

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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Mar 30 2021 10:46 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 81704

District Court No.
A-17-763397-B

JOINT APPENDIX
Vol. 48 of 85
[JA011053-JA011247]

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TABLE OF CONTENTS FOR VOLUME 48¹

Document	Vol.	Page No.	Date
Report of the Special Litigation Committee of DISH Network Corporation and Appendices of Exhibits Thereto (Exs. 1-792; Appx. Vols. 1-50)	4-73	JA000739- JA016874	11/27/18
Evidentiary Hearing SLC Exhibit 102²			

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

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

EXHIBIT 501

EXHIBIT 501

JA011053
009847

TX 102-010315

From: Berridge, Kimberly </O=ECHOSTAR COMMUNICATIONS
CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=KIMBERLY.BERRIDGE>
Sent: Thursday, August 18, 2011 1:52 PM
To: Kitei, Brett <Brett.Kitei@dishnetwork.com>
Subject: RE: Important! New Document Uploaded to CSC Matter Management

It is a TCPA frequent flyer wanting money. He got a call from Satellite Systems Network he alleges is a violation. I will draft our standard go after SSN letter for you to review.

Kimberly Berridge
Litigation Paralegal
Direct Phone: (303) 723-2171
Direct Fax: (720) 514-6351

THIS EMAIL MESSAGE AND ANY ATTACHMENTS ARE CONFIDENTIAL AND MAY BE SUBJECT TO THE ATTORNEY-CLIENT OR OTHER APPLICABLE PRIVILEGES

From: Kitei, Brett
Sent: Thursday, August 18, 2011 11:51 AM
To: Berridge, Kimberly
Subject: FW: Important! New Document Uploaded to CSC Matter Management

Can you see what this is about?

Brett J. Kitei
Corporate Counsel | DISH Network L.L.C.
(303) 723-2290 [p] | (720) 514-8479 [f] | brett.kitei@dishnetwork.com

PRIVILEGED ATTORNEY/CLIENT OR CONFIDENTIAL TRANSMITTAL
This e-mail message and any attachments are confidential and may be subject to the attorney-client or other applicable privileges. If you have received this transmittal in error, please delete this e-mail immediately and notify Brett Kitei at (303) 723-2290 or by return e-mail.

From: CSCMatterManagement@cscinfo.com [mailto:CSCMatterManagement@cscinfo.com]
Sent: Thursday, August 18, 2011 11:49 AM
To: Conley, Amy; Berridge, Kimberly; Blum, Jeffrey; Kitei, Brett; Gorsuch, Elena; Katzin, Lawrence; Parisi, Paul
Subject: Important! New Document Uploaded to CSC Matter Management

Corporation Service Company ®

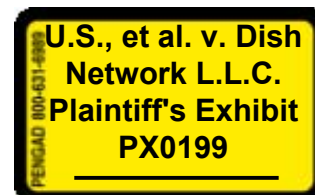
New Document Added to Matter Notification.

*This message is an alert only. Please do not reply to this message.
The following new Document(s) have been added to the following matter.*

Alert Date: 08/18/2011

Assigned Document(s):

Document ID:	9438166 (View/Share the Document)
Document Title :	Letter re TCPA Violations
Document Description :	
Answer Date :	08/31/2011



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PX0199-001

Produced Over Defendant's Privilege Designation Consistent With Court Order

JA011054
DISH9-0001824

TX 102-010316

Entity as Established : Dish Network L.L.C.
Date Served : 08/17/2011
CSC Doc type : Letter re TCPA Violations
Court :
State Served : Utah
Privileged :
Document is Time Sensitive :
Document is Service Of Process : Yes
Assigned By :
Author :
Original File Name :
Pages :
Version Number :

Matter Information:

3034276

Matter ID: 3034276 (Go to Matter Detail Folders)

Matter Id :

Matter Full Name : Jeffrey J. Mitchell vs. Dish Network, LLC

Matter Type :

Matter Description :

Jurisdiction : Utah

Court :

Cause # : Not shown

Matter Users:

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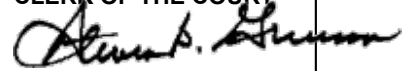
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JA011055
DISH9-0001825
009849

TX 102-010317



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19 *Nominal Defendant DISH Network Corp.*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

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

27 Plaintiffs,

28 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,

35 Defendants,

36 DISH NETWORK CORP., a Nevada Corp.,

37 Nominal Defendant

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

**VOLUME 28 OF APPENDIX TO
THE REPORT OF THE SPECIAL
LITIGATION COMMITTEE OF
DISH NETWORK CORPORATION**

<u>Ex.</u>	<u>Date</u>	<u>Description</u>	<u>Page No.</u>
502	11/03/1989	Permanent Injunction	9850
503	03/07/2001	EchoStar Retailer Agreement with Satellite Systems Network	9857
504	03/11/2002	Email from N. Meyers to B. Neylon et al.	9878
505		INTENTIONALLY OMITTED	9882
506	05/09/2002	Email from PJ Weyforth to S. Larson et al.	9884
507	06/12/2002	Letter from M. Davidson to A. Tehranchi	9887
508	06/12/2002	Email from J. Apala to PJ Weyforth et al.	9889
509	03/11/2003	Retailer Business Questionnaire for Star Satellite	9892
510	04/11/2003	Petition for Approval of Assurance of Voluntary Compliance with State of Indiana	9895
511	04/17/2003	Email from W. Osborne to M. Fox et al.	9910

DATED this 28th day of November 2018.

By /s/ Robert J. Cassity
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CERTIFICATE OF SERVICE

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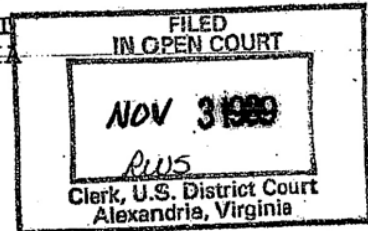
Attorneys for Defendants

By: /s/ Valerie Larsen
An Employee of Holland & Hart, LLP

EXHIBIT 502

EXHIBIT 502

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil No. 89-1046

DAVID DEFUSCO a/k/a David Hagen
or David Brown,
ANNETTE DEFUSCO a/k/a Annette
Hagen or Annette Brown, and
LEAD MARKETING, INC.,

Defendants.

PERMANENT INJUNCTION

Plaintiff, the Federal Trade Commission ("Commission"),
having filed a complaint for a permanent injunction and other
relief in this matter, pursuant to Section 13(b) of the Federal
Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), and having
moved for default judgment against defendants, and the Court
having considered the complaint, declarations, exhibits,
memorandum of law and arguments of the plaintiff, and now being
advised in the premises finds that:

1. A Complaint for Permanent Injunction and other
Equitable Relief was filed by Plaintiff on July 20, 1989.
2. The defendants were each served with a summons,
complaint and plaintiff's Motion for a Preliminary Injunction on
July 24, 1989.

A TRUE COPY, TESTE:
CLERK, U.S. DISTRICT COURT

BY

DEPUTY CLERK

JA011060
009851

PX0145-001

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX0145

FTC013-001867
TX 102-010322

3. On August 4, 1989, this Court granted plaintiff's Motion for a Preliminary Injunction and entered a Preliminary Injunction against the practices alleged by the complaint to be in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45.

4. Defendants have failed to file an Answer with the Clerk of this Court within the time set forth by Rule 12(a) of the Federal Rules of Civil Procedure. Plaintiff is thereby entitled to a default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure.

ORDER

I.

IT IS ORDERED, ADJUDGED AND DECREED that defendants David DeFusco, Annette DeFusco, and Lead Marketing, Inc., and each of them, and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, directly or through any corporation or other device, are restrained and enjoined from:

1. Representing, directly or by implication, that a named consumer has won a specified prize, award, gift, bonus,

premium, or any other good or service which is similarly described when in fact the consumer has not won the specified prize, gift, bonus, premium, or other good or service similarly described;

2. Representing, directly or by implication, to any consumer that they will receive a prize, award, gift, bonus, premium, or any other good or service which is similarly described as requiring no additional cost to the consumer, without disclosing fully, in type of equal size to that used to identify such good or service and immediately following each good or service thus represented, any cost that the consumer must pay to receive such good or service; or
3. Misrepresenting any material fact concerning any award, prize or premium.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants David DeFusco, Annette DeFusco, and Lead Marketing, Inc., and each of them, and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order, by personal service or otherwise, directly or through any corporation or other device, shall create, preserve and maintain accurate

records of (1) all advertising, promotional or sales materials containing representations regarding prize or gift offerings and (2) all prizes or gifts awarded pursuant to such offerings.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that for purposes of determining or securing compliance with this Order and subject to any legally recognized privilege, defendants, in connection with any business organization owned, managed or controlled in whole or in part by a defendant shall permit, upon reasonable written notice to defendants, representatives of the Federal Trade Commission:

A. Access during normal office hours to the offices of defendants to inspect and copy all documents in the possession or under the control of defendants relating to compliance with the terms of this Order; and

B. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, at a location reasonably convenient to both defendants and the Federal Trade Commission, the officers and employees of any such business organization, who may have counsel present, relating to compliance with the terms of this Order.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants David DeFusco and Annette DeFusco, for a period of ten years after release from any period of incarceration imposed as a result of federal criminal charges now pending against defendants, shall promptly give written notice to the Federal Trade Commission at the following address:

Federal Trade Commission
Associate Director for Marketing Practices
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

of each affiliation with a different business or employment. Such notice shall include the new business's name and address, a statement of the nature of the business, and a statement of his duties and responsibilities in connection with the business.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the expiration of any requirement imposed by this Order shall not affect any other obligation arising under this Order.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 3 day of Nov., 1989, at 10:30 am

Claude M. Hilton
United States District Judge

4 certified copies to counsel.

PX0145-006

JA011065
009856

FTC013-001872
TX 102-010327

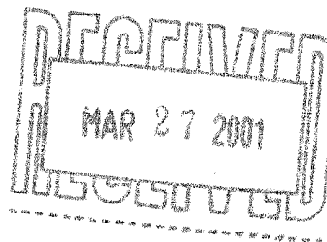
EXHIBIT 503

EXHIBIT 503

JA011066
009857

TX 102-010328

**ECHOSTAR SATELLITE CORPORATION
RETAILER AGREEMENT**



This Agreement (the "Agreement") is effective as of the 7 day of March, 2001, by and between EchoStar Satellite Corporation ("EchoStar") having a principal place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120, and Satellite Systems Network, having a principal place of business at 33282 Golden Lantern #110 Dana Point, CA 92629 ("Retailer").

INTRODUCTION

A. EchoStar is engaged, among other things, in the business of providing digital direct broadcast satellite (DBS) services through the DISH Network, a DBS service owned and operated by EchoStar and its Affiliates in the United States.

B. Retailer, acting as an independent contractor, desires to become authorized on a non-exclusive basis, to market, promote, and solicit orders for DISH Network™ video and audio programming packages ("Programming") provided by EchoStar (an "Authorized Retailer").

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

AGREEMENT

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

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

1.2 "Commissionable Programming" means the Programming packages designated by EchoStar as commissionable under this Agreement, as set forth in Exhibit B hereto, which EchoStar may change at any time in its sole discretion upon notice to Retailer.

1.3 "Commissions" mean the Residual Commissions, together with any Additional Commissions, as such terms are defined in Section 5.2 and as set forth in Exhibit B hereto, which EchoStar may change at any time in its sole discretion upon notice to Retailer.

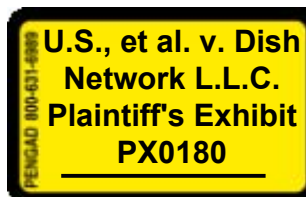
1.4 "DISH DBS System" means an MPEG-2 DVB compliant satellite receiver and related components packaged therewith, intended to be utilized for the reception of Programming delivered by satellite transponders owned and operated by EchoStar or its Affiliates, which is: (i) sold directly to Retailer by EchoStar or an EchoStar Affiliate under the "EchoStar" brand name or the brand name of an EchoStar Affiliate; or (ii) sold directly to Retailer by a Third Party Manufacturer pursuant to authorization granted by EchoStar under the brand name of such Third Party Manufacturer.

1.5 "EFT" means the electronic transfer of funds by a financial institution selected by EchoStar to the Retailer Account.

1.6 "Qualifying Residential Subscriber" means an individual at a Residential Location who orders Programming from EchoStar, who pays for the Programming in full, and who has never received any audio, video, or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its reasonable discretion, declines to activate.

