



## Investigations Update

Internal Audit participated in the investigation of the following **MySafeWorkplace** complaints filed since the previous audit committee meeting:

MSW #	Issue	Location	Status	Results/Recommendations
09-090	Policy Violation - Tuition Reimbursement	Corporate - Meridian	Closed	Complaint is unsubstantiated. All policy exceptions were thoroughly reviewed and approved at the appropriate time including business justification along with HR, Finance, and CEO approval.

### **EL Paso Receiver Theft Case:**

An investigation was completed at the **El Paso CSC** facility that identified two employees involved in a scheme to defraud DISH network. The employees stole 319 receivers over an 18-month period by creating equipment return authorizations using existing customer accounts and modifying the shipment address to one of three personal or related party addresses. It is believed that many of the receivers were sold on eBay. The employees were terminated and the El Paso Police Department is considering filing numerous charges.

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

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## Staffing Update

### Vision:

- Upgrade talent at all levels within the group.
- Focus on hiring a few new MBAs with several years of experience in finance-related roles.
- Working actively with DISH University Relations team to develop long-term relationships with previously untapped upper tier programs.
- Job descriptions have been rewritten to more accurately reflect IA's value-adding role, attract high-potential candidates and sell the benefits of working for DISH Internal Audit.
- Long-term view is to utilize Internal Audit Department as an informal management training ground and rotate staff into finance, IT and operations.

### Headcount Summary:

IA Staff as of May 1, 2009	19
Terminations	(4)
Transfers	(3)
	12
New Hires (prior year interns)	2
Open positions being recruited*	6
Projected Staff Size	20

\* Positions include both staff auditors and managers.

# EXHIBIT 390

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**DISH NETWORK CORPORATION**

**Regular Meeting of the Board of Directors**

August 4, 2009

A regular meeting of the board of directors (the "Board of Directors") of DISH Network Corporation (the "Corporation"), was held on August 4, 2009 at 1:00 p.m., prevailing Mountain Time, at the Corporation's headquarters located at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

The following members of the Board of Directors participated:

Charles W. Ergen  
Cantey M. Ergen  
James DeFranco  
David K. Moskowitz  
Carl E. Vogel  
Steven R. Goodbarn  
Tom A. Ortolf  
Gary S. Howard

Also participating at various times during the meeting at the invitation of the Chairman of the Board of Directors were R. Stanton Dodge, Executive Vice President, General Counsel and Secretary of the Corporation; Mr. Thomas A. Cullen, Executive Vice President – Programming, Sales and Marketing for the Corporation (*present for item 6 only*); Rex Povenmire, Vice President – Corporate Initiatives (*present for item 2 only*); Brandon E. Ehrhart, Vice President, Associate General Counsel and Assistant Secretary of the Corporation; Scott Miller, a partner in Sullivan and Cromwell LLP's Securities and Corporate Governance Group (*present for item 2 only*); and Dan Dufner, a partner in Linklaters LLP's U.S. Corporate Practice Group (*present for item 2 only*).

*Call to Order*

Mr. Charles W. Ergen, President and Chief Executive Officer of the Corporation and Chairman of the Board of Directors, called the meeting to order and presided. Mr. Dodge acted as Secretary of the meeting and Mr. Ehrhart acted as Assistant Secretary of the meeting.

*Notice and Quorum*

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

*Discussion Matters*



ITEM 1. APPROVAL OF MINUTES AND SIGNING OF CONSENTS

Mr. Dodge explained that draft minutes of the Regular Meeting of the Board of Directors held on May 5, 2009 and the minutes of the Annual Meeting of the Board of Directors held on May 11, 2009 were attached as Exhibits 1A and 1B, respectively, to the board book for the meeting.

After discussion and deliberation, upon motion duly made and seconded, the following resolution was unanimously adopted:

NOW, THEREFORE, BE IT RESOLVED, that the minutes of the Regular Meeting of the Board of Directors of DISH Network Corporation (the "Corporation") held on May 5, 2009 and the minutes of the Annual Meeting of the Board of Directors of the Corporation held on May 11, 2009, in substantially the form attached as Exhibits 1A and 1B, respectively, to the board book for the meeting be, and they hereby are, approved, ratified and confirmed in all respects.

ITEM 2. REG. S-K ITEM 404 "RELATED PERSON" TRANSACTIONS

Mr. Dodge reviewed certain new potential SEC Reg. S-K, Item 404 "Related Person" transactions, Nevada Revised Statutes §78.140 transactions and "Sensitive" transactions, as defined by the 2005 Audit Committee Recommendations to generally mean: (i) any non-ordinary course transaction in which the amount involved exceeded \$5,000,000; (ii) related party transactions; (iii) transactions of a highly confidential nature; (iv) transactions which grant exclusive rights or most favored nations status to any third party; or (v) any other transaction which in the judgment of the Board of Directors should reasonably be considered sensitive.

Mr. Dodge explained that the Corporation and/or its subsidiaries are considering entering into the following agreements and amendments to existing agreements with EchoStar Corporation ("SATS") and/or its subsidiaries: (i) amendments to certain commercial lease agreements by and between SATS and DISH Network L.L.C. ("DNLLC"), a wholly owned subsidiary of the Corporation, to extend the duration and adjust the rent for the leases covering the properties located at 90 Inverness Circle East, 9601 S. Meridian Blvd., and 5701 S. Santa Fe Drive; (ii) amendments to the Satellite Transponder Services Agreements for Echo III, Echo VIII, and Echo XII by and between SATS and DNLLC dated December 31, 2007, to extend the duration and revise pricing; (iii) enter into a purchase agreement pursuant to which the Corporation will purchase SATS' CMBStar launch vehicle; (iv) enter into an agreement pursuant to which the Corporation or one of its subsidiaries will pay SATS a slot fee for the right to utilize the Echo XVI satellite at the 61.5° W. L. orbital position; (v) enter into a Satellite Transponder Services Agreement for Echo I pursuant to which SATS will lease capacity on Echo I from the Corporation (items (ii), (iii), (iv) and (v) collectively being the "Proposed Satellite Transactions"); (vi) enter into a professional services agreement pursuant to which SATS will continue to have the right to receive certain services currently provided under that certain Transition Services Agreement between the Corporation and DISH dated December 31, 2007, and pursuant to which the Corporation will continue to have the right to receive the services currently provided under that certain Services Agreement by and between SATS and the Corporation dated December 31, 2007, and that certain Satellite Procurement Agreement by and

between EchoStar Technologies L.L.C. ("ETLLC"), a wholly owned subsidiary of SATS, and EchoStar Orbital II L.L.C., a wholly owned subsidiary of the Corporation, dated December 31, 2007; (vii) enter into a programming and trademark license agreement by and between SATS and the Corporation pursuant to which the Corporation will provide certain programming services to SATS for its Taiwanese joint venture and will provide a license for SATS to use the DISH name and trademarks; (viii) an amendment to the Remanufactured Receiver Agreement by and between ETLLC and DNLLC dated December 31, 2007, to extend the duration, the terms and conditions of which were more fully described in the spreadsheet and supporting materials attached as Exhibit 3A to the board book of the meeting (items (i) through (viii) collectively being the "Proposed SATS Transactions" and items (i), (vi), (vii) and (viii) collectively being the "Approved SATS Transactions").

