries are exempt from the rules
- Bad news = Exemption rules are complex and must be looked at closely
- If you are calling a direct inquiry that is on a do not call list:
  - Your call is exempt from federal rules for 90 days from the date of inquiry
  - BUT, 15 states limit the exemption period by having a shorter exemption period
  - And, inquiries must be checked against the company-specific DNC list prior to calling
- Retailers must take steps to comply when calling inquiries



JA009480  
008310

SLC\_ DNC\_Investigation\_0010083

TX 102-008742

# DNC and Direct Mail & Online Advertising

- Retailers must understand the permissible exemption periods for calls to inquiries from direct mail and online marketing
- Compliance checklist for retailers responding to inquiries:
  - Check numbers against the DISH specific DNC list prior to calling
  - Adhere to state and federal time limits for exempt calls
  - Adhere to Do Not Call status after exemptions expire
  - Collect and share requests to be placed on the DISH Network DNC list
  - Have a written DNC policy
  - Train employees on the DNC rules
  - Keep records on compliance activity
  - Be able to substantiate that all exempt calls are made within permissible calling periods



JA009481  
008311

# More Information

- FTC website
  - Info on Telemarketing Sales Rule
  - Info on National Do Not Call Registry
  - [www.telemarketing.donotcall.gov](http://www.telemarketing.donotcall.gov)
- FCC website
  - Info on Telephone Consumer Protection Act
  - [www.fcc.gov/cgb/donotcall](http://www.fcc.gov/cgb/donotcall)
- PossibleNOW website for DISH Network Retailers
  - Information on Echostar's DNC Program for DISH Network Retailers
  - Regulatory information and legal charts on all telemarketing requirements
  - [www.dncsolution.com/supplier/dishnetwork](http://www.dncsolution.com/supplier/dishnetwork)
- PossibleNOW Contact for Dish Network Retailers:
  - Guy Caldwell - Business Development Manager 770-255-1042  
[\*\*gcaldwell@possiblenow.com\*\*](mailto:gcaldwell@possiblenow.com)



JA009482  
008312

EXHIBIT 356

EXHIBIT 356

JA009483  
008313

TX 102-008745

**From:** Debi <debi@isattv.com>  
**Sent:** Tuesday, September 30, 2008 2:33 PM  
**To:** Van Emst, Blake <blake.vanemst@echostar.com>; Werner, Bruce <bruce.werner@echostar.com>; Musso, Reji <Reji.Musso@echostar.com>; Snyder, Serena <Serena.Snyder@echostar.com>; Bolivar, Elizabeth <Elizabeth.Bolivar@echostar.com>  
**Cc:** 'Jason Borup' <jason@isattv.com>; 'Skeeter Ellison' <skeeter@isattv.com>  
**Subject:** RE: Follow Up  
**Attach:** TCPA.DISH. 09 16 08 v2.xls

---

Hello All,

Attached is the updated TCPA violation list. We've added the affiliates (including the affiliates terminated) responsible for the violations. We apologize for the confusion.

We will have all TCPA violations eliminated within 45 days. I-Satellite will be the lead generator for all our call centers therefore we will have direct control of all of our offices.

Kind Regards,

Debi Adams  
Office Manager  
I-Satellite  
801.691.5521

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

**From:** Jason Borup [mailto:jason@isattv.com]  
**Sent:** Monday, September 29, 2008 5:03 PM  
**To:** 'Skeeter Ellison'; 'Debi'  
**Subject:** FW: Follow Up  
**Importance:** High

Debi,

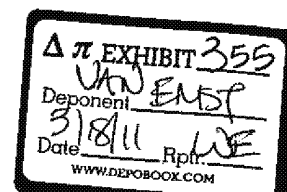
We need to be on this at 7am in the morning. We need detailed information on each and every complaint. We need to see which affiliate made each sale and who they were using for lead generation.

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

**From:** Musso, Reji [mailto:Reji.Musso@echostar.com]  
**Sent:** Monday, September 29, 2008 5:58 PM  
**To:** Jason Borup  
**Cc:** Van Emst, Blake; Werner, Bruce  
**Subject:** RE: Follow Up

Jason, it is important for us to know all of the info on the "bad" guys so we don't let people use them. although I'm familiar with some. So, the information requested includes what you have on them.

Screna is out today. She probably did have all she needed at the moment; however, since I was out of town, we generally review the information and we had not had a chance to do that. It is important for you to respond to each and every allegation. If she has more information than the e-mail from Debi, then I am unable to locate it.



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SLC\_ DNC\_Investigation\_0006797

TX 102-008746

If you could resend that would be great. Debi indicated that she had "soothed" the bulk of the complainants and we appreciate your attention to the consumers; however, I need to know all of the details i.e. where the lead came from, who made the call, when the call was made - how often were they called, etc. It really is to your advantage to share all that you have with us.

Also, as I mentioned on my call to Debi and Skeeter, which I thought you were going to attend, the Pre-Sale Disclosure issues are TOTALLY different than TCPA. While the Pre-Sales are concerning, and do indicate training opportunities with quality of sale, they are generated through written complaints to Attorneys General and Better Business Bureaus - unfavorable attention is called to I-Sat and that is not the attention that you want. You visited with Lori Kalani and I'm sure she stressed the importance of compliance.