1.7 "Residential Location" means a single family residential dwelling (i.e. single family houses, apartments, condominiums or other dwellings used primarily for residential purposes), located in the Territory; provided, however, in no case shall any satellite master antenna television system or private cable system in a residential multiple dwelling unit or any similar programming reception system (i.e. dormitories, etc.) be considered a Residential Location. EchoStar shall have the right to determine, in its sole discretion, whether a location constitutes a Residential Location, or is more appropriately considered a commercial or other non-residential location.

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



1.9 "Subscriber Account" means the account set up and maintained by EchoStar for a Qualifying Residential Subscriber who purchased a DISH DBS System from Retailer and for whom Commissionable Programming has been activated by EchoStar and which account remains active and in good standing.

1.10 "Territory" consists of the geographic boundaries of the United States, its territories and possessions.

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

2. APPOINTMENT; TERRITORY

2.1 Appointment. EchoStar appoints Retailer as a non-exclusive authorized representative to promote and solicit orders for DISH Network video and audio Programming listed in Exhibit A, which is attached hereto and incorporated by reference herein, subject to all of the terms and conditions of this Agreement. The appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same DBS service which may be operated by EchoStar or its Affiliates under a different name in the future. Retailer's authorization herein is limited to the solicitation of orders from, and the promotion of Programming to, Qualifying Residential Subscribers at Residential Locations unless EchoStar, in its sole discretion, specifically agrees in writing to permit Retailer to solicit orders from, or promote Programming to, others.

2.2 Territory. Retailer is only authorized, and shall limit its actions, to the promotion in the Territory of, and solicitation of orders in the Territory for, Programming in the packages (or a-la-carte for the Programming shown in Exhibit A as available on an a-la-carte basis), and at the prices, shown in Exhibit A.

2.3 Acceptance. Retailer accepts its appointment as an Authorized Retailer and agrees to use its reasonable commercial efforts to solicit orders for Programming in the Territory. Retailer understands that it may hold itself out to the public as an Authorized Retailer of EchoStar only after fulfilling, and for so long as it continues to fulfill, all of the requirements in this Agreement, and only during the Term of this Agreement.

2.4 Non-Exclusivity. Retailer acknowledges that: (i) nothing in this Agreement is intended to, nor shall it be construed as conferring any exclusive territory or any other exclusive rights to Retailer; (ii) EchoStar and its Affiliates make absolutely no promises, representations or warranties as to the potential amount of business or revenue that Retailer may expect to derive from participation in this Agreement; (iii) Retailer may not realize any business or revenue as result of its participation in this Agreement; (iv) nothing contained herein shall be construed as a guarantee of any minimum number of Commissions or other payments or forms of income or revenue; (v) EchoStar currently offers, and/or at any time in the future may offer, others the opportunity to solicit orders for Programming in the same geographic area in which Retailer is located and elsewhere; (vi) EchoStar currently solicits orders for Programming throughout the Territory and the entire United States, and may continue to do so in the future without any obligation or liability to Retailer whatsoever, and without providing Retailer with any notice thereof; and (vii) EchoStar shall be free to cease provision of the Programming services, and shall incur no liability to Retailer by virtue of any such cessation.

2.5 Purchase of DISH DBS Systems by Retailer from EchoStar. In the event that Retailer orders any DISH DBS Systems from Echosphere Corporation or any other Affiliate of EchoStar (collectively, "Echosphere" for purposes of this section) Retailer shall order such products by written purchase order ("Purchase Order") issued during the term of this Agreement. A Purchase Order shall be a binding commitment by Retailer. Any failure to confirm a Purchase Order shall not be deemed acceptance by Echosphere. Purchase Orders of Retailer shall state only the: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. Any additional terms stated in a Purchase Order shall not be binding upon Echosphere unless expressly agreed to in writing by Echosphere. In the event of any conflict between the terms of a Purchase Order and the terms of this Agreement, the terms of this Agreement shall prevail. Echosphere shall be considered a third party beneficiary of Retailer's obligations under this Agreement.

2.6 Sale of DISH DBS Systems. Retailer agrees that it will not directly or indirectly sell or otherwise transfer possession of a DISH DBS System to any person or entity who Retailer knows or has reason to know: (i) intends to resell it; (ii) intends to use it, or to allow others to use it, in any location other than a Residential Location; (iii) intends to use it, or to allow others to use it, in Canada or at any other location outside of the Territory; or (iv) intends to have Programming authorized for it under a single DISH Network account that has or will have Programming authorized for multiple DISH DBS Systems that are not all located in the same residence and connected to the same phone line. In the event that Retailer directly or indirectly sells or otherwise transfers possession of a DISH DBS System to a person or entity who uses it, or allows others to use it, to permit the viewing of Programming in a non-Residential Location or any other area open to the public and Retailer knew or reasonably should have known that the person or entity intended to use it, or to allow others to use it, for such purposes, then Retailer agrees to pay to EchoStar upon demand: (a) the difference between the amount actually received by EchoStar for the Programming authorized for the DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (b)

the total amount of any admission charges or similar fees imposed for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells or otherwise transfers possession of a DISH DBS System to a person or entity who has Programming authorized for it under a single DISH Network account that at any time has Programming authorized for multiple DISH DBS Systems that are not all located in the same residence and connected to the same phone line, and Retailer knew or reasonably should have known that the person or entity intended to have Programming authorized for the DISH DBS System under such an account, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate DISH Network account. In the event that Retailer breaches any of its obligations under this Section 2.6, EchoStar shall be entitled to charge back the Commissions, if any, paid to Retailer by EchoStar. EchoStar's calculation of amounts owing to EchoStar from Retailer under this Section 2.6 shall be binding absent manifest error. The foregoing provisions of this Section 2.6 are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise, and shall survive expiration or termination of this agreement indefinitely.

2.7 **Pre-Activations.** Retailer will not activate (a "Pre-activation") any DISH DBS System or DISH DBS receiver prior to installation of such DISH DBS System and/or receiver at a Residential Location.

2.8 **Prior Retailer Agreement.** In the event that Retailer previously entered into an agreement with EchoStar relating to the solicitation of orders for Programming by Retailer and the payment of commissions by EchoStar therefor (a "Prior Retailer Agreement"), which is in effect as of the effective date of this Agreement, then upon execution of this Agreement by Retailer and EchoStar: (i) the Prior Retailer Agreement shall be automatically terminated, except that the provisions (excluding the payment of commissions) in the Prior Retailer Agreement which expressly survive, and such other rights and obligations thereunder as would logically be expected to survive, its termination or expiration shall continue in full force and effect; and (ii) all commissions due to Retailer under the Prior Retailer Agreement shall be payable by EchoStar to Retailer in accordance with the terms and conditions of this Agreement; and (iii) except as set forth in Section 2.8(i) above, all rights and obligations between the parties shall be governed by the terms and conditions of this Agreement, and the Prior Retailer Agreement shall be of no force or effect. In the event that no Prior Retailer Agreement is in effect as of the effective date of this Agreement, Retailer shall only be eligible to receive Commissions for new Subscriber Accounts activated after the date of this Agreement, notwithstanding payment by EchoStar of any commissions to Retailer prior to the date of this Agreement. This Agreement shall not amend, modify, alter or change any terms or conditions of any Lease Plan Dealer Agreement, or any similar agreement relating to leasing, which is now existing or later made with EchoStar or any of its Affiliates.

3. **PROGRAMMING**

3.1 **Programming.** EchoStar, in its sole discretion, shall determine the Programming for which Retailer may solicit orders, as shown in Exhibit A. EchoStar may expand, reduce or otherwise modify Exhibit A and the content of any packages at any time and from time to time in its sole discretion. Any changes shall be effective (and Exhibit A shall be deemed modified) immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date.

3.2 **Changes.** If at any time or for any reason EchoStar changes the content of any Programming package, Retailer's authority to solicit orders for the prior Programming package shall immediately cease.

4. **PRICES.** EchoStar, in its sole discretion, shall determine the retail prices for Programming. Retailer will only solicit orders for Programming at the retail prices set by EchoStar from time to time. The initial retail prices for the Programming are as set forth in Exhibit A. EchoStar may increase, decrease or otherwise modify those prices from time to time in its sole discretion. Any price changes shall be effective (and Exhibit A shall be deemed modified) immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date.

5. **COMMISSIONS.**

5.1 **Residual Commissions.**

5.1.1 **Calculation.** Subject to the terms and conditions of this Agreement, for each DISH DBS System sold by a Retailer that results in the activation of Commissionable Programming for a new Subscriber Account, EchoStar shall pay Retailer a monthly commission (the "Residual Commission"), in accordance with the Commission Schedule attached hereto as Exhibit B (including the terms and conditions contained therein).

5.1.2 Payment Terms. Subject to the terms and conditions of this Agreement (including the exhibits attached hereto), commencing with the first full calendar month in which a Subscriber Account receives Commissionable Programming, and for every month thereafter in which the Subscriber Account receives Commissionable Programming during the entire month, Retailer shall be entitled to a Residual Commission. Each Residual Commission payment shall be made by EchoStar approximately forty-five (45) days following the last day of each calendar month for which a Residual Commission is owed to Retailer (on or about the fifteenth day of each month). Subject to the terms and conditions of this Agreement (including without limitation Sections 5.5, 5.6 and 5.7), Retailer shall continue to receive a Residual Commission on or about the fifteenth day of each month.

5.1.3 Chargebacks. In the event that Retailer is paid a Residual Commission but the Qualifying Residential Subscriber subsequently fails to pay in full for the Commissionable Programming, or a refund or credit is issued to the Qualifying Residential Subscriber for any reason (EchoStar shall have the discretion to issue a credit or refund in its sole discretion), Retailer shall be charged back the Residual Commission paid to Retailer.

5.1.4 Annual New Subscriber Minimum. If during the Term of this Agreement, Retailer fails in any full calendar year (or prorated portion of the calendar year in which this Agreement is executed) to activate the applicable annual minimum number of new Subscriber Accounts (the "Annual New Subscriber Minimum") as set forth in Exhibit B hereto, then as of January 1st of the following calendar year, Retailer shall no longer be entitled to receive Residual Commissions. Retailer shall thereafter be entitled to payment of Residual Commissions only upon attainment of the Annual New Subscriber Minimum during a subsequent calendar year and then only with respect to Qualifying Residential Subscribers whose Subscriber Account is first established during the year in which Retailer re-attains the Annual New Subscriber Minimum. Beginning the month following such attainment, Retailer shall be entitled to receive Residual Commissions (subject to the terms of this Agreement) for all Subscriber Accounts credited to Retailer in the then current calendar year and thereafter, unless and until Retailer fails to meet the Annual New Subscriber Minimum in any calendar year during the Term of this Agreement.

5.2 Additional Commissions. Retailer shall be eligible to participate in, and receive payments ("Additional Commissions") under, such promotions or incentive programs as EchoStar may institute in its sole discretion from time to time. Retailer acknowledges and agrees that: (i) under no circumstances shall EchoStar have at any time any obligation to offer Additional Commissions to Retailer, or if Additional Commissions are offered, to permit Retailer to be eligible to receive them; (ii) EchoStar may, in its sole discretion, add, discontinue, substitute, modify, or otherwise alter any or all of the terms of any promotion or incentive program involving the payment of Additional Commissions; and (iii) if EchoStar offers any Additional Commissions, Retailer shall only be eligible to receive the Additional Commissions if it meets all of the applicable qualification criteria and other terms and conditions as EchoStar may establish in its sole discretion.

5.3 Payment. Subject to the terms of this Section, all Commissions paid to Retailer hereunder shall be made by EFT.

5.3.1 Electronic Funds Transfer. Until Retailer provides EchoStar with the Retailer Account information in the manner prescribed by EchoStar ("EFT Instructions"), or in the event that Retailer elects to receive payments by check, EchoStar shall pay Commissions to Retailer by check and Retailer will be assessed EchoStar's standard processing fee, which may be changed by EchoStar in its sole discretion. For a period of approximately thirty (30) days after EchoStar receives initial EFT Instructions from Retailer, EchoStar will make all payments of Commissions to Retailer hereunder by check, and mail the same free of charge.

5.3.2 Reliance on Retailer Account Information. With respect to Retailer's EFT Instructions, and any purported changes or modifications thereof by Retailer, EchoStar may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument and may assume that any person purporting to give any such writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so.

5.3.3 EchoStar EFT Liability Limitation. Retailer agrees that in no event shall EchoStar have any liability under this Agreement for any Commissions not received by Retailer as a result of an error in any way attributable to: (i) any bank or financial institution; (ii) Retailer; or (iii) any other person or entity outside of EchoStar's direct control.