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

**AC/WP**

A summary of Mr. Miller's presentation was distributed at the meeting. Mr. Miller walked the members of the Board of Directors through his presentation and responded to several questions. Mr. Miller then left the meeting.

After further discussion among the members of the Board of Directors and the members of management present at the meeting, the following terms and conditions for allocation were proposed: (i) the Corporation shall indemnify, defend and hold SATS and its subsidiaries harmless for any and all liabilities and costs of defense arising out of or relating to the litigation with Tivo, including any litigation arising from any further design-around; (ii) SATS shall pay the Corporation an amount equal to its \$5,000,000 intellectual property liability limit under that certain Receiver Agreement between SATS and the Corporation, dated December 31, 2007 (the "Receiver Agreement"); provided that, such \$5,000,000 payment shall not exhaust SATS' potential liability under the Receiver Agreement for other intellectual property claims; (iii) both the Corporation and SATS shall jointly own (50/50) any intellectual property developed in connection with any further design-around and shall have a royalty-free, perpetual license to use such intellectual property with any manufacturer; provided that, the Corporation and SATS each pay one-half of the sustaining engineering costs of such design-around (collectively, the "Tivo Transaction").

Mr. Dufner then led a discussion regarding management's proposal for a waiver of potential conflicts and consent to continued representation in connection with the prior and proposed continued representation of the Corporation and SATS by the Corporation's in-house Legal Department (the "Conflict Waiver and Consent to Continued Representation"). A summary memorandum of Mr. Dufner's presentation was distributed at the meeting. Mr. Dufner walked the members of the Board of Directors through that memo and discussed, among other things, certain ways that potential conflicts could have adverse effects on the interests of the Corporation including, without limitation, certain types of conflicts that may arise and the risks involved therewith, certain types of future representations that may arise, certain implications of common representation with SATS, including possible effects on loyalty, confidentiality and the attorney-client privilege, and the advantages and risks involved. Mr. Dufner and Mr. Dodge then responded to several questions.

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Mr. Povenmire then led a discussion regarding the review of the Proposed Satellite Transactions, noting, among other things, the rationale behind the proposed \$175,000 per transponder per month rate under certain of the Proposed Satellite Transactions.

Mr. Dodge further explained that, during 2009 the Corporation (or one of its subsidiaries) expected to continue to employ Mr. Paul Ortolf, the son of Mr. Tom A Ortolf, a member of the Board of Directors (the "Ortolf Transaction"), and that the Corporation (or one of its subsidiaries) expected to pay him approximately \$41,000 during 2009.

Mr. Dodge further explained that, during 2009 the Corporation (or one of its subsidiaries) expected to continue to employ Ms. Courtland Wood Colantonio, the daughter of Mr. Stephen Wood, Executive Vice President of Human Resources for the Corporation (the "Wood Transaction"), and that the Corporation (or one of its subsidiaries) expected to pay her approximately \$35,000 during 2009.

*ADJOURNMENT*

*Upon motion duly made and seconded, the meeting was adjourned at 2:00 p.m. in order for a meeting of those members of the Board of Directors who are not also members of the Board of Directors of SATS, Mr. James DeFranco, Mr. Carl E. Vogel, Mr. Steven R. Goodbarn and Mr. Gary S. Howard and a meeting of the Audit Committee.*

*CONTINUATION*

*Following the meeting of those members of the Board of Directors who are not also members of the Board of Directors of SATS and the meeting of the Audit Committee, the meeting was reconvened at 2:15 p.m.*

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted:

WHEREAS, the Proposed SATS Transactions, the Tivo Transaction, the Conflict Waiver and Consent to Continued Representation, the Ortolf Transaction and the Wood Transaction may potentially be considered related party transactions under SEC Regulation S-K, Item 404, Nevada Revised Statutes §78.140 transactions and/or "Sensitive" transactions and therefore, out of an abundance of caution, the Board of Directors has been asked to review such transactions; and

***Approved SATS Transactions and Tivo Transaction***

WHEREAS, (a) management, those members of the Board of Directors who are not also members of the Board of Directors of SATS, Mr. James DeFranco, Mr. Carl E. Vogel, Mr. Steven R. Goodbarn and Mr. Gary S. Howard, and the Audit Committee have found, and recommended that the Board of Directors find, that the Approved SATS Transactions and the Tivo Transaction are fair to the Corporation and its subsidiaries; and (b) Messrs. DeFranco, Vogel, Goodbarn and

Howard, and the Audit Committee have approved, and recommended that the Board of Directors approve, the Approved SATS Transactions and the Tivo Transaction on substantially the same terms and conditions described in the spreadsheet and supporting materials attached as Exhibit 3A to the board book for the meeting and as set forth above, respectively, with such non-material modifications, changes, or amendments to such terms and conditions as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation (each, a "proper officer" and collectively, the "proper officers"), or any one of them, shall in their discretion approve;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of management, Messrs. DeFranco, Vogel, Goodbarn and Howard and the Audit Committee regarding the Approved SATS Transactions and the Tivo Transaction; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with Mr. Miller, the General Counsel of the Corporation and other members of management, and upon such other inquiries and other matters as are deemed appropriate or relevant by the Board of Directors, the Board of Directors hereby finds, that the Approved SATS Transactions and the Tivo Transaction are fair to the Corporation and its subsidiaries; and further

RESOLVED, (a) that the Approved SATS Transactions and the Tivo Transaction be, and they hereby are, approved on substantially the same terms and conditions described in the spreadsheet and supporting materials attached as Exhibit 3A to the board book for the meeting and as set forth above, respectively, with such non-material modifications, changes, or amendments to such terms and conditions as the proper officers, or any one of them, shall in their discretion approve; and (b) that the consummation of such transactions by any proper officer, with such non-material modifications, changes, or amendments to the terms and conditions of the Approved SATS Transactions and the Tivo Transaction as any proper officer shall approve, shall constitute conclusive evidence that such transactions have been approved hereby; and further

***Conflict Waiver and Consent to Continued Representation***

WHEREAS, the Corporation is an experienced user of the legal services performed by the Corporation's in-house Legal Department;

WHEREAS, as a result of providing representation to the Corporation and its subsidiaries and to SATS and its subsidiaries, the Corporation's in-house Legal Department could face potential concurrent conflicts of interest (each, a "Potential Conflict");

WHEREAS, management, those members of the Board of Directors who are not also members of the Board of Directors of SATS, Messrs. DeFranco, Vogel,

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Goodbarn and Howard, the Audit Committee and the Board of Directors have been made aware of the relevant circumstances and of the material and reasonably foreseeable ways that Potential Conflicts could have adverse effects on the interests of the Corporation including, without limitation, the nature of the Potential Conflicts and the nature of the risks involved therewith, types of future representations that may arise, the implications of common representation with SATS, including possible effects on loyalty, confidentiality and the attorney-client privilege, and the advantages and risks involved; and