We have connected these TCPA complaints to you through a variety of ways i.e. the consumer reporting your name (which may or may not be you) and the consumers setting up accounts or caller id's provided by you. As for the spreadsheet and the 16 that you feel you are not responsible for, I determined that we can hold you accountable for definitely 14 and possibly 15. We will further research the 1 that is unclear:

- \* 3 built accounts that would have been paid to I-Sat (dead giveaway)
- \* 1 of these accounts had a caller id of 616-980-2020 and linked I-Sat to 9 other complaints
- \* 1 of these, Mr. Deas, identified I-Sat and was subsequently contacted by you and I-Sat admitted to the call
- \* 1 of these was a caller identification you provided to me
- \* 1 indicates that the caller id was again provided by you - haven't been able to confirm the information - caller id is 949-469-2162
- \* 1 of these is unclear

I believe that all of these things combined indicate that you don't know who is doing what for you, regardless of intention. Just as the sting you did yourself - they were working for you and you didn't know it. That alone should have raised a red flag and caused some immediate attention to the whole of your business.

In any case, I am diligently going through the info I have. If there is additional information at this point, I would appreciate your resending to me. Providing the IP addresses to us is certainly a start in the right direction. One other thing, on the affiliate spread sheet you provided, the phone numbers are not the caller ids - if they are, they don't match any that you gave me in July. So we will definitely need those caller ids and who the caller ids belong to on all of the TCPA complaints.

Certainly seems as though there are a lot of reasons to get all of the

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SLC\_ DNC\_Investigation\_0006798  
TX 102-008747



information on the table. Doling out piece and parcel makes it look like you are not forthcoming.

By the way, Mr. Deas wants to know the call center that called him. He was told a call center in CA contacted him - he wants the name. It would probably be advantageous to provide that information as soon as possible.

I appreciate your attention to these requests. We can touch base tomorrow after you have had a chance to review the attached and to provide the additional information I requested on each and every TCPA complaint.

Reji J. Musso

Compliance Manager - Retail Services

DISH Network LLC

9601 S. Meridian Blvd.

Englewood, CO 80112

303.723.3262 (o) | 720.514.8288 (f)

<<mailto:reji.musso@echostar.com>>

---

From: Jason Borup [<mailto:jason@isattv.com>]  
Sent: Monday, September 29, 2008 3:08 PM  
To: Musso, Reji  
Subject: RE: Follow Up  
Importance: High

Reji,

I thought we submitted everything to you accurately?

From: Jason Borup [<mailto:jason@isattv.com>]  
Sent: Monday, September 29, 2008 1:06 PM  
To: 'Van Ernst, Blake'  
Subject: RE: Follow Up

When we spoke to Serena, she stated that she had everything. I will follow up and see if in fact they have everything.

We are getting IPs right now.

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SLC\_ DNC\_Investigation\_0006799  
TX 102-008748

Putting in business names right now as well. I put down affiliates from 2007 that we cut off. We aren't working with any of them anymore. 2006 we didn't work with any.

Jason

From: Van Ernst, Blake [<mailto:Blake.VanErnst@echostar.com>]  
Sent: Monday, September 29, 2008 12:30 PM  
To: Jason Borup  
Subject: RE: Follow Up

Jason,

Thanks. Reji is looking at the responses now but I believe that she'll want all of the detail on where the lead came from and my understanding is that it's not there. Reji will call you shortly.

On the contact information, we need ip addresses as well as information like business name as opposed to affiliate #1, etc. There appear to be no affiliates listed that you used in 2007 and 2006? Tom was clear that he wanted all of this information before we discuss any future decisions.

Thanks

Blake

---

From: Jason Borup [<mailto:jason@isattv.com>]  
Sent: Monday, September 29, 2008 8:55 AM  
To: Van Ernst, Blake  
Subject: RE: Follow Up

Ok.

1. You have.
2. It's attached except IP addresses, which we don't have yet and won't be able to get until we are back up and running. I can get those in

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SLC\_ DNC\_Investigation\_0006800  
TX 102-008749

matter of 1 day once we can sell again.

3. We sent them all the Reji last week. All are addressed.
4. You have.
5. You have.
6. You have. We are following the same strategy that we are with OE sales. The same rules apply.

Let me know if you need anything else ASAP.

Jason

From: Van Emst, Blake [<mailto:Blake.VanEmst@echostar.com>]  
Sent: Monday, September 29, 2008 8:28 AM  
To: Jason Borup  
Subject: Follow Up

Jason,

I think that we are still waiting on some detailed information on these items. These were my notes.

- 1) Churn: Provide specifics on how ISAT will address churn in the OE too as well as D2D business.
- 2) Affiliates: Provide a comprehensive list of affiliates ISAT uses and has used - Names, addresses, Dates of use, Caller IDs, IP addresses, owners etc.
- 3) TCPA Complaints: Respond to each TCPA complaint that has been responded to ISAT.
- 4) Controls: Documents concrete strategies ISAT will implement to stop complaints
- 5) Controls: Documents concrete strategies ISAT will implement to manage affiliate relationships in place and those anticipated.
- 6) Controls: Documents concrete strategies ISAT will implement to better manage D@D business.

I know that we missed each others calls this weekend.

Thanks

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008318

SLC\_ DNC\_Investigation\_0006801  
TX 102-008750

Blake

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.173 / Virus Database: 270.6.19/1664 - Release Date:  
9/29/2008 7:40 AM

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.173 / Virus Database: 270.6.19/1664 - Release Date:  
9/29/2008 7:40 AM

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.173 / Virus Database: 270.6.19/1664 - Release Date: 9/29/2008  
7:40 AM

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SLC\_ DNC\_Investigation\_0006802

TX 102-008751

# EXHIBIT 357

# EXHIBIT 357

**Do Not Call Compliance for DISH Network® Retailers  
Distributor Program Overview****Distributor Program Overview**

PossibleNOW has been providing Do Not Call services to Echostar and its DISH Network® Retailers since June 2007. As a recent enhancement to the service offering, PossibleNOW has created a special program for DISH Distributors. The program allows Distributors to offer an online Do Not Call application to its small Retailers at an affordable price. The application will provide the small Retailer with a complete set of tools to comply with the Do Not Call requirements of state and federal law and the DISH rules for Do Not Call. This includes the ability to check numbers against the DISH company-specific DNC list, the state and federal DNC lists, and to identify permissible calling periods for inquiries and previous transaction clients.