5.4 Commission Statements. EchoStar shall provide Retailer, in an electronic format determined by EchoStar, periodic statements reflecting the Residual Commissions and Additional Commissions (if any) payable to Retailer. At Retailer's request, EchoStar will prepare and mail a paper copy of Retailer's periodic statements, subject to EchoStar's standard processing fee.

5.5 Exceptions.

5.5.1 Notwithstanding Section 5.1, above, Retailer shall not be entitled to any Commissions with respect to any Subscriber Account for which: (i) the Commissionable Programming has been canceled; (ii) payment in full for the Commissionable Programming has not been received by EchoStar; (iii) a credit or refund has been issued by EchoStar (to the extent of the credit or

refund issued); (iv) the subscriber would otherwise be a Qualifying Residential Subscriber, but is already receiving any of the Programming, or any other audio, video or other programming services from EchoStar or any of its Affiliates on the date of the order; or (v) the Subscriber Account is otherwise terminated, disconnected or deactivated for any reason.

5.5.2 In no event shall Retailer be entitled to Commissions with respect to the activation by EchoStar of DISH DBS Systems not confirmed by EchoStar as having been purchased by Retailer directly from either: (i) Echosphere Corporation or other Affiliate of EchoStar; or (ii) a Third Party Manufacturer. Retailer acknowledges and agrees that, with respect to DISH DBS Systems purchased by Retailer directly from a Third Party Manufacturer, EchoStar shall not be required to pay Retailer a Commission for the activation of Programming for a new Subscriber Account resulting from the sale by Retailer of any such DISH DBS System unless and until the Third Party Manufacturer provides EchoStar with accurate information required by EchoStar to be able to pay the Commission to Retailer including, at a minimum: (a) the serial number of the DISH DBS System sold by the Third Party Manufacturer to Retailer; and (b) the name and address, and other appropriate identifying information, of Retailer.

5.6 Suspension and Termination of Commissions.

5.6.1 **Suspension.** In addition to any other rights and remedies available, EchoStar shall not be required to pay any Commissions to Retailer which would otherwise be due to Retailer during any period in which Retailer is in breach or default of this Agreement, the Trademark License Agreement (Exhibit C) or any Other Agreement (as defined in Section 5.8 below), and EchoStar shall have no liability to Retailer as a result of such suspension of payment. Specifically, and without limitation of the foregoing, Retailer shall have no right at any time to recoup any Commissions not paid during a period of breach or default. For purposes of this Section 5.6.1, Retailer shall be deemed to be in "default" of this Agreement if Retailer fails to pay any amount owing to EchoStar and/or any of its Affiliates when due. The foregoing provisions of this Section 5.6.1 are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise, and shall survive expiration or termination of this agreement indefinitely.

5.6.2 **Termination.** EchoStar shall have the right to terminate immediately all payments of Commissions due to Retailer under this Agreement, in addition to any other remedies available to EchoStar, upon the occurrence of any of the following events:

- (a) this Agreement is terminated: (i) pursuant to Section 9.2 or 9.3 and, if applicable, after written notice of default has been delivered to Retailer and the applicable cure period has passed without remedy by Retailer of the default in question; or (ii) the Trademark License Agreement (Exhibit C) between the parties has been terminated by EchoStar for cause; or
- (b) breach by Retailer of the confidentiality provisions contained in Section 13 below, during the Term or after expiration or termination of this Agreement. In no event shall the foregoing be the sole remedy available to EchoStar if Retailer breaches the confidentiality provisions of this Agreement;
- (c) Retailer is purchasing DISH DBS Systems through a Third Party Manufacturer, and the agreement between EchoStar or its Affiliates and the Third Party Manufacturer terminates for any reason; or
- (d) termination of any Other Agreement (as defined in Section 5.8 below) for any reason.

5.7 **Non-Commissioned Activations by EchoStar.** In the event that Retailer for any reason does not qualify for a Commission with respect to any Qualifying Residential Subscriber or any DISH DBS System, EchoStar shall be entitled to activate Programming for that Qualifying Residential Subscriber without payment of any Commission to Retailer, even if Retailer solicited the Qualifying Residential Subscriber to order Programming from EchoStar.

5.8 **Offsets.** In no event shall Retailer offset any Programming payment which may be collected by Retailer, or any other amounts due to EchoStar or any of its Affiliates from Retailer for any reason, against any Commissions owed to Retailer by EchoStar or any other sums owed to Retailer by EchoStar or any of its Affiliates. In the event that the Commissions paid by EchoStar to Retailer exceed the amount to which Retailer was entitled, or if Retailer is indebted to EchoStar or its Affiliates for any other reason, Retailer acknowledges and agrees that EchoStar and its Affiliates shall have the right, but not the obligation, to offset any such amounts due to EchoStar or its Affiliates from Retailer for any reason against any Commissions or other money otherwise due to Retailer from EchoStar or any of its Affiliates. Further, should one or more contracts now or hereafter exist between EchoStar and Retailer, or between Retailer and any Affiliate of EchoStar, or if EchoStar or any such Affiliate is holding funds or equipment to be paid or disbursed to Retailer pursuant to business dealings between the parties not reflected in any contract (all such other contracts and business dealings with EchoStar and/or any Affiliate are herein collectively referred to as the "Other Agreements"), EchoStar or such Affiliate may, but shall have no obligation to, deduct from any amounts due or to become due to Retailer under this Agreement any sums which Retailer owes to EchoStar or such Affiliate, whether or not then due arising out of this Agreement or the Other Agreements, as well as any and all amounts for which EchoStar or such Affiliate may become liable to third parties by reason of Retailer's acts in performing, or

failing to perform, Retailer's obligations under this Agreement or any of the Other Agreements. Further, EchoStar may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as EchoStar, in its sole discretion, deems necessary to protect EchoStar or any Affiliate from any loss, damage, or expense relating to or arising out of Retailer's performance hereunder, or in response to any claim or threatened claim of which EchoStar becomes aware concerning Retailer or the performance of Retailer's duties hereunder. EchoStar's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim, or recoupment of Retailer whatsoever, including, but not limited to, any which might arise from a breach of this Agreement by EchoStar or any of its Affiliates.

5.9 **Recovery of Outstanding Amounts.** EchoStar's calculation of Commissions or other amounts due from EchoStar or its Affiliates to Retailer and/or offset amounts shall be binding absent manifest error. If, after the termination of this Agreement EchoStar has paid, or taken offsets against, all Commissions or other amounts due from EchoStar or its Affiliates to Retailer, then Retailer shall pay to EchoStar, within five (5) days after the day on which Retailer receives EchoStar's written notice thereof, all offset amounts which EchoStar or its Affiliates have not already recovered.

5.10 **Collection of Programming Fees.** Retailer acknowledges and agrees that, except for the installation of DISH DBS Systems which may be provided by Retailer, under no circumstances shall Retailer collect any payment for Programming or any other money due to EchoStar and/or any of EchoStar's Affiliates directly from any Qualifying Residential Subscriber, and all Programming fees will be billed directly to Qualifying Residential Subscribers by EchoStar. In the event that, notwithstanding Retailer's best efforts to comply with this requirement, any Qualifying Residential Subscriber forwards any payment to Retailer rather than to EchoStar directly, Retailer shall immediately forward the payment, together with any applicable sales or similar taxes, to EchoStar without deduction or offset of any kind, and shall instruct the Qualifying Residential Subscriber that all future payments for Programming must be made to EchoStar directly.

5.11 **Sole Compensation.** Retailer acknowledges and agrees that the Commissions payable pursuant to this Agreement constitute the sole commissions or fees payable by EchoStar to Retailer for Retailer's role in soliciting orders for Programming or for any other audio, video, or other programming provided by EchoStar or any of its Affiliates. Retailer further acknowledges and agrees that Commissions payable under this Agreement shall be in lieu of and not in addition to any other commissions, incentive programs or promotions under any Other Agreements (as defined in Section 5.8 above).

5.12 **No Admission.** No payment to Retailer under this Agreement, whether in full or in part, shall be deemed to operate as EchoStar's acceptance or admission that Retailer has complied with any provision of this Agreement.

6. **ORDERS.**

6.1 Retailer agrees to use its best commercial efforts to promote and enhance EchoStar's business, reputation and goodwill. Retailer shall allow only its employees (and not any independent contractors, sub-agents or other person or entity) to solicit, take or transmit any orders unless Retailer obtains EchoStar's specific prior written consent to use of such other person or entity, which consent may be withheld in EchoStar's sole discretion.

6.2 Retailer shall not sell Programming under any circumstances. All sales of Programming are transactions solely between EchoStar and Qualifying Residential Subscribers. Retailer also agrees that it shall not condition, tie or otherwise bundle any purchase of Programming with the purchase of other services or products other than as specifically agreed to in writing by EchoStar in advance.

6.3 Retailer shall promptly forward to EchoStar all orders for Programming in the manner prescribed by EchoStar from time to time. Retailer understands that EchoStar shall have the right, in its sole discretion, to accept or reject, in whole or in part, all orders for the Programming.

6.4 Retailer shall take all actions and refrain from taking any action, as reasonably requested by EchoStar in connection with the marketing, advertisement, promotion of, or taking of orders and Retailer shall cooperate by supplying EchoStar with information relating to those actions as EchoStar reasonable requests.

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

8. **CONDUCT OF BUSINESS.**

8.1 **Business Ethics.** Retailer shall not engage in any activity or business transaction which could be considered unethical, as determined by EchoStar in accordance with prevailing business standards, or damaging to EchoStar's image or goodwill in any way. Retailer shall under no circumstances take action which could be considered disparaging to EchoStar. Retailer shall comply

with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise) ("Laws"), and Retailer is solely responsible for its compliance with all Laws which apply to its obligations under this Agreement.

8.2 **Signal Theft.** Retailer shall not directly or indirectly: (i) engage in any signal theft, piracy or similar activities; (ii) engage in any unauthorized reception, transmission, publication, use, display or similar activities with respect to Programming; (iii) use a single DISH Network account for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same residence and connected to the same phone line; (iv) alter any DISH DBS Systems or "Smart Cards", or any other equipment compatible with programming delivered by EchoStar or any of its Affiliates to be capable of signal theft (or for any other reason without the express written consent of EchoStar); (v) sell any equipment altered to permit signal theft or other piracy; or (vi) aid any others in engaging in, or attempting to engage in, any of the above described activities. Retailer shall immediately notify EchoStar if it becomes aware of any such activity.

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

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

9. **TERM AND TERMINATION**

9.1 **Term.** This Agreement shall commence on the date of execution by both parties and shall continue until December 31, 2001 (the "Term") unless and until terminated by either party in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable.

9.2 **Termination By Either Party Upon Default.** This Agreement may be terminated by a party (the "Affected Party"), upon the occurrence of any of the following with respect to the other party (the "Other Party"): (i) the Other Party commits a payment default which is not cured within ten (10) days of receipt of written notice from the Affected Party (for purposes of this Section 9.2, Retailer shall be deemed to have committed a "payment default" if Retailer fails to pay any amount owing to EchoStar and/or any of its Affiliates when due); or (ii) the Other Party defaults on any obligation or breaches any representation, warranty or covenant in this Agreement, the Trademark License Agreement or any Other Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right), and such default or breach, if curable, is not cured within thirty (30) days of receipt of written notice from the Affected Party. The parties agree that all obligations, representations, warranties and covenants contained in this Agreement, whether or not specifically designated as such, are material to the agreement of the parties to enter into and continue this Agreement.