WHEREAS, (a) management, Messrs. DeFranco, Vogel, Goodbarn and Howard, and the Audit Committee have approved, and recommended that the Board of Directors approve, a waiver of Potential Conflicts (the "Conflict Waiver"); and (b) management, Messrs. DeFranco, Vogel, Goodbarn and Howard, and the Audit Committee have granted, and recommended that the Board of Directors grant, their consent to the continued representation of the Corporation and its subsidiaries by the Corporation's in-house Legal Department in the event that a concurrent conflict of interest arises within the meaning of Rule 1.7 of the Colorado Rules of Professional Conduct or §10.66 of the Patent and Trademark Office Code of Professional Responsibility (the "Consent to Continued Representation"); provided that, in the case of both (a) and (b) above, the Corporation's in-house Legal Department lawyers providing legal services with respect to a matter for which a Potential Conflict has arisen reasonably believe that they will be able to provide competent and diligent representation to each affected client with respect to such matter; and provided further that, in the case of both (a) and (b) above, such representation is not prohibited by law and such representation does not involve the assertion of a claim by either the Corporation (or any of its subsidiaries) or SATS (or any of its subsidiaries) against the other in the same litigation or other proceeding before a tribunal;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of management, Messrs. DeFranco, Vogel, Goodbarn and Howard and the Audit Committee regarding the Conflict Waiver and Consent to Continued Representation; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with Mr. Dufner, the General Counsel of the Corporation and other members of management, and upon such other inquiries and other matters as are deemed appropriate or relevant by the Board of Directors, the Board of Directors hereby approves, ratifies and confirms the Conflict Waiver and hereby grants its Consent to Continued Representation; provided that the Corporation's in-house Legal Department lawyers providing legal services with respect to a matter for which a Potential Conflict has arisen reasonably believe that they will be able to provide competent and diligent representation to each affected client with respect to such matter; and provided further that such representation is not prohibited by law and such representation does not involve the assertion of a claim by either the Corporation (or any of its subsidiaries) or

SATS (or any of its subsidiaries) against the other in the same litigation or other proceeding before a tribunal; and further

RESOLVED, that any and all actions previously taken by the Corporation's in-house Legal Department in connection with its representation of the Corporation and its subsidiaries and SATS and its subsidiaries within the terms of the foregoing resolutions be, and the same hereby are, ratified, confirmed and approved in all respects; and

***Ortolf Transaction***

WHEREAS, (a) the Audit Committee has found, and recommended that the Board of Directors find, that the Ortolf Transaction is fair to the Corporation and its subsidiaries, provided Mr. Paul Ortolf's employment compensation does not exceed \$45,000 in 2009; (b) the Audit Committee has waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the Ortolf Transaction; and (c) the Audit Committee authorized, ratified and adopted in all respects, and recommended that the Board of Directors authorize, ratify and adopt, the Ortolf Transaction, provided Mr. Paul Ortolf's employment compensation does not exceed \$45,000 in 2009; and

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Ortolf Transaction; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with the General Counsel of the Corporation and upon such other matters as are deemed relevant by the Board of Directors, the Board of Directors hereby finds that the Ortolf Transaction is fair to the Corporation and its subsidiaries, provided Mr. Paul Ortolf's employment compensation does not exceed \$45,000 in 2009; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the Ortolf Transaction; and further

RESOLVED, that the Board of Directors hereby authorizes, ratifies and adopts in all respects the Ortolf Transaction; provided Mr. Paul Ortolf's employment compensation does not exceed \$45,000 in 2009; and further

***Wood Transaction***

WHEREAS, (a) the Audit Committee has found, and recommended that the Board of Directors find, that the Wood Transaction is fair to the Corporation and its subsidiaries, provided Mrs. Courtland Wood Colantonio's employment compensation does not exceed \$40,000 in 2009; (b) the Audit Committee has



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waived, and recommended that the Board of Directors waive, any conflict of interest (whether actual or potential) in connection with the Wood Transaction; and (c) the Audit Committee authorized, ratified and adopted in all respects, and recommended that the Board of Directors authorize, ratify and adopt, the Wood Transaction, provided Mrs. Courtland Wood Colantonio's employment compensation does not exceed \$40,000 in 2009; and further;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendations of the Audit Committee regarding the Wood Transaction; and further

RESOLVED, that based upon the information received by the Board of Directors, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Board of Directors, the Board of Directors hereby finds that the Wood Transaction is fair to the Corporation and its subsidiaries, provided Mrs. Courtland Wood Colantonio's employment compensation does not exceed \$40,000 in 2009; and further

RESOLVED, that the Board of Directors hereby waives any conflict of interest (whether actual or potential) in connection with the Wood Transaction; and further

RESOLVED, that the Board of Directors hereby authorizes, ratifies and adopts in all respects the Wood Transaction; provided Mrs. Colantonio's employment compensation does not exceed \$40,000 in 2009; and further

***General Enabling Resolutions***

RESOLVED, that the proper officers of the Corporation and its subsidiaries, be and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation and its subsidiaries, and under their corporate seals or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to enable the Corporation and its subsidiaries to accomplish the purposes and to carry out the intent or the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers of the Corporation and its subsidiaries within the terms of the foregoing resolutions be, and the same hereby are, ratified, and confirmed in all respects.

**ITEM 3. LITIGATION UPDATE**

Mr. Dodge, in his capacity as General Counsel of the Corporation, presented a report on the status of the significant litigation in which the Corporation and/or its affiliates are presently involved. Mr. Dodge explained that his report and any ensuing discussions were subject to the attorney/client and work product privileges.

ITEM 4. APPROVAL OF FORM AND FILING OF QUARTERLY REPORT ON FORM 10-Q AND REPORT ON ACTIVITIES OF AUDIT COMMITTEE

Mr. Dodge presented a report on the Audit Committee's review of the Corporation's financial statements and Form 10-Q for the quarter ended June 30, 2009.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted:

WHEREAS, the Corporation is required to file with the Securities and Exchange Commission (the "Commission") by August 10, 2009, a Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 (the "Form 10-Q");

WHEREAS, a draft of the Form 10-Q proposed to be filed with the Commission was attached as Exhibit 5A to the board book for the meeting (the "Draft Form 10-Q"), and each member of the Board of Directors has read the Draft Form 10-Q and has provided all comments and responses they deem necessary and appropriate to the General Counsel and Chief Financial Officer of the Corporation (or their designees);

WHEREAS, the Draft Form 10-Q contains quarter-end financial statements of the Corporation that were reviewed by KPMG;

WHEREAS, management has recommended that the Audit Committee and the Board of Directors approve (i) as to form the Draft Form 10-Q, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (ii) the filing with the Commission of the Form 10-Q (with any such non-material changes) at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and

WHEREAS, the Audit Committee has (a) approved, ratified and confirmed the recommendation of management concerning the approval (i) as to form of the Draft Form 10-Q, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (ii) of the filing with the Commission of the Form 10-Q (with any such non-material changes), at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and (b) recommended that the Board of Directors approve (i) as to form the Draft Form 10-Q, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (ii) the filing with the Commission of



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the Form 10-Q (with any such non-material changes), at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves, ratifies and confirms the recommendation of management and the Audit Committee concerning the approval as to form and filing of the Form 10-Q; and further

RESOLVED, that the Draft Form 10-Q, in substantially the form attached as Exhibit 5A to the board book for the meeting, be, and it hereby is, approved as to form with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate; and further

RESOLVED, that the Form 10-Q, in substantially the form attached as Exhibit 5A to the board book for the meeting, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, be filed with the Commission at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and further

RESOLVED, that the General Counsel and Chief Financial Officer be, and they collectively hereby are, authorized, empowered and directed to prepare or cause to be prepared, to execute or cause to be executed, and to file or cause to be filed with the Commission such non-material amendments and supplements to the Form 10-Q as they, collectively, may deem necessary or desirable, or as may be required by the Commission; and further

RESOLVED, that, in the event that such an amendment or supplement to the Form 10-Q is filed, the members of the Board of Directors shall be provided with redline copies of the revised Form 10-Q showing the changes that were made; and further

RESOLVED, that the Chief Executive Officer, Executive Vice President, General Counsel, and Secretary, or Executive Vice President and Chief Financial Officer of the Corporation (each, a "proper officer" and collectively, the "proper officers"), be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation and under its corporate seal or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to enable the Corporation to accomplish the purposes and to carry out the intent or the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers within the terms of the foregoing resolutions be, and the same hereby are, ratified, and confirmed in all respects.