**Distributor Program Specifics**

- **DNCQuickcheck for Small Retailers**
  - Online Do Not Call application for small Retailers
  - Check Numbers vs. DNC lists – DISH, FTC, states
  - Add numbers to DISH company-specific DNC list
  - Complete training on DNC laws
  - Create, manage, and send DNC Policy to consumers
  - Access reports on compliance activity
  - Meet DISH requirements for DNC
  - Meet legislative requirements for DNC
- **Product Launch Support**
  - Marketing assistance to notify Retailers about the offer
  - Email announcement
  - Fax blast
- **Educational Support & Compliance Resource**
  - Webinar series on DNC rules
  - Compliance Q&A on business practices
  - Attendance and presentations at group meetings

**How It Works**

- 1) Distributor signs up for PossibleNOW's Distributor Program and receives a Security Code
- 2) Retailers sign up online for DNCQuickcheck using the Distributor Security Code
- 3) Retailers have access to DNCQuickcheck tools
- 4) Distributor will receive a monthly report of all participating Retailers
- 5) PossibleNOW will provide ongoing compliance and technology support to the Distributor and Retailers

**Pricing**

- **DISH Distributor Do Not Call Program = \$500 per month**
  - Security code for DNCQuickcheck
  - DNCInteractive account
  - Product Launch Support
  - Education and compliance resource Support
- **DNCQuickcheck for Retailers = \$120 one time fee**
  - 12 month license to DNCQuickcheck
  - Online sign up via security code
  - Credit card invoiced
  - Up to 2,000 numbers per month

EXHIBIT 358

EXHIBIT 358

JA009492  
008322

TX 102-008754

Message

---

**From:** Moskowitz, David [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=DAVID MOSKOWITZ]  
**Sent:** 11/4/2008 12:59:56 PM  
**To:** Culig, Kim [kim.culig@echostar.com]; Ehrhart, Brandon [brandon.ehrhart@echostar.com]  
**Subject:** Marked Drafts  
**Attachments:** Q3 DISH 102708 Audit 10-q oCTOBER 29, 2008.doc; SATS 10-Q NOVEMBER 2. 2008.doc

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008323

SLC\_ DNC\_Investigation\_0014812  
TX 102-008755



CONFIDENTIAL

# EXHIBIT 359

# EXHIBIT 359

CONFIDENTIAL

JA009494  
008324

**To:** Kalani, Lori[Lori.Kalani@echostar.com]  
**From:** Laslo, David  
**Sent:** Wed 11/12/2008 8:31:08 AM  
**Subject:** RE: Legal concerns on Sting Program  
Cay Fatima Brio.xls

**CONFIDENTIAL**

She states that she has received calls for five years now and the calls are targeted to Middle Eastern consumers. She is currently on the National and Internal Do Not Call lists. (Brio report attached)

On her previous complaints we were unable to identify where the calls were originating. She states the calls are harassing and frequently on a daily basis; stating she is uninterested in our service and has never created a lead. She was unable to provide any additional or new information on the recent calls. She is tired of this pattern and stated she wanted to be compensated for the calls.

I have provided a brief explanation on how our stings work; but requests to go over the legality of the process.

Thanks,  
David Laslo

---

**From:** Kalani, Lori  
**Sent:** Tuesday, November 11, 2008 4:02 PM  
**To:** Laslo, David  
**Subject:** RE: Legal concerns on Sting Program

Before I call her, please give me the details on when she received a telemarketing call and any details you have regarding her situation.

---

**From:** Laslo, David  
**Sent:** Tuesday, November 11, 2008 3:22 PM  
**To:** Kalani, Lori  
**Subject:** Legal concerns on Sting Program

Good afternoon Lori,

I have a consumer I need some assistance with. Cay Fatima needs some assurance in our Sting program before she participates!

Previously I was working with Denise in arranging a call but was unable to reach the consumer. I haven't spoken to Cay for a year or so till she reached me today. Would it be possible for you to contact Cay to address her legal concerns with our Sting program?

Contact Info:  
Cay Fatima  
516-766-4409  
[kma711@aol.com](mailto:kma711@aol.com)

I appreciate your help and please let me know if you have any questions.

Thanks,

**David Laslo** | Supervisor  
Executive Resolution Team | 720.514.8517  
TCPA and Fact Act Supervisor  
EchoStar Satellite L.L.C.  
dba DISH Network

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**JA009495**  
008325

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SLC\_ DNC\_Investigation\_0009941  
**TX 102-008757**

# EXHIBIT 360

# EXHIBIT 360

**To:** Kalani, Lori[Lori.Kalani@echostar.com]  
**From:** Metzger, Marciedes  
**Sent:** Tue 11/18/2008 10:51:00 PM  
**Subject:** Re: Do Not Call Sting Program

**CONFIDENTIAL**

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

Marciedes Metzger

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

**From:** Kalani, Lori  
**To:** Metzger, Marciedes  
**Sent:** Tue Nov 18 14:14:18 2008  
**Subject:** RE: Do Not Call Sting Program

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

---

**From:** Metzger, Marciedes  
**Sent:** Tuesday, November 18, 2008 2:12 PM  
**To:** Kalani, Lori  
**Subject:** RE: Do Not Call Sting Program

Gary Poch has did not reply at all to any of my emails. He is the one who stated he had a solid relationship with the VP of their Security Department. Cathy works with our CMO team and with our Internal Audit team. She is probably more motivated to help us.