9.3 **Termination by EchoStar.** This Agreement shall terminate automatically should any of the following occur, unless EchoStar notifies Retailer to the contrary in writing: (i) Retailer becomes insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings are instituted against Retailer; (ii) Retailer, for more than twenty (20) consecutive days, fails to maintain operations as a going business; (iii) Retailer, for more than twenty (20) consecutive days, ceases to actively market and promote DISH DBS Systems and/or Programming; (iv) Retailer, or any officer, director, substantial shareholder or principal of the Retailer is convicted in a court of competent jurisdiction of any offenses related to the business conducted by the Retailer in connection with this Agreement; (v) Retailer fails to comply with any applicable federal, state or local law or regulation, or engages in any practice, related to the business conducted by the Retailer in connection with this Agreement, which is determined to be an illegal or unfair trade practice in violation of any applicable federal, state or local law or regulation; (vi) Retailer falsifies any records or reports required hereunder; (vii) Retailer fails to renew, or loses, due to suspension, cancellation or revocation, for a period of fifteen (15) days or more, any license, permit or similar document or authority required by law or governmental authority having jurisdiction, that is necessary in carrying out the provisions of this Agreement and to maintain its corporate or other business status, as in effect as of the effective date of this Agreement; (viii) Retailer

directly or indirectly sells or otherwise transfers possession of a DISH DBS System to a person or entity who Retailer knew or had reason to know: (a) intended to resell it; (b) intended to use it, or to allow others to use it, in any location other than a Residential Location; (c) intended to use it, or to allow others to use it, in Canada or at any other location outside of the Territory; or (d) intended to authorize Programming for it using a single DISH Network programming account that had or would have Programming authorized for multiple DISH DBS Systems that are not all located in the same residence and connected to the same phone line; (ix) Retailer makes any representation or promise on behalf of EchoStar inconsistent with the representations or promises that EchoStar has specifically authorized Retailer to make on behalf of EchoStar in this Agreement; (x) the Trademark License Agreement (Exhibit C) or any Other Agreement (as defined in Section 5.8 above) terminate for any reason; (xi) Retailer fraudulently receives, or attempts to receive, a commission, incentive or promotion under any Other Agreement (as defined in Section 5.8 above) in connection with Retailer's role in soliciting orders for Programming or for any other audio, video, or other programming provided by EchoStar or any of its Affiliates; (xii) Retailer directly or indirectly uses a single DISH Network account for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same residence and connected to the same phone line; (xiii) Retailer engages in Pre-activations; or (xiv) any actual or alleged fraud, misrepresentation, or illegal action of any sort by Retailer in connection with this Agreement, the Trademark License Agreement or any Other Agreement.

9.4 **Termination of Agreement.** Retailer agrees that if this Agreement terminates for any reason, then Retailer shall:

9.4.1 immediately discontinue the marketing, promotion, and solicitation of orders for Programming, and immediately cease to represent and/or imply to any person or entity that Retailer is an Authorized Retailer for EchoStar;

9.4.2 immediately discontinue all use of the trademarks associated or included in any way whatsoever with the Programming, including, without limitation, DISH. Moreover, the Trademark License Agreement shall also terminate;

9.4.3 deliver to EchoStar, or destroy, at EchoStar's option all tangible things of every kind (excluding DISH DBS Systems) in the possession or control of Retailer that bear any of the trademarks;

9.4.4 upon request by EchoStar, certify in writing to EchoStar that such delivery or destruction has taken place;

9.4.5 at the option of EchoStar's Echosphere Corporation Affiliate, cease to be authorized to purchase DISH DBS Systems from Echosphere or any other Affiliate of EchoStar; and

9.4.6 pay all sums due EchoStar.

10. **INDEPENDENT CONTRACTOR.** The relationship of the parties hereto is that of independent contractors. Retailer shall conduct its business as an independent contractor, and all persons employed in the conduct of such business shall be Retailer's employees only, and not employees or agents of EchoStar. Retailer represents that it is not dependent on EchoStar for a major part of its business. It is further understood and agreed that Retailer has no right or authority to make any representation, promise or agreement on behalf of EchoStar except for such representations, promises, or agreements as EchoStar shall specifically, in writing, authorize Retailer to make. Any such inconsistent or additional warranty or representation made by Retailer shall constitute a breach of, and serve as grounds for termination of this Agreement pursuant to Section 9.3.

11. **LIMITATION OF LIABILITY.**

11.1 Upon termination of this Agreement by EchoStar for any reason set forth herein, EchoStar and its Affiliates shall have no liability or obligation to Retailer whatsoever. For example and not by limitation, in any such event Retailer shall have no right to require EchoStar to continue to allow Retailer to act as an Authorized Retailer to solicit orders on behalf of EchoStar. Retailer agrees that in the event of termination of this Agreement for any reason, no amounts spent in its fulfillment will be recoverable from EchoStar or any of its Affiliates by Retailer. The provisions of this Section 11.1 shall survive expiration or termination of this Agreement indefinitely.

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

BE BINDING AS COMMITMENTS OR PROMISES BY ECHOSTAR. THE PROVISIONS OF THIS SECTION 11.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT INDEFINITELY.

12. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold EchoStar and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) Retailer's performance or failure of performance under this Agreement and any direct or indirect results thereof; (ii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees or agents, whether or not such acts are within the scope of employment of such employees or agents) relating to the sale, marketing, advertisement, promotion or distribution of Programming and DISH DBS Systems and equipment; (iii) the breach of any of Retailer's representations or warranties herein; (iv) all purchases, contracts, debts and/or obligations made by Retailer; (v) Retailer directly or indirectly selling or otherwise transferring possession of a DISH DBS System to any person or entity who Retailer knew or reasonably should have known: (a) intended to resell it; (b) intended to use it, or to allow others to use it, in any location other than a Residential Location; (c) intended to use it, or to allow others to use it, in Canada or at any other location outside of the Territory; or (d) intended to authorize Programming for it using a single DISH Network programming account that had or would have Programming authorized for multiple DISH DBS Systems that are not all located in the same residence and connected to the same phone line; (vi) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation; (vii) the failure of Retailer to comply with any provision of this Agreement; (viii) the failure of Retailer to collect adequate taxes and remit same to EchoStar as required herein; (ix) any claim brought by Retailer's employees or agents for compensation and/or damages arising out of the expiration or termination of this Agreement; (x) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers (except with respect to any marketing materials supplied to Retailer by EchoStar); or (xi) Retailer directly or indirectly using a single DISH Network account for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same residence and connected to the same phone line. The provisions of this Section 12 shall survive expiration or termination of this Agreement indefinitely.

13. **CONFIDENTIALITY.**

13.1 **General.** At all times during the term of this Agreement and for a period of three (3) years thereafter, Retailer and its employees will maintain, in confidence, the terms and provisions of this Agreement, as well as all data, summaries, reports or information of all kinds, whether oral or written, acquired, devised or developed in any manner from EchoStar's personnel or files, or as a direct or indirect result of Retailer's actions or performance under this Agreement, and Retailer represents that it has not and will not reveal the same to any persons not employed by Retailer, except: (i) at the written direction of EchoStar; (ii) to the extent necessary to comply with law, the valid order of a court of competent jurisdiction or the valid order or requirement of a governmental agency or any successor agency thereto, in which event Retailer shall notify EchoStar of the information in advance, prior to making any disclosure, and shall seek confidential treatment of such information; (iii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, provided such parent company, auditors and attorneys agree to be bound by the provisions of this paragraph; or (iv) to the extent necessary to permit the performance of obligations under this Agreement.

13.2 **Subscriber Information.** All subscribers who subscribe to Programming services shall be deemed customers of EchoStar for all purposes relating to programming services (including video, audio and data) and the hardware necessary to receive such services. Retailer acknowledges and agrees that the names, addresses and related information of such subscribers ("Subscriber Information") are as between Retailer and EchoStar, with respect to the delivery of programming services and the hardware necessary to receive such services, proprietary to EchoStar, and shall be treated with the highest degree of confidentiality by Retailer. Retailer shall not directly or indirectly use any Subscriber Information for the purpose of soliciting, or to permit any others to solicit, subscribers to subscribe to any other programming services or promote the sale of any hardware product used in connection with such services, and Retailer shall under no circumstance directly or indirectly reveal any Subscriber Information to any third party for any reason without the express prior written consent of EchoStar, which EchoStar may withhold in its sole and absolute discretion; provided however, that nothing shall prohibit Retailer from utilizing its own customer list for its general business operations unrelated to the delivery of programming services or the sale of any product used in conjunction with such services. The provisions of this Section 13.2 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

13.3 **Remedies.** Retailer agrees that a breach of these obligations of confidentiality will result in the substantial likelihood of irreparable harm and injury to EchoStar, for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that EchoStar shall have the right, in addition to any other remedies available, to obtain immediate injunctive relief as well as other equitable relief allowed by the federal and state courts. The foregoing remedy of injunctive relief is agreed to without prejudice to EchoStar to exercise any other rights and remedies it may have, including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section 13.3 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

13.4 **Economic Benefits Derived Held in Trust.** In the event that Retailer derives an economic benefit, in any form, from a violation of its obligations under Section 13.2, it is hereby agreed that such economic benefit is the property of EchoStar and that Retailer shall deliver the cash value of the economic benefit to EchoStar immediately upon receipt of the economic benefit. It is further agreed that Retailer shall hold such economic benefit in trust for the benefit of EchoStar until such time as its cash value is delivered to EchoStar. The foregoing is agreed to without prejudice to EchoStar to exercise any other rights and remedies it may have, including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section 13.4 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

14. **MISCELLANEOUS.**

14.1 **Waiver.** The failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature. All rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity.

14.2 **Attorney Fees.** In the event of any suit or action to enforce or interpret this Agreement or any provision thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney fees, both at trial and on appeal, in addition to all other sums allowed by law.

14.3 **Successor Interests; No Assignment by Retailer.** This Agreement is binding upon the heirs, legal representatives, successors and assigns of EchoStar and Retailer. EchoStar may assign this Agreement to an Affiliate in whole or in part at any time without the consent of Retailer. This Agreement shall not be assigned by Retailer, except upon the prior written consent of EchoStar. Any merger, reorganization or consolidation of Retailer shall be deemed an assignment. If any person not a substantial stockholder of Retailer (less than a 25% interest) as of the date of this Agreement becomes a substantial stockholder of Retailer (equal to, or greater than a 25% interest), that shall be considered an assignment requiring EchoStar's consent hereunder.

14.4 **Choice of Law and Exclusive Jurisdiction.**

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

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

14.5 **Severability.** The parties agree that each provision of this Agreement shall be construed as separable and divisible from every other provision and that the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision hereof. In the event that a court of competent jurisdiction determines that any term or provision herein, or the application thereof to any person, entity, or circumstance, shall to any extent be invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, and shall be interpreted as if the invalid term or provision were not a part hereof.

14.6 **Entire Agreement.** This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, relevant to the subject matter of this Agreement made or existing before the date of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

14.7 **Compliance with Law.** The parties shall comply with, and agree that this Agreement is subject to, all applicable federal, state, and local laws, rules and regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

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

14.9 **Remedies Cumulative.** It is agreed that the rights and remedies herein provided in case of default or breach by Retailer of this Agreement are cumulative and shall not affect in any manner any other remedies that EchoStar may have by reason of such default or breach by Retailer. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

14.10 **Audit Rights.** In the event of any actual or suspected breach or default by Retailer (as determined in EchoStar's sole judgment), EchoStar shall have the right to review and audit, upon reasonable prior notice, Retailer's books and records for the purpose of determining Retailer's compliance with its duties and obligations under this Agreement (an "Audit"). Any audit conducted by EchoStar shall be conducted by EchoStar or its representative(s) at Retailer's offices during normal business hours. The provisions of this Section 14.10 shall survive expiration or termination of this Agreement indefinitely.

14.11 **General Provisions.** The terms and conditions attached as exhibits hereto are fully incorporated into this Agreement.

By signing below, Retailer hereby indicates its acceptance of the terms of, and agreement to, this Agreement.

Approved by :

ECHOSTAR SATELLITE CORPORATION

By: _____

Title: _____

Date: _____

RETAILER

By: _____

Title: _____

Date: _____

**EXHIBIT A
DISH NETWORK
PROGRAMMING PACKAGES
ECHOSTAR I AND II**

America's Top 40 \$19.99 per month \$220.00 per year

A&E	History Channel (The)
America's Voice	Home & Garden TV
Angel One	Home Shopping Network
Cartoon Network (The)	Learning Channel (The)
CNBC	Lifetime
CNN	MTV
Comedy Central	Nashville Network (The)
Country Music Television	Nickelodeon (East)
Court TV	Nickelodeon (West)
C-SPAN	Nick at Nite (East)
C-SPAN2	Nick at Nite (West)
Discovery Channel	TV Land
Disney Channel (East)	QVC
Disney Channel (West)	Sci-Fi Channel
E! Entertainment	TBN
ESPN	TBS
ESPN2	TNT
ESPNEWS	Travel Channel (The)
EWTN	TV Games
Food Network	USA Network
FOX Family Channel	VH1
Headline News	Weather Channel (The)

America's Top 100 CD \$28.99 per month \$320.00 per year

America's Top 40

PLUS

AMC
Animal Planet
BBC America
Black Entertainment Television (BET)
Bravo
CNNFN/CNNI
Discovery People

Turner Classic Movies
Univision
WGN
ZDTV
(1) FOX/SportsChannel Regional Network

Country Classics CD
Country Currents CD
Easy Instrumentals CD
Eurostyle CD
Fiesta Mexicana CD
Hot Hits CD
Jazz Traditions CD

CD Channels

ESPN Classic
FX
FOX News Channel
Galavision
Game Show Network
Independent Film Channel
M2
MSNBC
NOGGIN
PAX TV
Romance Classics
Toon Disney

70s Songbook CD
Adult Alternative CD
Adult Contemporary CD
Adult Favorites CD
Americana CD
Big Band Era CD
Blues CD
Classic Rock CD
Concert Classics CD
Contemporary Christian CD
Contemporary Instrumentals CD
Contemporary Jazz CD

Jukebox Gold CD
Kidtunes CD
Latin Styles CD
LDS Radio Network CD
Light Classical CD
Modern Rock Alternative CD
New Age CD
New Country CD
Non-Stop Hip Hop CD
Power Rock CD
Reggae CD
Urban Beat CD

All prices, packages and programming subject to change without notice.