ITEM 5. QUARTERLY REVIEW OF OPTION GRANTS TO EMPLOYEES OTHER THAN EXECUTIVE OFFICERS AND REPORT ON ACTIVITIES OF THE EXECUTIVE COMPENSATION COMMITTEE

Mr. Dodge presented a report on the Executive Compensation Committee's review of the option grants made to employees other than executive officers during the second quarter 2009, a list of which was distributed to the members of the Board of Directors at the meeting.

After discussion and deliberation, upon motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, the Corporation adopted the 2009 Stock Incentive Plan (the "Plan"), which Plan provides for the grant of stock options, among other stock-based performance awards, to key employees of the Corporation and its subsidiaries;

WHEREAS, eighty million (80,000,000) shares of Class A Common Stock, \$0.01 par value per share ("Common Stock"), of the Corporation have been reserved for issuance under the Plan;

WHEREAS, the Board of Directors has established the Executive Compensation Committee to administer the Plan;

WHEREAS, Management believes: (i) that officers and other key employees, who are in a position to make a substantial contribution to the long-term success of the Corporation and to build stockholder value, should have a stake in the Corporation's ongoing success; and (ii) that this focuses attention on managing the Corporation as an owner with an equity position in the Corporation's business and seeks to align the officers' and key employees' interests with the long-term interests of stockholders;

WHEREAS, the Plan was adopted by the Board of Directors and approved by stockholders in recognition of Management's belief;

WHEREAS, (i) awards under the Plan follow a review of the individual employee's performance, position in the Corporation, long-term potential contribution to the Corporation and the number of options previously granted to the employee; and (ii) neither Management nor the Board of Directors assigns specific weights to these factors, although the employee's position and a subjective evaluation of his or her performance are considered most important;

WHEREAS, generally, the number of options granted to an employee reflect his or her level of responsibility, position in the Corporation and potential to

contribute to the long-term success of the Corporation or otherwise achieve significant corporate goals;

WHEREAS, however, the number of options granted to specific employees are not based on any objective criteria;

WHEREAS, options are generally granted to director level and above employees, although in certain circumstances options are granted to certain other employees based on length of service or contribution to the Corporation;

WHEREAS, Charles W. Ergen, Chairman and Chief Executive Officer of the Corporation, desires to: (i) incentivize certain new employees and/or certain employees receiving promotions who are in a position to make a substantial contribution to the long-term success of the Corporation and to build stockholder value; and/or (ii) reward certain key employees of the Corporation and its subsidiaries, in connection with their efforts during the past year, and provide them with an incentive to continue to help build the success of the Corporation, which rewards and incentives add value to the Corporation that is at least equal to the fair market value of the shares of the Corporation's Common Stock that these employees will receive through the Plan;

WHEREAS, in the Unanimous Written Consent of the Board of Directors dated March 30, 2009, (i) the Board of Directors delegated the authority to Mr. Ergen, as Chairman of the Board of Directors, to make grants of options to purchase the Common Stock, effective at the end of each quarter, to new employees and existing employees of the Corporation or its subsidiaries who are not executive officers in connection with hiring, promotion or other recognition, as Mr. Ergen deems appropriate, without further need to consult with or seek prior approval from the Board of Directors or the Executive Compensation Committee, consistent with the criteria established in the Plan, and that the actions taken by Mr. Ergen in connection therewith shall be deemed approved, ratified and confirmed by the Board of Directors and the Executive Compensation Committee as of the date such action is taken; provided however, that no authority was granted to Mr. Ergen to make grants to: (a) executive officers or directors of the Corporation (executive officers of the Corporation are those persons identified as executive officers in the Corporation's annual report on Form 10-K); (b) "affiliates" of the Corporation, as such term is used in Section 16 of the Securities Exchange Act of 1934, and as interpreted by the General Counsel of the Corporation; (c) in excess of one hundred thousand (100,000) shares to an individual employee at or below the Vice President level; or (d) in excess of five hundred thousand (500,000) shares to an individual employee at or above the Senior Vice President level, without advance approval of the Compensation Committee;

WHEREAS, the Chairman has made the grant of options to purchase shares of the Corporation's Common Stock ("Options") to those employees of the Corporation

and its subsidiaries who are not executive officers set forth in the list attached as Exhibit 6A to the board book for the meeting, and in such amounts as set forth opposite each employee's name on such list under the terms of the Plan and an incentive stock option agreement to be approved by the Chief Executive Officer of the Corporation; and

WHEREAS, (i) the date of grant of such Options is June 30, 2009 (the "Grant Date"); (ii) such Options vest at the rate of 20% per year, with the first 20% of such Options vesting on the date which is one year after the Grant Date and 20% thereafter on the anniversary of the Grant Date for each of the following four years; (iii) the exercise price for each share of Common Stock shall be equal to the closing price, as reported on the National Association of Securities Dealers Automated Quotation System, for shares of the Common Stock on the Grant Date, or the last business day prior to such date in the event that such date falls on a weekend or holiday; and (iv) such Options expire ten years from the Grant Date;

NOW, THEREFORE, BE IT RESOLVED, that, after due consideration, the Board of Directors hereby determines that the grant of such Options is consistent with the authority delegated to the Chairman in the Unanimous Written Consent of the Board of Directors dated March 30, 2009.

ITEM 6. 700 MHz SPECTRUM UPDATE

Mr. Cullen led a discussion regarding the 700 MHz Spectrum held by the Corporation and the build out of such spectrum in the Atlanta market. A summary of Mr. Cullen's presentation was distributed at the meeting.

ITEM 7. REVIEW OF CERTAIN ITEMS PREVIOUSLY APPROVED BY THE BOARD OF DIRECTORS

Mr. Dodge reviewed certain items approved by the Board of Directors year-to-date and the status of each such item, as well as certain items approved by the Board of Directors in prior years that authorized the expenditure of over \$100 million and that remain active. To assist the members of the Board of Directors, a list of such items was included in the board book for the meeting.

ITEM 8. INVESTMENT POLICY UPDATE

Mr. Ergen provided an update on certain investments made by the Corporation during the second quarter. Mr. Ergen further explained the strategic rationale for certain trades.

ITEM 9. UPDATE ON MARKET FOR FINANCINGS

Mr. Vogel led a discussion regarding the current market for financings available to the Corporation and the proposed use of proceeds from any such financings.