---

**From:** Kalani, Lori  
**Sent:** Tuesday, November 18, 2008 2:08 PM  
**To:** Metzger, Marciedes  
**Subject:** RE: Do Not Call Sting Program

Thank you for the update.

---

**From:** Metzger, Marciedes  
**Sent:** Tuesday, November 18, 2008 2:08 PM  
**To:** Kalani, Lori  
**Subject:** FW: Do Not Call Sting Program

Cathy just got back to me. She states that she is working on our request but does not have an answer as of yet.

---

**From:** Cathy.Benigno@equifax.com [mailto:Cathy.Benigno@equifax.com]

**CONFIDENTIAL**

JA009497  
008327

SLC\_ DNC\_Investigation\_0009936

**TX 102-008759**

Sent: Tuesday, November 18, 2008 2:03 PM  
To: Metzger, Marciedes  
Subject: RE: Do Not Call Sting Program

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Thanks for the offer, I will let you know.

Cathy Benigno  
Office - 480 792 9066

"Metzger, Marciedes" <Marciedes.Metzger@echostar.com>

11/18/2008 12:38 PM

To

<Cathy.Benigno@equifax.com>

cc

Subject

RE: Do Not Call Sting Program

Cathy:

Thank you for the follow up. Would it help to set up a meeting with myself, our government affairs attorney, Lori Kalani, you, Gary and your someone from your Security Department? If you think that this would be helpful, let me know and I will be happy to arrange the meeting on my end.

Marcie Metzger

---

From: Cathy.Benigno@equifax.com [mailto:Cathy.Benigno@equifax.com]  
Sent: Tuesday, November 18, 2008 11:00 AM  
To: Metzger, Marciedes  
Subject: Re: Do Not Call Sting Program

Marci:

Didn't want you to think we'd forgotten you ... I'm following up on this.

**CONFIDENTIAL**

JA009498  
008328

SLC\_ DNC\_Investigation\_0009937  
TX 102-008760

"Metzger, Marciedes" <Marciedes.Metzger@echostar.com>

11/12/2008 03:02 PM

To

<Gary.Poch@equifax.com>

cc

<Cathy.Benigno@equifax.com>

Subject

Do Not Call Sting Program

Hi Gary,

I wanted to touch base regarding the Do Not Call Sting program that we discussed when you were here in Denver. Since we spoke last, one of our attorneys's suggested that I run a different proposal by you and see if it would be easier to accommodate on your end. He thought that it might be easier to have Equifax flag or look for credit checks that were run on our existing sting profiles and report back to DISH the merchant's name that ran the credit check on one of our sting profiles.

DISH would continue to create the profiles and load them in our internal credit qualification tool to return a false positive and allow the consumer to build the account through the telemarketer. If the telemarketer ran the credit outside of the DISH tools and Equifax was able to catch the credit check and provide us with the date, time and merchant's name, we would still be able to prove the telemarketer made the call to the consumer in violation of TCPA even though the account was not built.

Is this something that Equifax can do for us? Do you think this would be easier to facilitate from a security perspective than creating fictitious credit files to be used by DISH in their Do Not Call Sting program?

I have pasted below the language from our North Carolina AG settlement. There is similar language in a settlement agreement that we reached with the FTC. We also expect this language to be included in a multi state settlement agreement stemming from Retail Telemarketing violations committed by retailers without our knowledge or consent.

Let me know if this information will suffice or if you will need the actual settlement agreement documents to get the ball rolling.

The provision from the North Carolina AG settlement is as follows:

G EchoStar shall monitor, directly or through a third party monitoring service approved by EchoStar, its Covered Marketers to determine whether they are telemarketing North Carolina consumers and, if so, to determine whether they are complying with N.C.

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SLC\_ DNC\_Investigation\_0009938

TX 102-008761

Gen. Stat. § 75-100 et seq. and the Telemarketing Sales Rule. EchoStar has informed the Attorney General that it has had persons pose as potential subscribers in order to engage in "sting" type operations to determine if certain Covered Marketers are complying with its do not call policies. Among other things, EchoStar will continue engaging in such practices as part of the monitoring process described above

**CONFIDENTIAL**

Thank you,

Marciedes Metzger

General Manager

Executive Offices of DISH Network

Ph: 720-203-0171

Marciedes.metzger@echostar.com <mailto:Marciedes.metzger@echostar.com>

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**JA009500**  
008330

SLC\_ DNC\_Investigation\_0009939

**TX 102-008762**

# EXHIBIT 361

# EXHIBIT 361



**To:** 'bob@robertegan.com'[bob@robertegan.com]  
**From:** Kalani, Lori  
**Sent:** Wed 11/19/2008 6:18:25 PM  
**Subject:** DISH Network's sting program

**CONFIDENTIAL**

Mr. Egan:

I am following up on our earlier conversations regarding unwanted telephone calls you received from callers claiming to be DISH Network. DISH Network has not called either of your numbers (510-839-5695 and 510-839-5650). We have researched the caller ID numbers that you provided, and at this time, we are unable to determine who placed those calls to you.