Updated: 11/15/99

**DISH NETWORK
PROGRAMMING PACKAGES
ECHOSTAR I AND II**

DISH PIX Package \$15.00 per month No Annual Available		PPV	
A package of 10 channels – No A la Carte Available Choose from services available in AT 40, AT 100 CD or Superstations (excluding Disney Channel, Toon Disney, Regional Sports Networks, MTV, M2, Nickelodeon, VH1, Nick At Nite's TV Land, FX, Romance Classics, IFC, Galavision, Univision, BBC America, ZDTV, FOX News Channel, and PAX TV, NOGGIN)		DISH on Demand 12 Channels	Prices beginning at \$2.99
International Services A la Carte		DISH LATINO* \$19.99 per month \$239.88 per year	
RAI:	\$9.99 per month or \$119.88 per year	The following services are broadcast from satellites at the 119 Degree W.L. orbital position. Additional services are broadcast from the 110 Degree W.L. location. Univision Galavision Fox Sports World Espanol DISH CD Latin – 6 channels of CD-Quality Latin-Variety Music	
ANTENNA:	\$14.99 per month or \$179.88 per year		
Combination Superstation/Broadcast Networks		Premium Services	
Choose Any One:	\$4.99 per month or \$59.88 per year	Choose One Premium Pkg:	\$10.99 per month or \$121.00 per year
Choose Any Two:	\$7.99 per month or \$95.88 per year	Choose Two Premium Pkgs:	\$19.99 per month or \$220.00 per year
Choose All Three:	\$9.99 per month or \$119.88 per year.	Choose Three Premium Pkgs:	\$27.99 per month or \$308.00 per year
PACKAGES AVAILABLE		Choose Four Premium Pkgs:	\$34.99 per month or \$385.00 per year
<u>DISHNETS EAST Package</u> ABC, CBS, NBC, FOX PBS – National Network		PREMIUM PACKAGES AVAILABLE	
<u>DISHNETS WEST Package</u> ABC, CBS, NBC, FOX* PBS – National Network		<ul style="list-style-type: none"> HBO Package (6 channels) includes 5 channels of HBO plus HBO Family Showtime Package (8 channels) includes 3 channels of Showtime plus Showtime Extreme, 2 channels of TMC, FLIX and Sundance Channel MultiChannel Cinemax (3 channels) Includes 3 channels of Cinemax Encore/STARZ! (4 channels) includes 1 channel of Encore, 2 channels of Starz! and 1 channel of Encore Westerns 	
*The West Coast FOX feed available September 1, 1998.			
<u>SuperStation Package</u> KTLA, KWGN, WPIX, WSBK, WWOR			
DISH NETS Local Broadcast Networks Packages \$4.99 per month each		Additional Services A la Carte	
<u>Los Angeles</u> <u>DMA</u>	<u>New York</u> <u>DMA</u>	Disney Channel: (Both East and West) \$9.99 per month	
ABC – KABC	ABC – WABC	The Golf Channel: \$4.99 per month or \$59.88 per year	
CBS – KCBS	CBS – WCBS	Outdoor Channel \$1.99 month or \$23.88 per year	
NBC – KNBC	NBC – WNBC	DISH CD: \$4.99 per month or \$59.88 per year	
FOX – KTTV	FOX – WNYW	Single Broadcast Networks: \$1.50 each	
PBS – National	PBS – National	MultiSport Package: \$4.99 per month or \$59.88 per year (must subscribe to AT100 CD)	
Adult Services A la Carte			
Playboy	\$12.99 per month		
	\$6.99 per 4-hour block		
TeN	\$19.99 per month		
	\$219.89 per year		
	\$8.99 per 90-minute movie		
Pleasure	\$5.99 per 90 minute movie		

*The Spanish language package requires the DISH 500 antenna or two dishes, one pointed at the 119 Degree Orbital location and the other at the 110 Degree Orbital location. All prices, packages and programming subject to change without notice. Updated 11/15/99

**DISH NETWORK
ECHOSTAR III
61.5 Degrees W.L.**

International Services		International Radio	
TV5 (French)	\$9.99 per month \$119.88 per year	RFI	\$1.00 per month \$12.00 per year
RTPi (Portuguese) (must subscribe to AT40 or AT100)	\$4.00 per month \$48.00 per year	Al Zikr ART Music	Included in the ART Arabic Language Package at no additional charge. No a la carte is available.
TV Japan (Japanese)	\$25.00 per month \$300.00 per year		
TV Polonia (Polish) (must also subscribe to 2 Polskie Radio Services)	\$14.99 per month* \$179.88 per year*	Radio Maria Italy (Italian)	\$5.00 per month \$55.00 per year
ART (Arabic)	\$19.99 per month	Radio Maria Poland (Polish)	\$5.00 per month \$55.00 per year
ART Movies (Arabic)	\$239.88 per year	Radio Maria Spanish	\$5.00 per month \$55.00 per year
LBC (Arabic from Lebanon)			
Aljazeera		Polskie Radio Program 1	\$4.99 per month*
(these four video services plus Al Zikr Radio service sold only as a package/no a la carte available)		Polskie Radio Program 3 (must subscribe to 2 Polskie Radio and 1 TV Polonia video services)	\$59.88 per year*
ZEE TV (Hindi)	\$14.99 per month \$179.88 per year		
TV Asia (Hindi/English/Gujarati)	\$14.99 per month \$179.88 per year		
ZEE TV and TV Asia Package	\$24.99 per month \$299.88 per year		
NTV and NTV PLUS	\$24.99 per month \$299.88 per year		
GLOBO	\$19.99 per month \$239.88 per year		
A la Carte		PPV	
NASA	Free Access	DISH on Demand 5 Channels	Prices beginning at \$2.99
Bloomberg	\$1.50 per month \$18.00 per year		
TrackPower	\$19.95 per month \$150.00 per year		
The Racing Network	\$24.99 per month \$299.88 per year		
Local Network Packages \$4.99 per month each			
<u>Atlanta</u> DMA	<u>Boston</u> DMA	<u>Chicago</u> DMA	<u>Dallas</u> DMA
ABC - WSB CBS - WGMX FOX - WAGA NBC - WXIA PBS - NATIONAL	ABC - WCVB CBS - WBZ FOX - WFXT NBC - WHDH PBS - NATIONAL	ABC - WLS CBS - WBBM FOX - WFLD NBC - WMAQ PBS - NATIONAL	ABC - WFAA CBS - KTVT FOX - KDFW NBC - KXAS PBS - NATIONAL
<u>Miami</u> DMA	<u>New York</u> DMA	<u>Pittsburgh</u> DMA	<u>Washington, D.C.</u> DMA
ABC - WPLG CBS - WFOR FOX - WSVN NBC - WTVJ PBS - NATIONAL	ABC - WABC CBS - WCBS FOX - WNYW NBC - WNBC PBS - NATIONAL	ABC - WTAE CBS - KDKA NBC - WPXI FOX - WPGH PBS - NATIONAL	ABC - WJLA CBS - WUSA FOX - WTTG NBC - WRC PBS - NATIONAL

*Must subscribe to 1 TV Polonia video and 2 Polskie Radio Services. All prices, packages and programming subject to change without notice.

Updated 11/15/99

**DISH NETWORK
ECHOSTAR TV
TEMPORARILY MOVED TO SATELLITES LOCATED AT
119 DEGREES W.L.**

International Services		International Radio Services	
TV Japan (Japanese)	\$25.00 per month \$300.00 per year	Al Zikr	Included in the ART Arabic Language Package at no additional charge. No a la carte is available.
ART (Arabic)	\$ 19.99 per month		
ART Movies (Arabic)	\$239.88 per year		
LBC (Arabic from Lebanon)			
Aljazeera			
(these four video services plus Al Zikr Radio service sold only as a package/no a la carte available)			
ZEE TV (Hindi)	\$ 14.99 per month \$179.88 per year		
TV Asia (Hindi/English/Gujarati)	\$ 14.99 per month \$179.88 per year		
ZEE TV and TV Asia Package	\$ 24.99 per month \$299.88 per year		

All prices, packages and programming subject to change without notice.

Updated: 11/15/99

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**DISH NETWORK PROGRAMMING
LOCATED AT 110 DEGREES W.L.**

DISH LATINO* \$19.99 per month \$239.88 per year		International	
The package also includes HTV, FOX Sports World Espanol, Telemundo, Univision, Galavision and DISH CD Latin which are located at the 119 Degree Orbital position. CBS Telenovelas MTV-S Cine Latino Playboy en Espanol Discovery en Espanol SUR GEMS TV Chile Gran Canal Latino		CHANNEL KOREA	\$19.99 per month \$239.88 per year
Local Network Packages \$4.99 each			
<u>Atlanta</u> <u>DMA</u>	<u>Chicago</u> <u>DMA</u>	<u>Dallas</u> <u>DMA</u>	<u>Denver</u> <u>DMA</u>
ABC - WSB CBS - WGMX FOX - WAGA NBC - WXIA PBS - NATIONAL	ABC - WLS CBS - WBBM FOX - WFLD NBC - WMAQ PBS - NATIONAL	ABC - WFAA CBS - KTVT FOX - KDFW NBC - KXAS PBS - NATIONAL	ABC - KMGH CBS - KCNC NBC - KUSA FOX - KDVR PBS - NATIONAL
<u>Phoenix</u> <u>DMA</u>	<u>Salt Lake City</u> <u>DMA</u>	<u>San Francisco</u> <u>DMA</u>	
ABC - KNXV CBS - KPHO NBC - KPNX FOX - KSAZ PBS - NATIONAL	ABC - KTVX CBS - KUTV NBC - KSL FOX - KSTU UPN - KJZZ PBS - NATIONAL	ABC - KGO CBS - KPIX NBC - KRON FOX - KTVU PBS - NATIONAL	
PPV		A La Carte	
DISH on Demand 12 Channels		Bloomberg	\$1.50 per month \$18.00 per year

*The Spanish language package requires the DISH 500 antenna or two dishes, one pointed at the 119 Degree Orbital location and the other at the 110 Degree Orbital location.

**EXHIBIT B
COMMISSION SCHEDULE**

- A. **Commissionable Programming Packages:** DishPix, America's Top 40, America's Top 100 CD, Dish Latino, and such other Programming packages as EchoStar, in its sole discretion, may add or substitute upon notice to Retailer.
- B. **Annual New Subscriber Minimum:** 24 (to be prorated in the calendar year in which the Agreement is executed)
- C. **Residual Commissions for Retailers.** Provided Retailer has reached the Annual New Subscriber Minimum, payment of Residual Commissions to Retailer will commence when and for such times as Residual Commissions payable to Retailer exceed twenty-five dollars (\$25.00).

<u>Number of New Subscriber Accounts Per Calendar Year</u>	<u>Monthly Residual Commission Per Subscriber</u>
24 - 99	.50
100 - 249	.75
250 - 999	1.00
1000 - 2499	1.25
2500+	1.50

Terms and Conditions for Residual Commissions

- a. The applicable Commission to which Retailer is entitled for each new calendar year during the Term of the Agreement shall be based upon the net number of new Subscriber Accounts activated by Retailer during the preceding calendar year, which is defined as the number of Retailer's current active Subscriber Accounts as of January 1 of the current calendar year, less the number of Subscriber Accounts on January 1 of the previous year.
- b. During the calendar year in which the Agreement becomes effective, EchoStar may, in its sole discretion, pay Commissions due to Retailer based on a volume of new Subscriber Accounts which Retailer estimates in good faith that it will activate during such initial calendar year. In any event, the applicable Commission to which Retailer is entitled for the calendar year following the initial year shall be based upon the net number of new Subscriber Accounts (as defined above) activated by Retailer during the initial calendar year on a prorated basis.
- c. With respect to multi-month Commissionable Programming purchased by Qualifying Residential Subscribers, Commissions shall be paid to Retailer, subject to the provisions of Section 5 of the Retailer Agreement to which this Exhibit is attached, on a pro rata basis in monthly installments for the period during which the multi-month Commissionable Programming is in effect.