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted:

WHEREAS, the Board of Directors has determined that it is in the best interests of the Corporation for it (or one of its wholly-owned subsidiaries) to issue and sell up to \$1.5 billion aggregate principal amount of new secured or unsecured high-yield debt securities with maturities not less than 5 years, an interest rate not to exceed 9.5% per annum and with the proceeds of the offering to be used for general corporate purposes;

NOW, THEREFORE, BE IT RESOLVED, that the Corporation (or one of its wholly-owned subsidiaries) be, and it (or one of its wholly-owned subsidiaries), hereby is, authorized to issue and sell at such time and on such other terms and conditions as the Chief Executive Officer and General Counsel (each, a "proper officer" and collectively, the "proper officers") shall determine up to \$1.5 billion aggregate principal amount of new secured or unsecured high-yield debt securities with maturities not less than 5 years, an interest rate not to exceed 9.5% per annum and with the proceeds of the offering to be used for general corporate purposes (the "Notes"); and further

RESOLVED, that the Corporation (or one of its wholly-owned subsidiaries) is hereby authorized to enter into agreements with such entities to act as initial purchasers of the Notes, and upon such terms and provisions, as the proper officers, or any one of them, shall in their discretion approve; and further

RESOLVED, that the proper officers be, and they hereby are, authorized to take all appropriate and customary actions as any one of them shall deem necessary or desirable in connection with the issuance of the Notes, including without limitations all actions necessary or desirable to consummate a registered exchange offer for the Notes; and further

RESOLVED, that the Corporation hereby adopts the form of any and all resolutions required by the SEC, the trustee, the depositary, the registrar, the paying agent, the notice agent, the exchange agent (each, as specified in the indenture), the DTC and any state authority, jurisdiction, institution, person or agency in connection with the issuance of the Notes if: (i) in the opinion of the proper officers (or any one of them) the adoption of such resolutions is necessary and desirable; and (ii) the Secretary or Assistant Secretary of the Corporation evidences such adoption by filing with the minutes of the Corporation copies of such resolutions, in which case those resolutions shall be deemed to be adopted by the Board of Directors and incorporated herein by reference with the same force and effect as if expressly contained herein; and further

***General Enabling Resolutions***

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RESOLVED, that the proper officers be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation (or, if applicable, one of its wholly-owned subsidiaries) and under its (or, if applicable, one of its wholly-owned subsidiaries') corporate seal or otherwise, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to enable the Corporation (or, if applicable, one of its wholly-owned subsidiaries) to accomplish the purposes and to carry out the intent of the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers within the terms of the foregoing resolutions (including, without limitation, any and all actions taken in furtherance of the issuance, offering and sale of the Notes) be, and the same hereby are, ratified and confirmed in all respects; and further

RESOLVED, that the remaining portion of the authorization from January 22, 2008 for the Corporation to issue up to \$2 Billion aggregate principle amount of debt securities (\$1.25 Billion) and the authorization from January 30, 2009 for the Corporation to issue up to \$1 Billion aggregate principle amount of debt securities be, and they hereby are, terminated.

**ITEM 10. CHAIRMAN'S REPORT**

Mr. Ergen presented a report on the general state of the business of the Corporation and other matters including, among other things, the Corporation's investment in ICO. Mr. Ergen noted that, to assist the members of the Board of Directors with their consideration of this item, a memorandum regarding upcoming satellite launches was attached as Exhibit 2A to the board book for the meeting.

*Termination*

There being no further business to come before the meeting, the meeting was, upon motion duly made and seconded, terminated at 4:15 p.m., prevailing Mountain Time.

---

R. Stanton Dodge  
Secretary

FILED

NOV 28 2018

*Alvin L. Burton*  
CLERK OF COURT

1 APEN

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16 Tel: (302) 571-6600  
17 Fax: (302) 571-1253

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

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

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

28 Plaintiffs,

v.

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 17 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



<u>Ex.</u>	<u>Date</u>	<u>Description</u>	<u>Page No.</u>
391	08/11/2009	OE Retailer Business Rules Certain Requirements for OE Retailers	8622
392	08/11/2009	Email from N. Martinez to R. Calbert	8624
393	08/26/2009	PossibleNow Telemarketing Monitoring and Enforcing Solutions for [DISH] Network	8626
394	09/03/2009	Email from L. Rose to J. Blum, et al.	8635
395	09/03/2009	Letter from D. Crane-Hirsch to L. Rose	8638
396	11/02/2009	DISH Agenda of Audit Committee Meeting	8644
397	11/03/2009	DISH Minutes of Board Meeting	8666
398	12/07/2009	Email from R. Corvello to J. Blum, et al.	8685
399	12/17/2009	Email from E. Pastorius to C. Ergen	8687
400	02/17/2010	Draft Marketing Services Agreement	8690

DATED this 28th day of November 2018.

By   
 J. Stephen Peek, Esq. (1758)  
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 HOLLAND & HART LLP  
 9555 Hillwood Drive, 2nd Floor  
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 Rodney Square, 1000 North King Street  
 Wilmington, DE 19801

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of November 2018, a true and correct copy of the foregoing **VOLUME 17 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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An Employee of Holland & Hart, LLP

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Las Vegas, NV 89134

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# EXHIBIT 391

# EXHIBIT 391



**OE RETAILER BUSINESS RULES**  
**Certain Requirements for OE Retailers**  
**Effective Date: August 11, 2009**

The terms and conditions set forth in these Business Rules are subject to (and without limitation of) the terms and conditions set forth in a retailer's DISH Network Retailer Agreement, Distributor Retailer Agreement, such other form of agreement as may be determined by DISH at Any Time in its Sole Discretion authorizing a retailer to market, promote and solicit orders for Programming (including without limitation a DISH Network L.L.C. OE Retailer Agreement) (each, a "Retailer Agreement"), any Other Agreement and other applicable Business Rules. Retailers with a valid Retailer Agreement in full force and effect with DISH Network L.L.C., formerly known as EchoStar Satellite L.L.C. ("DISH"), are hereinafter referred to as "DISH Retailers."

Any breach or default of any of your obligations under these Business Rules may be deemed, as determined in DISH's Sole Discretion, to be a breach and/or default under your Retailer Agreement(s).

**Requirement for Written Policies and Procedures:**

All OE Retailers who Telemarket any DISH Network Services and/or DISH Network Equipment must establish written policies and procedures to comply with all federal, state and local laws regarding Telemarketing, including, but not limited to, those that prohibit calling Consumers who are on any federal, state and local do-not-call list.

**Definitions:**

Solely for purposes of these Business Rules, the terms below shall have the following meanings:

**"Consumer"** shall have the same meaning as that term is defined in the Consumer Protection Acts of any state that an OE Retailer does business in. However, in the event that such Consumer Protection Acts do not define the term "consumer," then it shall have the same meaning as the term "Person" as defined in such Consumer Protection Acts, or other identifying individual or entity term, as defined by such Consumer Protection Acts.

**"Telemarketing"** shall mean "telemarketing" as that term is defined in the Federal Trade Commission's Telephone Sales Rule, 16 C.F.R. §310.2(cc), and in other federal, state, or local laws defining that term.

**General:**

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

**THESE BUSINESS RULES ARE SUBJECT TO CHANGE FOR ANY REASON OR NO REASON AT ANY TIME AND FROM TIME TO TIME AT THE SOLE AND ABSOLUTE DISCRETION OF DISH UPON NOTICE TO RETAILER. THESE BUSINESS RULES SUPERSEDE ANY AND ALL PRIOR VERSIONS IN THEIR ENTIRETY.**

EXHIBIT 392

EXHIBIT 392

JA009800  
008624

TX 102-009062

**To:** Calbert, Robert[Robert.Calbert@dishnetwork.com]  
**Cc:** Kitei, Brett[Brett.Kitei@dishnetwork.com]  
**From:** Martinez, Natalie  
**Sent:** Tue 8/11/2009 6:27:32 PM  
**Subject:** OE Business Rules Required for AG Compliance  
Order Entry - Certain Requirement for OE Retailers - 081109.doc

Rob,

Attached is a new set of Business Rules required by the AVC that is specific to OE Retailers. These rules should be distributed to all OE Retailers in a manner that constitutes official notice. Please let me know if you have any questions.