In an effort to help stop illegal telemarketing calls, I urge you to participate in our sting program. Hundreds of people have participated in the program, and through those efforts, the program has been successful. If you would like to have more information on our sting program, please contact David Laslo at 720-514-8517.

Thank you,  
Lori

**Lori Kalani**  
**Director of Government Affairs and Senior Counsel**  
**DISH Network L.L.C.**  
**Legal Department**  
**9601 S. Meridian Blvd.**  
**Englewood, CO 80112**  
**Direct Dial: 720.514.5560**  
**Direct Fax: 303.723.2581**  
**Mobile: 703.338.8753**

***ATTORNEY/CLIENT AND WORK PRODUCT PRIVILEGES APPLY***

This electronic mail message contains information that (a) is or may be legally privileged, confidential, proprietary in nature, or otherwise protected by law from disclosure, and (b) is intended only for the use of the addressee named herein. If you are not the intended recipient, you are hereby notified that reading, using, copying or distributing any part of this message is strictly prohibited. If you have received this electronic mail message in error, please contact me immediately.

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**JA009502**  
008332

Confidential,

SLC\_ DNC\_Investigation\_0010050  
**TX 102-008764**

# EXHIBIT 362

# EXHIBIT 362

**To:** 'Leah Sees'[lsees@sbcglobal.net]  
**Cc:** Han, Bernie[Bernie.Han@echostar.com]; Dodge, Stanton[Stanton.Dodge@echostar.com]  
**From:** Ergen, Charlie  
**Sent:** Tue 12/2/2008 7:22:48 PM  
**Subject:** RE: Unwanted, illegal, annoying sales calls

**CONFIDENTIAL**

Dear Leah,

Thank you for your note. I can assure you that this is NOT Dishnetwork calling you. It is most likely a company or individual trying to 'flip' your account.

I would be most grateful if perhaps you would let us contact you and work with us to help discover who this person or company is. We will then take appropriate action against them.

Please let me know if it is ok to contact you. It would be tomorrow and I would need the phone number you would like us to call.

Thank you again for bringing this to my attention. We take this very seriously and want to solve this problem.

Charlie

---

**From:** Leah Sees [mailto:lsees@sbcglobal.net]  
**Sent:** Tuesday, December 02, 2008 4:02 PM  
**To:** Ergen, Charlie  
**Subject:** FW: Unwanted, illegal, annoying sales calls

Since I originally sent this email, I have received no less than TEN more calls from your outfit. I now consider this harrassment and hence have filed a formal complaint with the Texas Attorney General's office. I have also made an appointment with my attorney to speak about exploring other remedial alternatives.

---

**From:** Leah Sees [mailto:lsees@sbcglobal.net]  
**Sent:** Saturday, November 29, 2008 11:26 AM  
**To:** 'ceo@echostar.com'  
**Subject:** Unwanted, illegal, annoying sales calls

I have received several unwanted phone calls to 817-358-1940 from a number (888-285-9984) that I have discovered, via a web search, is a telemarketer working in your interest. Just to inform you, and whomever you have contracted for this service, I am on the national Do Not

Call list. Furthermore, I am not a subscriber to Dish Network, and thus have no working relationship with Echostar, I DO NOT have any type of business relationship with anyone who is contracted to you. I am keeping a record of the number of these calls and when they were placed. If these calls do not cease, I will seek legal means of dealing with this problem.

Thank you,

Leah Sees  
111 Glade Shadow Drive  
Euless, TX 76039

**CONFIDENTIAL**

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008334

Confidential

SLC\_DNC\_Investigation\_0009731  
Docket 81704 Document 2021-09043  
1X 102-008766

# EXHIBIT 363

# EXHIBIT 363

CONFIDENTIAL

Message

**From:** Rose, Lewis [LRose@KelleyDrye.com]  
**Sent:** 12/23/2008 5:21:19 PM  
**To:** Blum, Jeffrey [jeffrey.blum@echostar.com]; Kalani, Lori [lori.kalani@echostar.com]  
**CC:** Hutnik, Alysia [AHutnik@KelleyDrye.com]  
**Subject:** FW: Privileged and Confidential  
**Attachments:** proposed complaint to Rose December 23, 2008.pdf; proposed stipulated order to Rose December 23, 2008.pdf

Jeff and Lori:

Russ Deitch sent his holiday wishes in the form of the following email. I will look it over tomorrow and send you my thoughts.

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

Lew

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

**From:** Deitch, Russell S. [mailto:RDEITCH@ftc.gov]  
**Sent:** Tuesday, December 23, 2008 4:02 PM  
**To:** Rose, Lewis  
**Cc:** Ivens, Gary L.  
**Subject:** Privileged and Confidential

A proposed complaint against Dish Network has been forwarded to the Commission. You have an opportunity to submit your views in writing to the Commission. You may also request meetings with the Commissioners. It will be up to individual Commissioners, however, whether to grant such requests. If you chose to submit your views to the Commission in writing, a copy of any material submitted should be sent to me or Gary Ivens at the same time. If you have any questions, please feel free to contact me at 202-326-2585, or Gary Ivens at 202-326-2330.

I have attached a copy of the proposed complaint and proposed stipulated order.

Pursuant to Treasury Regulations, any U.S. federal tax advice contained in this communication, unless otherwise stated, is not intended and cannot be used for the purpose of avoiding tax-related penalties.