Additional Commissions

Activation Commissions Program

1. For each primary receiver sold directly to Retailer after June 1, 1997 and before this Activation Commissions Program is terminated by EchoStar in its sole discretion, by: (i) Echosphere Corporation or an Affiliate under the "EchoStar" brand name; or (ii) a Third Party Manufacturer, and which results in the activation of a primary receiver for a new Subscriber Account, EchoStar shall pay Retailer a commission of \$100.00 (an "Activation Commission"). The date of sale shall be deemed to be the date that the receiver is shipped to Retailer. For the purposes of this Exhibit B, a "Primary Receiver" shall be the first integrated receiver-decoder to be activated on a new Subscriber Account, all other receivers activated on that Subscriber Account (whether at the same time or later) shall be "Secondary Receivers".
2. For each Secondary Receiver sold to Retailer by: (i) Echosphere Corporation or an Affiliate; or (ii) a Third Party Manufacturer, and which is used in conjunction with a Primary Receiver of a Subscriber Account, EchoStar shall pay Retailer an Activation Commission of \$40.00.
3. Subject to the terms and conditions of the Agreement to which this Exhibit is attached (including without limitation Sections 5.5, 5.6 and 5.7), each Activation Commission payment shall be made by EchoStar within ten (10) days of the later to occur of: (i) activation of the receiver; or (ii) if applicable, the date payment is due to Echosphere or its Affiliate for the receiver.
4. In the event that a receiver, for which an Activation Commission has been paid to Retailer by EchoStar, does not remain active and receiving Commissionable Programming for two hundred thirty (230) consecutive days commencing from the date of initial activation, Retailer shall be charged back the Activation Commission, and EchoStar may deduct charged back amounts from Commissions due to Retailer under this Agreement.

EXHIBIT C

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is effective as of the 7 day of March, 2001, by and between EchoStar Satellite Corporation, with a place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120 ("ESC") and Satellite Systems Network, with its principal place of business at 33283 Golden Lantern #110 Dana Point, CA 92629 ("Licensee").

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

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

C. Licensee desires to be permitted to use the EchoStar trademarks, service marks and trade names set forth in Exhibit A hereto, as amended from time to time in ESC's sole discretion (the "Trademarks") as ESC, in its sole discretion, may authorize, from time to time, under a non-exclusive license, to promote and solicit orders for DISH Network Programming.

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

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

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

3. Licensee expressly recognizes and acknowledges that the License, as well as any past use of the Trademarks in any manner whatsoever by Licensee (including but not limited to use on signs, business cards, or in advertisements) or in any form whatsoever by Licensee (including but not limited to typewritten or stylized form), shall not confer upon Licensee any proprietary rights or interest to any Trademarks including, but not limited to any existing or future goodwill in the Trademarks. All goodwill in the Trademarks shall inure to ESC's sole benefit. Further, Licensee waives any and all past, present, or future claims it has or might have to the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between ESC and Licensee, ESC has the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that ESC retains full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein. While Licensee has no right or authority to do so, in the event that Licensee has previously, or in the future reserves, files, or registers any of the Trademarks of ESC (whether in typewritten, stylized or any other form), Licensee agrees to notify ESC immediately, and immediately upon request of ESC, to assign any and all interest to ESC that is obtained through the reservation, filing, or registration of the Trademarks in the U.S. or any foreign jurisdiction, and hereby acknowledges that any such reservation, filing, or registration of the Trademarks, whenever occurring, shall be on behalf of and for the sole benefit of ESC, and Licensee waives all claims or rights to any compensation whatsoever therefor. Licensee's obligations in this paragraph shall survive the expiration or termination of this Agreement indefinitely.

4. Nothing in this Agreement shall be construed to bar ESC from protecting its right to the exclusive use of its Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including Licensee, either during the

term of this Agreement or following any expiration or termination of Licensee's right to use the Trademarks pursuant to this Agreement. Licensee will promptly and fully advise ESC of any use of any mark that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with ESC in defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESC's expense. Similarly, nothing in this Agreement shall be construed to require that ESC take any action to protect the Trademarks in any instance, and ESC shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

5. (a) This Agreement shall continue for a period of time equal to the term of the Retailer Agreement to which this Agreement is attached, unless terminated earlier for a reason provided herein. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

(b) This Agreement may be terminated by a party (the "Affected Party") in the event that the other party (the "Other Party") defaults on any obligation or breaches any representation, warranty or covenant in this Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right), and such default or breach, if curable, is not cured within thirty (30) days of receipt of written notice from the Affected Party. The parties agree that all obligations, representations, warranties and covenants contained in this Agreement, whether or not specifically designated as such, are material to the agreement of the parties to enter into and continue this Agreement.

(c) This Agreement shall terminate automatically upon termination of the Retailer Agreement to which this Agreement is attached any Other Agreement (as defined in Section 5.8 of the Retailer Agreement) for any reason, unless EchoStar notifies Licensee to the contrary in writing.

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first above written.

ECHOSTAR SATELLITE CORPORATION

By: _____

Title: VP Sales

LICENSEE

By: _____

Title: President

EXHIBIT A TO TRADEMARK LICENSE AGREEMENT

ECHOSTAR ®

dish
NETWORK™

dish™

EXHIBIT 504

EXHIBIT 504

JA011087
009878

TX 102-010349

From: Meyers, Nick
Sent: Monday, March 11, 2002 2:06:11 PM
To: Neylon, Brian; Ahmed, Amir
CC: Portela, Shawn
Subject: RE: Dish Network Answering Machine Message

Yes, this is our account.

This is being done by Vector marketing - on behalf of many retailers around the country.

Since they are not seeking co-op, many of the dealers are choosing to waive the activation fee (just like Direct Sales and Target Marketing have done).

While we are not lawyers, we know of no Colorado law which prohibits leaving solicitation voice mails - and Vector claims the same.

It has caused a few concerning calls, but seems to be greatly out weighed by the results.

Please let me know if you need us to do anything regarding this issue - or if it is still an issue at all.

Thanx

Nick

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

From: Neylon, Brian
Sent: Monday, March 11, 2002 8:53 AM
To: Ahmed, Amir
Cc: Meyers, Nick
Subject: FW: Dish Network Answering Machine Message

Amir,

Retailer is from Ft. Collins CO.

Nick, any insight?

Brian

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

From: Frey, Dennis
Sent: Monday, March 11, 2002 10:51 AM
To: Neylon, Brian
Subject: RE: Dish Network Answering Machine Message

Brian,

This is Satellite Systems Network out of Ft. Collins CO

The phone number takes you to a call center in CA who SSN contracts through for their sales...
Satellite Systems Network (Call Center)
33282 Golden Lantern #106
Dana Point, CA 92629
1-800-615-1621

The CSR for the call center wasn't sure of the exact mailing address for the DISH Network retailer contact of SSN, but let me know that they are out of Ft. Collins, CO.

Dennis

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

From: Davidson, Mary
Sent: Sunday, March 10, 2002 10:12 PM



JA011088
009879

PX0080-001

To: Ahmed, Amir; Neylon, Brian; 'wadewelch@twwlaw.com'
Subject: RE: Dish Network Answering Machine Message

Guys:

Our retailer agreement does have a clause that says that retailers must follow all laws - federal, state and local. So, if this is a violation of state law, then he needs to be advised of this. However, I have gotten several pre-recorded solicitation calls at home so we need to make sure this is prohibited before we bust him.

Wade:

Is calling with a pre-recorded message a specific violation of the federal telemarketing act?

Please advise.

Thanks,

Mary

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

From: Novak, Scott
Sent: Sunday, March 10, 2002 7:26 PM
To: Ahmed, Amir; Neylon, Brian
Cc: Davidson, Mary
Subject: RE: Dish Network Answering Machine Message

Don't know New York law specifically, but in general state law frowns on pre-recorded telephone calls And retailer's contract, I'm sure, says they must follow laws, and indemnify us for problems they create.

If someone wants to make that clear to retailer I would be much obliged.

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

From: Ahmed, Amir
Sent: Friday, March 08, 2002 10:44 PM
To: Neylon, Brian; Novak, Scott
Subject: FW: Dish Network Answering Machine Message

Brian,

Who is the retailer?

Scott, What are the laws? Anything you want me to do here?

Amir

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

From: Pitts, Duke
Sent: Friday, March 08, 2002 8:34 AM
To: Ahmed, Amir
Cc: Novak, Scott
Subject: RE: Dish Network Answering Machine Message

Amir and Scott,

I was told that you should be informed of dealers using answering machine messaging. This is one calling in NY. He will answer his 800 number when you call. Let me know if you need me to go further with this.

Duke

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

From: Jeff Grill [SMTP:jgrill@theromanngroup.com] <mailto:[SMTP:jgrill@theromanngroup.com]>
Sent: Thursday, March 07, 2002 5:39 PM
To: Pitts, Duke; Kral, Colleen
Cc: gad@theromanngroup.com <mailto:gad@theromanngroup.com>; ann@theromanngroup.com <mailto:ann@theromanngroup.com>
Subject: Dish Network Answering Machine Message

PX0080-002

JA011089
009880

Confidential - U.S. v. DISH

DISH5-0000108060
TX 102-010351

FYI,

I received this pre-recorded message on my answering machine yesterday (Long Island, New York):

Hi, this is uh Jim "Thomas with satellite systems network, sorry I missed ya.

Just calling to let you know that we are in your area installing free DISH Network Satellite television systems and ah we just came out with a great new promotion where you can get up to 4 TV's hooked up all with separate receivers and remote at no charge. That is a savings of over 1000 dollars and that is no cost for the equipment and no installation charge. And we are now also giving you the first 3 months of programming free as well.

And we are now giving you the first three months of programming as well what you get is over twice as many channels as cable. Commercial free music. And local channels in most areas as well.

And you get all this at a monthly cost which is usually lower than the cost of cable

All at a monthly cost, which is often, lower than cable

Give us a call when you get home.

You can reach us at 800-6151621

Made sure to mention promotion code SR241

We look forward to hearing from you.

PX0080-003

JA011090
009881

EXHIBIT 505

EXHIBIT 505

JA011091
009882

TX 102-010353

INTENTIONALLY OMITTED

JA011092
009883

TX 102-010354

EXHIBIT 506

EXHIBIT 506

From: Weyforth, PJ
Sent: Thursday, May 09, 2002 3:36 PM
To: Larson, Scott; Stingley, Tom; Bissell, Kent; Welch, Shana; Schnittgrund, Steve; Pitts, Duke; Binns, Todd; Firestone, Brian; Weaver, Nileen; Apala, Jay
Cc: Cartwright, Soraya
Subject: Telemarketing

Recently there have been quite a few complaints in states regarding the telemarketing efforts of Dish Network. As a result we are evaluating our practices to ensure we are in compliance with national and state guidelines. Together we need to review where we are and potential gaps that need to be closed. We realize that retailer may be causing the bulk of the issues but we need to ensure we are buttoned up in each area. There is to be a meeting scheduled with Legal shortly to review Telemarketing in general and this may assist us in the discussion.

Target Marketing Lists

All campaigns from Duke Pitts and Todd Binns are scrubbed by the vendor against the national and state no call lists. We are getting a letter from the vendor stipulating that this is their business practice and is applicable for all work they do for us.

LTS Leads

While there is opinion that we have a relationship with this customer because they called us we will begin scrubbing this list just as we do the Target Marketing List above. Duke Pitts and Todd Binns will identify a vendor to support this work. We just want to ensure there is a timely turn-around on these lists so we don't lose the effectiveness of this contact.

Winback

Those that we outbound call within 3 to 5 days of disconnect we are most likely alright to contact because of our recent business relationship. But this needs to be validated.

The lists that are more aged will need to be scrubbed against the no call list. Marty's team may need assistance from Duke & Todd to incorporate into the LTS lead scrub.

Premium Up-Sales

We have a business relationship with these customers and should not preclude us from contacting them. We may want to treat this like LTS leads and scrub against the national and state no call lists through a vendor. The legal department should be able to advise.