Thanks,

**Natalie Martinez**

Associate Corporate Counsel

DISH Network L.L.C.

ph: 303.723.2293

fax: 720.514.8409

MAY CONTAIN PRIVILEGED ATTORNEY/CLIENT, ATTORNEY WORK PRODUCT OR CONFIDENTIAL INFORMATION

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JA009801  
008625

SLC\_DNC\_Investigation\_0010104  
Docket 81704 Document 2021-09065  
EX 102-009063

# EXHIBIT 393

# EXHIBIT 393

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# Telemarketing Monitoring and Enforcing Solutions For Dish Network

PossibleNOW Confidential

August 2009

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JA009803  
008627

Confidential

SLC\_ DNC\_Investigation\_0004248  
TX 102-009065





## Scope

As part of its normal marketing activities, Dish Network and its authorized retailers use the telephone to acquire new accounts. The use of the telephone for outbound telemarketing activity is regulated by state and federal law. As such, Dish Network and its retailers must comply with the state and federal regulations regarding the use of the telephone. In addition to compliance on all outbound telemarketing calls, Dish Network is also faced with the issue of monitoring and enforcing compliance activity for entities that market on its behalf. Specifically, Dish Network must monitor outbound telemarketing activity to verify calls are compliant and are not placed to telephone numbers on the National DNC list or the Dish Network company-specific DNC list.

PossibleNOW and CompliancePoint have created a program that will allow Dish Network to meet the monitoring and enforcement requirements of state and federal law. PossibleNOW and CompliancePoint met with key project stakeholders in Englewood, CO on August 6, 2009 to discuss the details of the proposed retailer monitoring and enforcement initiatives. Dish Network desires to implement several telemarketing and Do Not Call compliance initiatives to ensure federal, state and corporate compliance requirements are being met by third parties as well as their own internal call center operations.

The monitoring and enforcement program is scalable and appropriate in terms of rigor to variable third party operations. There are three options that will provide Dish Network with variable levels of compliance due diligence rigor. The tier levels are not designed to be proportionate to the size of a call center or retailer operation; rather, they are based on depth and scope. For instance, Dish may have large scale partners that have an established history of conformance. Tier 1 (compliance survey) may be an appropriate level of rigor in this case. Alternatively, smaller scale operations that have been consistent sources of complaints may be required to undergo a Tier 3 Certification. PossibleNOW recommends that any potential new partner undergo the Tier 3 Certification as a prerequisite to joining the Dish Network family of partners.

PossibleNOW and CompliancePoint believe that the proposed services will allow Dish Network to meet the state and federal requirements for monitoring and enforcing compliance.



## Approach

### Introduction:

PossibleNOW and CompliancePoint recommend the following monitoring and enforcement program. There are three components to the recommendation: 1) Initial process audit, 2) Ongoing DNC data audit, and 3) Ongoing compliance support for Dish Network itself. PossibleNOW and CompliancePoint recommend that Dish Network assess the compliance process to anyone that uses the telephone. Three unique tiers are recommended to accomplish this and they vary based on depth and rigor.

### Part 1: Suggested Third Party Due Diligence Tier Levels

**Tier 1 Compliance Survey:** Compliance survey of specified third party and retailer call centers.

- **Benefits:** The compliance survey will gauge the call center's knowledge of federal, state and Dish Network corporate compliance guidelines. An analysis of the responses to survey questions could be used to determine if further action is required including training, compliance assessments or certifications. The effectiveness of this program will be augmented by performance of a periodic DNC data audit.
- **Relevance:** Basic compliance review for all retailers that use the telephone for new client acquisitions
- **Cost:** \$1000 per authorized retailer

**Tier 2 Compliance Assessment:** Compliance assessment of specified third party and retailer call centers.

- **Benefits:** The assessment program provides a compliance review of all high risk compliance areas including compliance with Do Not Call, call abandonment and Caller ID. The effectiveness of this program can be augmented by performance of a periodic DNC data audit.
- **Relevance:** Aggressive retailers that use outbound telemarketing as a part of their strategy
- **Cost:** \$2500 per authorized retailer

**Tier 3 Compliance Certification:** Compliance certification of specified in house, third party and retailer call centers.

- **Benefits:** The certification program provides a thorough review and certification of all federal and state telemarketing and Do Not Call issues. Dish would be assured that "certified" call centers possess the processes and procedures to meet or exceed



regulatory as well as Dish Network corporate requirements. Onsite audits if deemed necessary are available. The effectiveness of this program can be augmented by performance of a periodic DNC data audit.

- **Relevance:** Tier 3 is best suited for high volume, larger scale operations including Dish Network's internal call centers. Tier 3 is also useful as a remediation tool for call center operations with high complaint levels as well as prospective new third party call center operations.
- **Cost:** \$4500 per authorized retailer

## Part 2: Do Not Call and Call Abandonment Rate Compliance Data Audits

As part of the monitoring and enforcement program, not only will PossibleNOW and CompliancePoint provide initial audits, we will also provide ongoing monitoring and enforcement. A randomly selected population of retailers will be audited each quarter.

The periodic audits will review telephone numbers dialed to ensure they were in compliance with National, state, wireless, and Dish Network internal DNC lists at the time of dial. Compliance with the call abandonment safe harbor requirements will also be audited. The audit service accounts for all available grace periods and includes remediation of all potentially violation calls as well as full documentation of performance and issue resolution.

### Exempt Calls (EBR)

- Federal and State inquiry/transaction EBR exemption rules
- Wireless ported number compliance
- Wireless block compliance
- Dish/third party internal DNC list compliance
- Dish corporate policies

### Non-exempt Calls (acquisition/purchased leads/cold calls)

- Federal and state DNC list compliance
- Wireless ported number compliance
- Wireless block compliance
- Dish/third party internal DNC list compliance
- Dish corporate policies

### Call Abandonment Rate Compliance

- Determines if more than 3% of calls answered by a live person were abandoned per campaign, per 30 day period.

**Benefits:** Despite possessing detailed compliance guidelines, DNC suppression methodologies and training, violations of DNC and call abandonment rules occur every day. Human error, omission, miscommunications, lack of understanding of the rules and poor campaign management can contribute to violations at the time of dial despite Dish's best efforts to comply. DNC Audit reveals "suspect" calls resulting in further investigation with the retailer to verify facts, define process errors and develop remediation procedures. All of these steps are documented and serve as the strongest evidence of due diligence and efforts to comply in case errors result in regulator investigations.



Audit schedules will be developed to ensure all identified retailers are periodically audited on a randomized basis. Quarterly audits will be effective if the process is random with immediate steps to remediate identified issues

Our consultants will review audit results and work directly with each call center to remediate identified anomalies. This remediation includes compliance education and training where necessary as well as consultation on process improvement. All remediation efforts will be fully documented and submitted to Dish Network on a monthly basis.

**Relevance:** Ongoing data audits and abandonment rate analysis will allow Dish Network to meet the monitoring and enforcement requirements of state and federal regulation.