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CONFIDENTIAL

JA009506  
008336

SLC\_DNC\_Investigation\_0009900  
TX 102-008768

# EXHIBIT 364

# EXHIBIT 364

CONFIDENTIAL

Message

**From:** Blum, Jeffrey [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=USERS AND GROUPS/CN=CORPORATE/CN=RIVERFRONT/CN=JEFFREY.BLUM]  
**Sent:** 12/29/2008 10:53:20 AM  
**To:** Dodge, Stanton [stanton.dodge@echostar.com]  
**Subject:** FW: Privileged and Confidential  
**Attachments:** proposed complaint to Rose December 23, 2008.pdf; proposed stipulated order to Rose December 23, 2008.pdf

Fyi. We will update you after we chat with Lew.

---

**From:** Rose, Lewis [mailto:LRose@KelleyDrye.com]  
**Sent:** Tuesday, December 23, 2008 3:21 PM  
**To:** Blum, Jeffrey; Kalani, Lori  
**Cc:** Hutnik, Alysa  
**Subject:** FW: Privileged and Confidential

Jeff and Lori:

Russ Deitch sent his holiday wishes in the form of the following email.

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT

Lew

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

**From:** Deitch, Russell S. [mailto:RDEITCH@ftc.gov]  
**Sent:** Tuesday, December 23, 2008 4:02 PM  
**To:** Rose, Lewis  
**Cc:** Ivens, Gary L.  
**Subject:** Privileged and Confidential

A proposed complaint against Dish Network has been forwarded to the Commission. You have an opportunity to submit your views in writing to the Commission. You may also request meetings with the Commissioners. It will be up to individual Commissioners, however, whether to grant such requests. If you chose to submit your views to the Commission in writing, a copy of any material submitted should be sent to me or Gary Ivens at the same time. If you have any questions, please feel free to contact me at 202-326-2585, or Gary Ivens at 202-326-2330.

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**JA009509**  
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**TX 102-008771**



# EXHIBIT 365

# EXHIBIT 365

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January 21, 2009

**CONFIDENTIAL**  
**FOR SETTLEMENT PURPOSES ONLY**

**VIA OVERNIGHT DELIVERY**

The Honorable Jonathan Leibowitz  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room H-340  
Washington, DC 20850

**Re: Dish Network LLC**

Dear Commissioner Leibowitz:

We understand that the staff of the Bureau of Consumer Protection has forwarded its recommendation that the Commission file a complaint against Dish Network LLC ("Dish") for alleged violations of the Telemarketing Sales Rule ("TSR" or "Rule"), the Telephone Consumer Protection Act ("TCPA"), and California, Illinois, North Carolina, and Ohio state law. One of the main issues of dispute between Dish and the staff is the FTC's theory in this case on third party liability under the TSR. We believe the staff's theory raises serious legal issues, and, in anticipation of our meeting scheduled for later this month, we would like to explain our position on why this theory, as applied to Dish, would be dismissed in federal court.

In sum, the TSR only permits the FTC to hold an entity liable for the acts of a third party when the FTC can prove that the entity caused the third party to violate the Rule, or where the entity provided substantial assistance to the third party while it knew or consciously avoided knowledge of the third party's telemarketing violations. Here, the facts alleged in the complaint fail to satisfy either of these threshold requirements on third-party liability.

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Confidential/

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TX 102-008773

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Rather, the complaint asserts that Dish generally engaged in business with third-party entities, and, on that basis, knew or should have known whether these entities were telemarketing, and exactly how so. That is not the legal standard for holding one party legally and financially liable for the conduct of independent third parties, and the TSR does not authorize the FTC to hold Dish liable for the independent dealers' conduct based on such general allegations.

**I. The Complaint's Allegations on Third Party Liability**

In relevant part, on causation, the FTC's complaint alleges that:

*Since on or about October 1, 2003, Defendant DISH Network caused the Marketing Dealers to engage in violations of the Amended TSR through a variety of acts or practices, including, but not limited to: (1) directly or indirectly offering to provide or providing financial payments for sales of Dish Network programming; (2) entering into relationships whereby the Marketing Dealers marketed on behalf of DISH Network; or (3) by directly or indirectly offering to provide or providing financial payments for sales of Dish Network programming, or by entering into relationships whereby the Marketing Dealers marketed on behalf of DISH Network, and failing to monitor and enforce compliance with the Amended TSR.<sup>1</sup>*

With respect to providing "substantial assistance" while knowing or consciously avoiding knowledge of retailer violations, the FTC's complaint alleges that:

*Defendant DISH Network has provided substantial assistance to the Marketing Dealers by, directly or indirectly, including but not limited to, making financial payments to the Marketing Dealers, allowing the Marketing Dealers to market DISH Network goods or services, allowing the Marketing Dealers to use the Dish Network trade name or trademark, entering into contracts with consumers contacted by the Marketing Dealers, collecting money from consumers contacted by the Marketing Dealers, providing services to consumers contacted by the Marketing Dealers, in some cases, granting some authorized dealers the right and ability to conduct business through DISH Network's Order/Entry System,*

<sup>1</sup> Compl. at ¶ 58 (emphasis added).

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*and in some cases, providing installers so that consumers can receive Dish Network programming.*<sup>2</sup>

Based primarily on these factual allegations, the complaint, in relevant part, asserts that (1) Dish initiated, or “caused a telemarketer” to initiate, outbound telephone calls that violated the National Do Not Call Registry; (2) Dish initiated or “caused telemarketers” to abandon outbound telephone calls in violation of the TSR; and that (3) Dish provided substantial assistance and support to independent dealers, even though Dish “knew or consciously avoided knowing” that they were engaged in TSR violations.<sup>3</sup>

Under the TSR and all published interpretations of the Rule by the Commission, these allegations are not sufficient to demonstrate that Dish caused or provided substantial assistance and support to independent dealers engaged in any act or practice in violation of the TSR.