Non-Pay

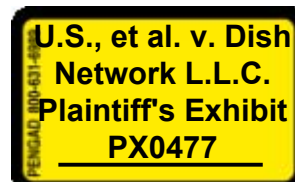
No perceived impact if we continue the current process. Validation with legal may be appropriate.

Collections

This should not be an issue and today we don't view this as an issue but we may want to validate for any national or state rule changes that may change that perception.

No Call List

Today in the CSCs when an agent is told by a customer they do not want to be contacted through any telemarketing efforts they are identified in the system. However we do have individuals that contact us asking to be put on the Dish Network No Call List that are not customers. This is a bit more complex but there a process. I believe the gap is what we do with that list and how we ensure that any list we call is scrubbed against this list along with the national and state no call lists. We may be able to supply these to the vendor we select for LTS, Winback, Premium... to incorporate in their master list.



Rules & Regulations

Today we are probably not as versed in all the regulations surrounding telemarketing as we should be. We need a point person other than legal within CSC or Marketing who is our resident expert. We also need to join an organization or web site that offers information in this area. This could go a long way.

So here is where we are and we need to meet on this quickly to get our plan of action together.

P.J. Weyforth

EXHIBIT 507

EXHIBIT 507

June 12, 2002

Satellite Systems Network
Alex Tehranchi
33282 Golden Lantern, Suite 110
Dana Point, CA 92629

Re: Violation of the EchoSphere Retailer Agreement

Dear Mr. Tehranchi:

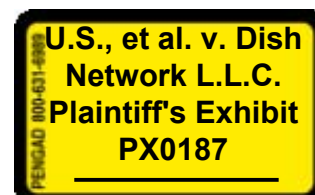
It has come to our attention that Satellite Systems Network is in violation of the EchoSphere Retailer Agreement (Agreement). The violation that occurred was in reference to paragraph 9.3, section v.

Paragraph 9.3 states that the Agreement shall terminate if "Retailer fails to comply with any applicable federal, state or local law or regulation, or engages in any practice, related to the business conducted by the retailer in connection with this Agreement which is determined to be an illegal or unfair trade practice in violation of any applicable federal, state or local law or regulation". Satellite Systems Network must comply with all applicable federal, state, and local laws, including but not limited to those specifically pertaining to telemarketing.

Please ensure that all practices pertaining to telemarketing are within the law. Thank you in advance for your co-operation in this matter.

Regards,

Mary Davidson
Director, Retail Services
DISH Network



JA011097
009888

PX0187-001

EXHIBIT 508

EXHIBIT 508

JA011098
009889

TX 102-010360

From: Apala, Jay
Sent: Wednesday, June 12, 2002 3:19 PM
To: Weyforth, PJ; Stingley, Tom
Cc: Bissell, Kent; Kuelling, Chris; Pitts, Duke; Binns, Todd
Subject: Available States for Outbounding

Importance: High

All,

Below are 25 states we can start calling. The states below do not have a state DNC list. Two of the states (California, Illinois) were originally pulled from calling, but California's DNC list is not in effect till January 2003 and Illinois does not have one. Washington which is not listed does not have a DNC list but is one of the states that need we need to be registered in. Please let me know if there are any questions.

Arizona	Iowa	Nevada
California	Maryland	N. Hampshire
Delaware	Mississippi	New Mexico
		North
Hawaii	Montana	Carolina
Illinois	Nebraska	North Dakota
Ohio	Vermont	
Rhode Island	Virginia	
South Carolina	West Virginia	
South Dakota	Michigan	
Utah	New Jersey	

Jay



PX0473-002

Confidential-US v. Dish

JA011100
009891

Dish-00008870

TX 102-010362

EXHIBIT 509

EXHIBIT 509

JA011101
009892

TX 102-010363



Retailer Business Questionnaire

2038969

Retailer Information

Name Star Satellite LLC
Street Address 79 W. 1450 N. #80
Street Address #2 _____
City Provo State UT ZIP 84604
Primary Business Phone Number 801.342-4880 Primary Business Fax Number () _____
email address _____

Number of Locations ☐ ☐ ☐ ☒

(Check all that apply)

☒ Satellite Only

☐ Consumer Electronics

☐ Cellular

☐ Security

☐ other _____

Please attach picture of primary location

Description of Current Business

Will sell and install new Dish Network accounts.

Current Advertising Mediums

Percent of advertising budget

Advertising mediums to be used to promote DISH Network:

Newspapers ☒

20%

Television ☐

Direct Mail ☒

80%

Telemarketing ☐

Internet ☐

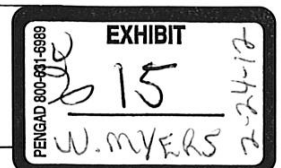
What DISH Network promotion will your business focus on
Please list your projected subscriber additions per month for the first 6 months

Digital Home Plan

30 accounts per month

Installation Capabilities ☒ Owned & Operated ☐ Sub-Contractor ☐ DISH Network Service Corp. ☐ other _____

Daily Install Capacity: # 40 per day



DEFENDANT'S
EXHIBIT
DTX-335

Question/Insert/Retail/789



Credit Authorization

2038869

To Whom It May Concern:

I hereby give my permission and authorization for the release of credit and banking information to EchoSphere Corporation. This authorization is valid for both business and personal, credit and banking purposes.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Washington D.C.

(Please fill out the information below. Must be completed by Principals, Partners or Owners only.)

(1) Name	<u>Daniel Myers</u>	Social Security #	<u>530-25-5160</u>
Signature (X)	<u>Daniel Myers</u>	Date	<u>March 11, 2003</u>
Title	<u>President</u>		
(2) Name	_____	Social Security #	_____
Signature (X)	_____	Date	_____
Title	_____		
(3) Name	_____	Social Security #	_____
Signature (X)	_____	Date	_____
Title	_____		

(Please Provide If Available.)

Dunn & Bradstreet #

--	--	--	--	--	--	--	--	--	--

EchoSphere Corporation and its subsidiaries reserve the right to conduct a background check and request a current credit report from the appropriate agencies. Under penalty of perjury, misrepresentations will be subject to immediate termination of the Retailer Agreement by EchoStar Satellite Corporation, in its sole and absolute discretion.

EXHIBIT 510

EXHIBIT 510

JA011104
009895

TX 102-010366

STATE OF INDIANA)
)
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT

CAUSE NO.

IN RE: EchoStar Satellite Corporation,)
)
Respondent.)
)

49C01030141001011
FILED

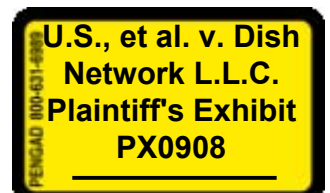
(46) APR 11 2003

Doris Ann Muller
CLERK OF THE
MARION CIRCUIT COURT

**PETITION FOR APPROVAL OF ASSURANCE OF
VOLUNTARY COMPLIANCE**

Petitioner, Stephen Carter, Attorney General of the State of Indiana, by counsel, Marguerite M. Sweeney, states the following in support of this Petition for Approval of Assurance of Voluntary Compliance:

1. Stephen Carter (hereinafter "the Attorney General") is the duly elected, qualified, and acting Attorney General of the State of Indiana.
2. The Attorney General is authorized to administer and enforce IC 24-4.7 et seq regulating the Telephone Solicitation of Consumers law (herinafter the "Act").
3. In administering the Act, the Attorney General alleges that EchoStar Satellite Corporation (hereinafter "RESPONDENT") has engaged in certain trade practices deemed to be in violation of IC 24-4.7-4.
4. On or about April 11, 2003, the Indiana Attorney General and the RESPONDENT entered into an Assurance of Voluntary Compliance ("AVC") designed to assure the Indiana Attorney General and the citizens of the State of Indiana that RESPONDENT will not engage in those practices alleged to be unlawful by the Attorney General. The AVC, marked as Exhibit 1, is attached hereto and incorporated herein by reference.



JA011105
009896

PX0908-001

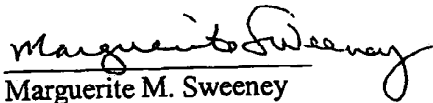
5. By entering into this AVC, RESPONDENT admits no wrong doing. Additionally, this AVC does not constitute that RESPONDENT has engaged in any methods, acts, uses, practices or solicitations declared to be unlawful under IC 24-4.7 or any rule or regulation promulgated thereto.

6. The AVC reflects that the Attorney General and the RESPONDENT recommend that this Court approve the AVC.

WHEREFORE, the Indiana Attorney General respectfully prays this Court to enter its Order approving the AVC attached hereto as Exhibit 1.

Respectfully submitted,

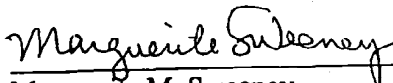
STEPHEN CARTER
Attorney General

by: 
Marguerite M. Sweeney
Atty. # 2052-49
Deputy Attorney General
Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-6201

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of April, 2003, the foregoing was mailed first-class, postage prepaid to:

Scott L. Novak
EchoStar Satellite Corporation
5710 S. Santa Fe Drive
Littleton, Colorado 80120


Marguerite M. Sweeney
Atty. # 2052-49

STATE OF INDIANA)	IN THE MARION CIRCUIT COURT
)	
COUNTY OF MARION)	CAUSE NO.
IN RE: ECHOSTAR SATELLITE)	
CORPORATION,)	
)	
<i>Respondent.</i>)	

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Stephen Carter and the Respondent, EchoStar Satellite Corporation (hereinafter "EchoStar," and collectively with the State of Indiana, the "Parties"), enter into an Assurance of Voluntary Compliance ("AVC") arising out of Ind. Code § 24-4.7.

I. DEFINITIONS

As used in this AVC and accompanying Agreed Order, the following words or terms shall have the following meanings:

1. The "Act" means Indiana's Telephone Solicitation of Consumers Act of 2001, Ind. Code § 24-4.7, and related statutes and rules adopted pursuant thereto, as said statutes and rules are amended from time to time.

2. The "Compliance Date" means April 1, 2003, which is the date by which EchoStar has assured the Division and the Office of the Attorney General that EchoStar and its Affiliates were in compliance with the AVC. For purposes of this AVC, an "Affiliate" shall mean a corporation or entity controlling, controlled by, or under common control with EchoStar; an entity "controls" another entity if it directly possesses the power to direct the management and policies of a person through ownership of voting securities. An independent retailer or independent contractor that sells EchoStar products or services does not constitute an Affiliate.

Initial SN

EXHIBIT

PX0908-003

Page 1 of 12

JA011107
009898

FTC306-029887
TX 102-010369

3. "Consumer" means a residential telephone subscriber who is an actual or a prospective:

- (a) purchaser, lessee, or recipient of consumer goods or services; or
- (b) donor to a charitable organization.

4. "Consumer Goods or Services" means any of the following:

- (a) Tangible or intangible personal property or real property that is normally used for personal, family, or household purposes.
- (b) Property intended to be attached to or installed on real property without regard to whether it is attached or installed.
- (c) Services related to property described in (a) or (b) above.
- (d) Credit cards or the extension of credit.

5. "Violation" means any individual instance of noncompliance with any provision of the Act.

6. "Division" means the Consumer Protection Division of the Office of the Attorney General of the State of Indiana.

7. For purposes of this AVC, "Doing Business in Indiana" means making Telephone Sales Calls to Consumers located in Indiana whether the Telephone Sales Calls are made from a location in Indiana or outside Indiana.

8. The "Effective Date" of this agreement shall be the date that it is executed by the Attorney General or his authorized deputy.

9. "Fund" refers to the Consumer Protection Division telephone solicitation fund established by Ind. Code § 24-4.7-3-6.

Initial JS

Page 2 of 12

PX0908-004

JA011108
009899

FTC306-029888
TX 102-010370

10. "Listing" refers to the no telephone sales solicitation listing that is published quarterly by the Division.

11. EchoStar's "locality" or "business location" means the geographic location or locations at which EchoStar may place telephone sales calls to Indiana consumers and the geographic location at which EchoStar maintains its corporate or business headquarters.

12. The phrase "Telephone Solicitor or Sub-entity Working for" shall mean EchoStar's or its Affiliates' employees, successors, assigns, principals, officers and directors.

13. "Telephone Number" means a residential telephone number in the State of Indiana.

14. "Telephone Sales Call" means a telephone call made to an Indiana Consumer for any of the following purposes:

- (a) Solicitation of a sale of consumer goods or services.
- (b) Solicitation of a charitable contribution.
- (c) Obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

The term includes a call made for the above purposes by use of automated dialing or recorded message devices.