**Cost:** Data Audit \$100 per retailer per audit to be charged to the retailer, \$5,000 consultative fees for remediation of all retailer results to be charged to Dish directly.

### **Part 3: Ongoing Corporate Consultative Support:**

Dish Network is currently tasked with monitoring the regulation for changes and making sure that the marketing programs are conducted according to state and federal regulation. As such, PossibleNOW recommends Dish Network partner with CompliancePoint directly on an ongoing basis.

Retainer consultative services to perform compliance consulting services as required or as directed by Dish Network

**Benefits:** CompliancePoint consultants are industry recognized experts in not only the regulatory requirements but are equally qualified in the operational aspects of compliance. All of our consultants are Certified Information Privacy Professional's (CIPP) including members who are certified Self Regulatory Organization teleservices auditors. Available services include but are not limited to:

- Consultation on regulatory matters to include US federal and state, Canadian telemarketing and do not call, CANSPAM, Junk Fax Prevention Act, and US Postal code compliance
- Opt in strategy development
- General corporate compliance officer support
- Consumer complaint reduction strategy development
- Compliance monitoring and enforcement activities
- New client due diligence
- Telemarketing script and contract reviews
- Compliance education and training
- Assistance with regulator investigative inquiries
- Onsite in Atlanta or client site compliance officer training program
- Implementation of compliance recommendations
- Participation in planning sessions
- Development of documentation to include
  - DNC Policy
  - DNC Policy training



- Corporate Compliance guidelines
- General compliance training
- Consultation regarding process implementation
- Establishment of a compliance review committee
- Participation in a compliance review committee
- Consultation regarding state telemarketing registration issues
- Assistance with the ATA Self Regulatory Organization audit preparedness

**Relevance:** CompliancePoint would become a true partner with Dish Network and a regulatory resource for all compliance and marketing efforts.

**Cost:** Recommended initial level is 30 hours per month at \$4,500. Rate of consulting support is \$150 per hour.



## Telemarketing Monitoring and Enforcing Pricing

### Part 1: Initial Due Diligence Tiers

Program Implementation Fees	
One Time Fees	
Tier 1 – Compliance Survey	\$1,000
Tier 2 – Compliance Assessment	\$2,500
Tier 3 – Compliance Certification	\$4,500
<b>Description:</b> PossibleNOW will work closely with Dish Network and its retailers audit compliance processes. Three tier based on varied rigor will be used to conduct the audit. PossibleNOW recommends all retailers that use the telephone go through the Tier 1 at a minimum.	

### Part 2: Do Not Call and Call Abandonment Rate Analysis

Service	Description	Cost Per Retailer Per quarter	Monthly Cost to Dish Network
DNC Audit and Call Abandonment Rate Analysis	Audit of exempt and non-exempt calls as well as abandonment rate analysis to determine if calls were compliant at the time of dial.	\$150	\$4,500

### Part 3: Ongoing Compliance Consulting

Service	Description	Hours per Month	Hourly Rate	Total Monthly Fees
Ongoing Compliance Consulting	<b>Retainer to Include:</b> monitoring and advising Dish Network on changes to the regulatory landscape, maintain all registration and 3rd party list subscriptions, developing additional pre-campaign guidelines, and monitoring ongoing campaign compliance	30	\$150	\$4,500



## Summary

PossibleNOW and CompliancePoint are uniquely qualified to provide the above services. With nearly 10 year of experience in the compliance and direct-to-consumer marketing space, the expertise and insight gained is unparalleled.

CompliancePoint has extensive experience in managing and deploying monitoring and enforcing solutions for many top name direct-to-consumer marketers. Based on the current relationship Dish Network has with PossibleNOW, additional value will be delivered as the CompliancePoint partners with PossibleNOW to deliver the most appropriate services and solutions possible.

PossibleNOW and CompliancePoint look forward to working with Dish Network on a consulting level. The above proposal will seek to ensure that Dish Network meets the monitoring and enforcement requirements of the law and maintain the best posture possible as it relates to compliance.

***For additional information on this quote, please contact:***

Guy Caldwell  
Sr. Business Development Manager  
Phone: (770) 255-1042  
Email: gcaldwell@possiblenow.com

EXHIBIT 394

EXHIBIT 394

JA009811  
008635

TX 102-009073



Message

**From:** Rose, Lewis [LRose@KelleyDrye.com]  
**Sent:** 9/3/2009 3:00:39 PM  
**To:** Blum, Jeffrey [jeffrey.blum@dishnetwork.com]; Kalani, Lori [lori.kalani@dishnetwork.com]; Dodge, Stanton [stanton.dodge@dishnetwork.com]  
**CC:** Hutnik, Alysa [AHutnik@KelleyDrye.com]  
**Subject:** FW: Dish--Plaintiffs' new proposed consent decree  
**Attachments:** 20090903 Ltr to Dish re settlement proposal.pdf; 20090903 PLs Proposed Order.doc; 20090903 PLs Proposed Order.pdf; 20090903 PLs Proposed Order.wpd

Just in from Daniel. **REDACTED-ATTORNEY-CLIENT PRIVILEGED/WORK-PRODUCT**

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

Lew

Lewis Rose  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
202-342-8821 (voice)  
202-391-8268 (cell)

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

**From:** Crane-Hirsch, Daniel [mailto:Daniel.Crane-Hirsch@usdoj.gov]  
**Sent:** Thursday, September 03, 2009 2:52 PM  
**To:** Rose, Lewis; Boyle, Joseph; Kelly, Henry T.  
**Cc:** Deitch, Russell S.; Ivens, Gary L.; albert.shelden@doj.ca.gov; eblackston@atg.state.il.us; erin.leahy@ohioattorneygeneral.gov; jfeltman@atg.state.il.us; Jbrill@ncdoj.gov; kander@ncdoj.gov; michael.ziegler@ohioattorneygeneral.gov  
**Subject:** Dish--Plaintiffs' new proposed consent decree

Lew, Joe, and Henry,

Please find attached a letter of today's date; and plaintiffs' new proposed consent decree (the latter in each of PDF, WordPerfect, and Word formats). We look forward to meeting with you Wednesday next week at the FTC's headquarters.

Regards, Daniel

Daniel K. Crane-Hirsch  
Trial attorney  
U.S. Justice Department, Office of Consumer Litigation  
202-616-8242

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JA009812  
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TX 102-009074

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JA009813  
008637

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TX 102-009075

# EXHIBIT 395

# EXHIBIT 395



CONFIDENTIAL

U.S. Department of Justice

Office of Consumer Litigation

Post Office Box 386  
Washington, D.C. 20044-0386

Telephone: (202) 616-8242  
Telecopier: (202) 514-8742

September 3, 2009

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Parippany, NJ 07054  
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Re: *United States, et al. v. Dish Network, LLC*, No. 3:09-cv-03073 (C.D. Ill. filed  
Mar. 25, 2009)

**(Settlement material—Subject to evidentiary restrictions of Fed. R. Evid.  
408)**

Dear Counsel:

In advance of our in-person settlement conference set for Wednesday next week, September 9, 2009, please find enclosed a further proposed consent decree. For convenience, I am enclosing it in three formats: PDF, WordPerfect, and Word.

As you will see, its terms follow the *DIRECTV* consent decree. It defines “Authorized Telemarketer” to include any person that has received express written authorization from Dish to use telemarketing to market Dish goods or services. (This tracks the definition in Dish’s June 17, 2009, proposal.)