## **II. The TSR Does Not Support the FTC’s Theory on Third Party Liability**

The TSR sets forth specific, limited circumstances for third-party liability under the Rule: (1) when a seller “cause[s] a telemarketer to engage” in a TSR violation, or (2) when a person provides “substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing [by deliberately ignoring] that the seller or telemarketer is engaged in any act or practice that violates” specified provisions of the Rule (*i.e.*, assisting and facilitating the violation). 16 C.F.R. §§ 310.4(b) and 310.3(b)(1).

Joint and several liability, a general assertion that Dish “caused” others to violate the Rule without facts demonstrating such causation, and a general assertion that Dish knew or consciously avoided knowing of third party violations without facts showing how Dish deliberately ignored unlawful telemarketing practices, are not sufficient to establish third-party liability or survive a motion to dismiss.

<sup>2</sup> Compl. at ¶ 52 (emphasis added).

<sup>3</sup> Compl. at ¶¶ 63 - 65.

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**A. The TSR Explicitly Excludes Joint and Several Liability on Sellers and Telemarketers**

By seeking to impose liability upon Dish for the actions of independent dealers, the staff attempts to impose a standard of liability under the Rule that Congress never intended and that the Commission expressly rejected. The Rule specifically enumerates the circumstances in which a seller is liable for a telemarketer. Those circumstances do not exist here.

When it promulgated the Rule, the Commission twice explained that the Rule's authorizing statute, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), does not make sellers jointly and severally liable for the actions of their telemarketers. In its Revised Notice of Proposed Rulemaking, ("RNPRM") the Commission explained:

*The Commission finds nothing in the statute or legislative history to support the view that it is the intent of Congress to impose joint and several liability between a seller and telemarketer. Nor does the Commission intend such a result.*<sup>4</sup>

The Commission reiterated its position in its Statement of Basis and Purpose accompanying the original Rule ("SBP for the Original Rule"). There, it again explicitly stated:

*The Commission declines to read joint and several liability for sellers and telemarketers into the Telemarketing Act.*<sup>5</sup>

This declaration justified the Commission's rejection of a suggestion that easing the burden of proof in prosecutions of Rule violations thereby makes sellers and telemarketers jointly liable for the actions of the other.<sup>6</sup> The Commission refused to impose vicarious liability. If prosecutors seek to implicate a seller for a telemarketer's

<sup>4</sup> 60 Fed. Reg. 30406, 30411 (June 8, 1995) (emphasis added).

<sup>5</sup> 60 Fed. Reg. 43842, 43845 (Aug. 23, 1995). See also David O. Bickart, *Civil Penalties under Section 5(m) of the Federal Trade Commission Act*, 44 U. Chi. L. Rev. 761, 789 (1976) ("The legislative history of section 5(m) . . . does not support the proposition that defendants not directly subject to a cease and desist order may be held strictly liable.").

<sup>6</sup> 60 Fed. Reg. 43842, 43844-45 (Aug. 23, 1995).

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violations of the Rule, the Commission responded, specific provisions of the rule would apply:

*[T]he assisting and facilitating provisions in § 310.3(b) of the Rule more appropriately provide a basis for [such] an action.<sup>7</sup>*

Accordingly, the Commission has staked out clear boundaries regarding vicarious liability under the Rule. The Commission has not imposed – and the Rule does not impose – vicarious liability. Instead, liability depends on culpable, conscious actions of the defendant. Absent a showing that (1) Dish “caused” the dealers to violate the Rule, or that (2) Dish “assisted and facilitated” the dealers in their alleged violations of the Rule, there can be no liability for Dish for the actions of the dealers.

**B. A Seller Must “Cause” the Telemarketer’s Violations**

The Commission has never formally defined or provided any published guidance that it views the term “cause,” as it is used in the TSR, to mean that a seller can be held strictly liable for violations by a telemarketer when the seller has done nothing more than generally engage in business with another seller who may, on its own time, using its own resources, potentially telemarket on its own accord. Despite this lack of definition, the Staff here is suggesting that “cause,” as used in 16 CFR § 310.4(b)(1), could establish direct liability for a seller, such as Dish, for the actions of a third-party telemarketer, when Dish did not know of such conduct, direct it, or provide assistance resulting in the conduct.

The section of the Rule in question, 310.4(b)(1), falls under the heading “Pattern of Calls” and states:

*It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct . . . (emphasis added).*

While “cause” is not explicitly defined in the history of the Rule, a single example of “cause” is given and the term is used a few other times in the various documents issued by the Commission in the course of the rulemaking process. Neither the example provided, nor the other uses of “cause,” indicate that the Commission intended a strict

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<sup>7</sup> *Id.* at 43845.

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liability standard, or a joint and several liability standard when it promulgated the TSR. Under the TSR, based on the history of the Rule, “cause” means active conduct, such as *directing another person to; or providing the instrument to; or triggering the mechanics for violating the Rule*. Relevant examples might include *making calls that violate the Rule, sending bills that violate the Rule, or directing another person to violate the Rule*.