Our current proposal does not include “cure” provisions that would let Dish continue doing business with (and profiting from the activities of) authorized dealers who engage in telemarketing contrary to the consent decree’s (proposed) requirements. This is because the cure provisions we’ve seen so far appear to swallow the rule. We are willing to hear more restricted proposals, so let me explain in more detail what we see as the problems.

Dish’s past cure proposals simply indicate that Dish need not terminate an authorized dealer for violations if it “has cured the conduct set forth in this Part within ten (10) days notice

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by Dish Network.” (In Dish’s 6/17/09 proposal, see § II(F), second unnumbered paragraph provision (ii) at 13; § III, second unnumbered paragraph provision (ii) at 15.)

Broadly speaking, there are three categories of interest here: First, authorized dealers who telemarket Dish services without express written authorization from Dish (and who thus have not demonstrated to Dish’s satisfaction that they have effective compliance programs in place), but who do not violate substantive telemarketing requirements; second, authorized dealers whom Dish has expressly authorized in writing to engage in telemarketing (*i.e.*, “authorized telemarketers”), but who violate substantive telemarketing requirements in the course of telemarketing Dish services; and third, authorized dealers who telemarket without Dish’s permission and moreover violate substantive telemarketing requirements while doing so.

**1. Authorized dealers telemarketing without Dish’s permission (but without violating substantive telemarketing requirements)**

Any provisions for the first category would need to deter authorized dealers from telemarketing Dish services without Dish’s permission; and give Dish incentives to make sure that its authorized dealers do not do so. Where the consent-decree violation is simply telemarketing Dish services without Dish’s permission, it appears that Dish itself could cause the authorized dealer to “cure the conduct” by giving the dealer the required express written permission within ten days. Especially where failing to grant such permission would require Dish to terminate an authorized dealer (who, presumably, has been enrolling new subscribers for Dish), it would appear very much in Dish’s economic interest to make a routine of granting express written permission as quickly as possible. Indeed, it appears entirely foreseeable that when Dish notifies an authorized dealer that Dish has determined that it is telemarketing without Dish’s permission, Dish’s notice might itself have language to the effect of, “To remedy this violation, you must fill out the enclosed paperwork and return it to us within ten days so that we can grant you express written permission. If you do not do so, we will be obliged to terminate your authorized dealership.”

Under this proposal, it appears authorized dealers would have little incentive to seek Dish permission for telemarketing. If they are caught telemarketing without permission, they would have ten days to cure without penalty; and until then, they would have every reason to telemarket without subjecting themselves to the monitoring and compliance measures. Likewise, Dish would seem to have little incentive vigorously to ensure that authorized dealers telemarket only with its permission. Part of what plaintiffs are seeking through a consent decree is effective monitoring and compliance programs that apply to all dealers who telemarket Dish services. This proposed cure language gives us little assurance that we would get the benefit of our bargain.

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## **2. Authorized telemarketers found violating substantive telemarketing requirements**

The second category of violations is even more problematic. To become an “authorized telemarketer,” a dealer must persuade Dish that it has an effective compliance program in place, and agree to have its telemarketing monitored by an outside third party. By definition, then, authorized telemarketers in this category are those who have Dish-approved compliance programs and know their telemarketing is subject to monitoring, but, even so, engage in substantive telemarketing violations.

Such violations can take many forms: Delivering prerecorded solicitation messages without express permission from consumers; telemarketing to persons on the national Do Not Call Registry (for whom there is no established business relationship exception); telemarketing to persons on Dish’s entity-specific Do Not Call list; failing to add consumers to Dish’s entity-specific list on request; failing to connect answered calls to a sales representative within two seconds; failing to transmit required Caller ID information; and several others. If the authorized telemarketer is in fact adhering to the compliance program that Dish approved, and is aware that its telemarketing is being monitored by a third party, it appears implausible that such violations would occur wholly as the result of error—one of six criteria needed for the authorized dealer to qualify for the Telemarketing Sales Rule’s “safe harbor” to escape liability for Do Not Call violations, 16 C.F.R. § 310.4(b)(3)(vi).<sup>1</sup> It appears likely that a higher portion of substantive violations will arise because the authorized telemarketer is not, in fact, adhering to the compliance programs that it told Dish it would, and is not monitoring and enforcing its own compliance—another of the six criteria it would need to escape liability for Do Not Call violations under the TSR’s safe harbor, 16 C.F.R. § 310.4(b)(3)(v). In fact, it appears likely that some significant portion of violations in this category would be due to authorized telemarketer conduct that is reckless or worse, perhaps as much as intentional.

Against this background, it is not in the least clear what it would mean for an authorized telemarketer to “cure” a demonstrated violation of substantive telemarketing requirements. In Dish’s view, would it be sufficient for the Dish-authorized telemarketer to accept the same compliance program again? (After all, by hypothesis, Dish approved the dealer’s compliance

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<sup>1</sup> There is a separate safe harbor for failing to connect answered calls to sales representatives within 2 seconds, which requires (among other conditions) that 97% of all answered calls be transferred within the required time. 16 C.F.R. § 310.4(b)(4). There is no safe harbor under the TSR for delivering prerecorded solicitation messages without express permission, or for failing to transmit Caller ID information. And no safe harbors protect telemarketers from liability for violating the TCPA and its regulations, or for violating the requirements of the pertinent State auto-dialing and telemarketing laws.

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program when Dish authorized the dealer to become an authorized telemarketer.) Would it be sufficient for the authorized telemarketer to sign onto a new compliance program? To accept more frequent monitoring?

Where the authorized telemarketer's compliance program was approved by Dish but did not work, plaintiffs are having difficulty envisioning any meaningful "cure" (especially if it is Dish that would approve or reject proposed cures). In addition, we are unsure how it would advance our enforcement interests if Dish could continue profitable relationships with telemarketers who engage in demonstrated telemarketing violations despite having Dish-approved compliance programs.

**3. Authorized dealers telemarketing without Dish's permission who also violate substantive telemarketing requirements**

For similar reasons, we are hard-pressed to see how it would advance our enforcement interests if Dish could continue profitable relationships with authorized dealers who telemarket Dish services without Dish permission (contrary to the terms of the proposed consent decree and their contracts with Dish) and engage in demonstrated telemarketing violations (contrary to the proposed consent decree and substantive telemarketing laws). To be sure, such dealers by definition do not have Dish-approved compliance programs in place. But by definition, such dealers are also by definition violating both their contracts with Dish not to telemarket absent Dish's agreement, and in violation of substantive law.


To sum up, for the first category, it is possible that Dish might be able to suggest a range of penalties and other provisions that would give authorized dealers (and Dish itself) strong incentives to ensure that Dish dealers seek and obtain Dish's permission (based upon a demonstrated compliance program, etc.) before telemarketing Dish services (and deter them from waiting until they are caught telemarketing without permission to seek and obtain Dish's permission). For the second and third categories, we are dubious, but will listen to whatever Dish has to say.

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Thank you for your assistance in this matter. My counterparts and I look forward to meeting with you at FTC's headquarters in Washington, DC, at 10 a.m., Wednesday next week, September 9.

Sincerely yours,



Daniel K. Crane-Hirsch  
Trial attorney

Enclosure: Plaintiffs' proposed consent decree as of September 3, 2009

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