1. *Cause means providing the instrument to violate the Rule, such as a list of phone numbers that should not be called*

The Commission’s only specific example of how a seller can “cause” a telemarketing to make violation calls appears in the Notice of Proposed Rulemaking for the original Rule. Under the heading “Pattern of Calls,” the Commission states:

*Section 310.4(b) of the proposed rule deals with repeated telemarketing calls, and calls to persons who have indicated an unwillingness to receive such calls. This section prohibits a telemarketer from engaging in such calls, or a seller from causing a telemarketer to engage in such calls.<sup>27</sup> Specifically, this Section states that it is an abusive act or practice and a violation of the rule to call a person’s residence to offer, offer for sale, or sell, on behalf of the same seller, the same or similar goods or services more than once within any three-month period.<sup>8</sup>*

Footnote 27 explained “A seller may cause a telemarketer to engage in such calls by providing the telemarketer with a customer contact list that includes customers that should not be called.” *Id.* (emphasis added).

The example provided by the Commission is clear: if a seller provides the instrument that results in a call to a number that should not be receiving such a call, the seller is responsible, even if the seller was unaware that particular number was on the list. The Commission appeared intent on holding sellers responsible for their actions, and providing a list that was not scrubbed or a list that was known to have bad numbers on it falls under the concept of “cause.” The example provided by footnote 27, while perhaps not exclusive, does not place a seller at risk for strict liability for the unknown, unprompted, unassisted actions of a telemarketer.

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<sup>8</sup> Notice of Proposed Rule Making, 60 FR 8313, 8318 (Feb. 14, 1995) (emphasis added) (citation omitted).



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2. *Cause means directing another person to violate the Rule*

In its discussion of Section 310.4(b)(1)(iii) in the SBP to the Final Amended Rule, the Commission explains a seller may not escape liability under the Rule if, through a third party, that seller denies a consumer's request to be placed on a do-not-call list. The Commission explains as follows:

*Therefore, the Commission has determined that it is an abusive telemarketing act or practice to deny or interfere in any way with a person's right to be placed on a "do-not-call" list, including hanging up on the individual when he or she initiates such a request. Section 310.4(b)(1)(ii) of the amended Rule prohibits this practice, and encompasses both telemarketers soliciting the purchase of goods or services and those soliciting charitable contributions in accordance with the USA PATRIOT Act amendments. In addition, § 310.4(b)(1)(ii) prohibits anyone from directing another person to deny or interfere with a person's right to be placed on a "do-not-call" list. This aspect of the provision is intended to ensure that sellers who use third-party telemarketers cannot shield themselves from liability under this provision by suggesting that the violation was a single act by a "rogue" telemarketer where there is evidence that the seller caused the telemarketer to deny or defeat "do-not-call" requests.<sup>9</sup>*

The language used by the Commission is clear: a seller who is found "directing" telemarketers to deny do-not-call requests will be regarded as having "caused" the denial. But it is not enough simply to have engaged the telemarketer generally for business purposes unrelated to any unlawful conduct for liability to attach to the seller. Nor is a cause of action warranted if a seller simply compensates a telemarketer for the sales it solicits if the seller has no knowledge and there are no obvious signs to the seller that the telemarketing practices were conducted unlawfully. Every telemarketer derives compensation by offering goods or services of some seller. To find a seller in violation of the Rule, there must be evidence of an affirmative action, such as "directing" the denial or interference. Contrary to the staff's assertions in this case, the Commission acknowledged that sellers will not be held strictly liable for the violations of a "rogue" telemarketer.

<sup>9</sup> Final Amended Rule, 68 FR 4580, 4628 (Jan. 29, 2003) (emphasis added).



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3. *Causing means triggering the mechanics that literally make telephones ring*

In the SBP for the Final Amended Rule, the Commission discussed abandoned calls and the Safe Harbor for abandoned calls, definitively clarifying that, even if a telemarketer hangs up on a consumer before speaking with the consumer, thus subjecting the consumer to "dead air," this will be classified as an "outbound telephone call."<sup>10</sup> In rejecting the proposal by some industry commenters that abandoned calls were not outbound telephone calls, the Commission explained that such an interpretation would allow for calls that did not contain a sales pitch to not be considered outbound telephone calls. That interpretation would run counter to the "overall purpose and intent of the Rule," the Commission stated. As relevant to the Staff's use of "cause" in this case, the Commission explained that "*A telemarketer initiates a telephone call by causing the called consumer's telephone to ring.*"<sup>11</sup>

Thus, the Commission again uses the verb "cause" in a manner that underscores direct action relative to the unlawful call, and in doing so, puts telemarketers on notice that complete dialing of actual phone numbers is an outbound call. The Commission does *not* state in the SBP for the Final Amended Rule, as the Staff appears to imply, that engaging generally in business with another entity in a manner that is not related to any unlawful practices, and does not involve providing the mechanics that make unlawful outbound calls ring, is the same as "causing" unlawful outbound telephone calls.

4. *Cause means conduct, such as abandoning calls*

The FTC has amended the TSR since the publication of the Final Amended Rule. In one of these amendments, the Commission created an additional safe harbor provision in connection with abandoned calls.<sup>12</sup> In the course of determining that some of the provisions of the Section 310.4(b)(1)(iv) were overly restrictive and were not addressing the problems they were intended to solve, the Commission states that it "*now believes that under certain limited circumstances, enforcement of the call abandonment provision would serve only to deter conduct that does not cause the harms to consumers that prompted adoption of that provision.*"<sup>13</sup>

<sup>10</sup> 68 FR 4580, 4642 (Jan. 29, 2003).

<sup>11</sup> *Final Amended Rule*, 68 FR 4580, 4643 (Jan. 29, 2003) (emphasis added).

<sup>12</sup> *Notice of Proposed Rule Making*, 69 FR 67287 (Nov. 17, 2004).

<sup>13</sup> 69 FR 67287, 67290 (emphasis added).