15. "Telephone Solicitor" means an individual, a firm, an organization, a partnership, an association, or a corporation expressly authorized by EchoStar or an Affiliate in writing for the specific purpose of initiating Telephone Sales Calls to Indiana Consumers.

Initial SD

Page 3 of 12

PX0908-005

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FTC306-029889
TX 102-010371

III. WITNESSETH

20. This AVC, which is entered into without the adjudication of any issue of fact or law and upon consent of the parties, does not constitute an admission by EchoStar of any Violation. A violation of this AVC, however, does constitute *prima facie* evidence of a Violation.

21. EchoStar is organized under the laws of Colorado, with its principal place of business at 5701 S. Santa Fe Drive, Littleton, CO 80120. EchoStar transacts business with Indiana consumers.

22. The Division alleges that EchoStar committed one or more Violations prior to the Compliance Date, by making or causing to be made Telephone Sales Calls to one or more Telephone Numbers that appear on the Listing and offering, among other things, satellite television-related products or services. EchoStar expressly denies said allegations.

IV. ASSURANCES

23. To the extent that EchoStar has not already done so, EchoStar will immediately cease from making or causing to be made Telephone Sales Calls to Telephone Numbers on the Listing.

24. To the extent that EchoStar has not already done so, EchoStar shall establish, implement and maintain systems and procedures that are reasonably calculated to ensure compliance with the Act.

25. EchoStar shall subscribe to, continue to subscribe to, and remain current with, the Listing, so long as it makes Telephone Sales Calls to Indiana Consumers.

Initial SL

Page 5 of 12

PX0908-006

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TX 102-010372

V. PENALTIES FOR FAILURE TO COMPLY

26. EchoStar understands and agrees that any violation of Ind. Code § 24-4.7-4 constitutes *prima facie* evidence of a Violation.

27. EchoStar also understands and agrees that each Telephone Sales Call in violation of the Act is considered a separate violation.

28. EchoStar further understands the remedies available to the Attorney General under the Act.

VI. CIVIL PENALTIES AND COSTS

29. EchoStar shall pay the sum of One thousand five hundred and 00/100 U.S. dollars (\$1,500.00). EchoStar shall make full payment to the "Office of the Attorney General Consumer Protection Division Telephone Solicitation Fund" within fifteen (15) days after EchoStar receives a countersigned copy this AVC.

30. The payment referred to in the foregoing paragraph shall constitute a full settlement and release of any violations of the Act allegedly committed by EchoStar or any Telephone Solicitor or Sub-Entity Working for EchoStar prior to the Compliance Date.

VII. STIPULATED FUTURE CIVIL PENALTIES AND COSTS

31. In the event that EchoStar or any Telephone Solicitor or Sub-Entity Working for EchoStar violates the Act on or after the Compliance Date, EchoStar shall pay the sum of Nine hundred and 00/100 U.S. dollars (\$900.00) per violation as an agreed-upon stipulated penalty (hereinafter "Stipulated Future Penalty").

Initial SN

Page 6 of 12

PX0908-007

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TX 102-010373

32. This stipulation as to the Stipulated Future Penalty shall continue until September 15, 2004 (hereinafter "Stipulated-Penalty Expiration Date"), such that any violations committed by EchoStar or any Telephone Solicitor or Sub-Entity Working for EchoStar between the Compliance Date and Stipulated-Penalty Expiration Date shall be subject to the Stipulated Future Penalty as identified herein.

33. Any violations committed by EchoStar or any Telephone Solicitor or Sub-Entity Working for EchoStar on or after the Stipulated-Penalty Expiration Date shall be subject to any and all remedies available under the Act.

34. Upon notification from the Division of an alleged violation, EchoStar shall have thirty (30) days to investigate and report the results of said investigation to the Division. The Division shall review EchoStar's investigation in good faith, taking into consideration any mitigating facts and circumstances shown by EchoStar. If the Division, after a review of all available evidence in good faith, affirms that EchoStar or a Telephone Solicitor or Sub-Entity Working for EchoStar committed a violation, and EchoStar does not dispute the Division's determination, EchoStar shall make full payment to the Fund within thirty (30) days after being advised of such determination.

35. If EchoStar and the Division are unable to resolve a dispute as to whether an alleged violation call was made by EchoStar or a Telephone Solicitor or Sub-Entity Working for EchoStar, and EchoStar elects not to make payment as described above, then the Division may pursue any and all of the remedies available to it under the Act with respect to such call.

VIII. MONITORING AND COMPLIANCE

36. EchoStar acknowledges that upon the request of the Division, EchoStar may be required to provide a record of all Telephone Sales Calls made by EchoStar or by a Telephone

Initial SW

Page 7 of 12

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TX 102-010374

Solicitor or Sub-Entity Working for EchoStar, in the time and manner prescribed by 11 IAC 1-2, as said rule may be amended from time to time.

37. EchoStar shall cooperate with the Office of the Attorney General and Division in the investigation and resolution of any and all complaints received by the Indiana Attorney General against EchoStar or DISH Network, including but not limited to, assisting the Indiana Attorney General in identifying and contacting any independent retailer which may have been responsible for the alleged violation.

38. When information provided to EchoStar by the Division indicates that an independent retailer of EchoStar products may have violated the Act, EchoStar will discuss the matter with the Division and will address the matter with said independent retailer to the extent EchoStar is able to do so under the law and its contractual relationships.

39. In the event that the Indiana Attorney General initiates litigation against a current or former independent dealer of EchoStar products for violations of the Act, EchoStar will act in a commercially reasonable manner to assist and cooperate in the prosecution of said independent dealer to the extent EchoStar is able to do so under the law and its contractual relationships.

IX. FORBEARANCE ON EXECUTION AND DEFAULT

40. No execution on the monetary portion of this AVC shall be issued so long as full payment is received pursuant to the terms as set forth above.

41. Failure by EchoStar to fully comply with payment, as set forth above, constitutes a violation of the terms of this AVC.

Initial SD

Page 8 of 12

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TX 102-010375

47. This AVC embodies the entire agreement and understanding of the parties hereto solely with respect to violations of the Act occurring prior to the Compliance Date. Acceptance of this AVC by the Division and the Office of the Attorney General, and its approval by the court, shall not be construed as a release or waiver of any claims or causes of action that may accrue to third parties having any private right of action, or of any claims or causes of action that may arise out of the violation or alleged violation of any statute or rule other than the Act, or of violations of the Act occurring after the Compliance Date.

48. All parties agree that this AVC constitutes a fair agreement, and presently agree to proceed in accordance therewith. EchoStar has had the opportunity to consult with legal counsel regarding this AVC, and agrees to be bound by all provisions contained herein.

49. EchoStar expressly waives any right to contest the validity or applicability of the Act or of this AVC, so long as and to the extent that said Act remains valid and enforceable.

50. The Office of the Attorney General, without further notice, shall make *ex parte* application to the Circuit Court of Marion County, State of Indiana, for entry and approval of this AVC.

51. The receipt of a fully executed original of this signed and filed AVC by EchoStar shall constitute notice and acceptance by EchoStar of all the terms of this AVC and EchoStar waives having the AVC served upon it.

Initial JS

Page 10 of 12

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TX 102-010376

THE RESPONDENT'S SIGNATURE AND ACKNOWLEDGMENT

The RESPONDENT, EchoStar Satellite Corporation, has read and understands this agreement and each of its terms and agrees to each and every term.

I, being first duly sworn on oath, depose and say that I am the SVP and General Counsel of EchoStar Satellite Corporation and am fully authorized and empowered to sign this Assurance of Voluntary Compliance on behalf of EchoStar Satellite Corporation, and have the ability to bind EchoStar Satellite Corporation to the terms of this Assurance of Voluntary Compliance.

David K. Moskowitz
Signature

David K. Moskowitz
Print name

Senior Vice President and General Counsel
Title

5701 S. Santa Fe Drive, Littleton, Colorado 80120
Address

State of Colorado)
County of Arap.) SS:

00 Subscribed and sworn to before me the undersigned, a Notary Public for the State of CO, this 4th day of April, 2003.

(SEAL) Sandi / Bray, Notary Public

County of Residence: Arapahoe
My commission expires: 7/30/03

Initial SD

Page 11 of 12

PX0908-011

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TX 102-010377

ACCEPTANCE OF STATE OF INDIANA
EX REL ATTORNEY GENERAL STEPHEN CARTER

STEPHEN CARTER
Attorney General

by: Marguerite M. Sweeney
Marguerite M. Sweeney
Deputy Attorney General
Attorney Number: 2052-49

DATE SIGNED: 4-8-2003

Office of the Attorney General
402 West Washington Street
Indiana Government Center South - 5th Floor
Indianapolis, Indiana 46204
Telephone: (317) 232-1011
Facsimile: (317) 232-7979

Initial SW

Page 12 of 12

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FTC306-029896
TX 102-010378

STATE OF INDIANA)

IN THE MARION CIRCUIT COURT

COUNTY OF MARION)

CAUSE NO.

49C010304M1001011

IN RE: EchoStar Satellite Corporation,)

Respondent.)

95

FILED

APR 15 2003

Donna J. Miller
CLERK OF THE
MARION CIRCUIT COURT

ORDER APPROVING
ASSURANCE OF VOLUNTARY COMPLIANCE

Cause comes to be heard on the Petition for Approval of Assurance of Voluntary Compliance ("AVC") presented to the Court by Petitioner Attorney General Stephen Carter. The Court, having read the petition and the AVC, and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction over the parties and the subject matter of this cause pursuant to IC § 24-4.7-5-5; and
2. The parties have read and understand the terms and conditions of this AVC and recommended that this Court approve the AVC; and
3. The AVC will adequately protect the public interest as expressed in IC 24-4.7.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Assurance of Voluntary Compliance executed on or about April 11, 2003, is APPROVED.

SO ORDERED this _____ day of _____, 2003:

APR 15 2003

[Signature]

JUDGE PRO TEMPORE

JUDGE, Marion Circuit Court

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FTC306-029897
TX 102-010379

Distribution:

**Marguerite M. Sweeney
Deputy Attorney General
Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204**

**Scott L. Novak
EchoStar Satellite Corporation
5710 S. Santa Fe Drive
Littleton, Colorado 80120**

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**FTC306-029898
TX 102-010380**

EXHIBIT 511

EXHIBIT 511

JA011119
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TX 102-010381

From: Osborne, Wade
Sent: Thursday, April 17, 2003 6:44 PM
To: Fox, Michelle; Binns, Todd; Dimick, Jeff; French, Jennifer; Ghoshal, Snehashis; Hays, Steve; Lascelles, Stephanie; Liu, Julie; Mason, Robert; Rushing, Chad; Szigethy, Stephen; Vigil, George
Cc: Hannappel, Darcy; Roberson, Andre; Tran, Yume; Kerouac, Laura; Schaefer, Germar; Scarborough, John
Subject: RE: DNC Database
Importance: High

All

I am really concerned about this one. If I'm reading this correctly, we are not including the DNC data inside CRM so therefore there are outside work-around processes required to suppress DNCs from the list. Legal requirement or not, we must have DNC suppressions done within the CRM tool. We cannot rely on outside processes to ensure we catch these suppressions. Contacting prospects or customers that have specifically requested they not be contacted is not acceptable (we recently had a episode with our e-mail pull). We need to treat these outside suppression processes as double-checks, not as the source of the suppression.

I don't want this project closed until we have DNC within the CRM tool. Please give me a timeline when this will be delivered.

Thanks.

W

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

From: Fox, Michelle
Sent: Thursday, April 17, 2003 11:34 AM
To: Binns, Todd; Dimick, Jeff; French, Jennifer; Ghoshal, Snehashis; Hays, Steve; Lascelles, Stephanie; Liu, Julie; Mason, Robert; Rushing, Chad; Szigethy, Stephen; Vigil, George
Cc: Hannappel, Darcy; Roberson, Andre; Tran, Yume; Osborne, Wade; Kerouac, Laura
Subject: RE: DNC Database

Todd,

I believe the call centers already have a process to ensure we do not call people on the do not call list. If there are legal requirements regarding mail and e-mail, please specify what those are. If this is in fact a legal compliance issue, we would likely revisit the priority.

Also, just to clarify for everyone on this distribution, the integration of DNC with CRM has been treated as part of the CRM project. It was added to DNC while were working on the report in order to gain some traction, but the report is now competed. Executive management wants DNC taken off the list because the scope of that effort has been delivered. If this effort is to be separated from CRM and given its own slot on the priority list, it would not likely be referred to as the DNC project. It would have to stand on its own as a separate project.

I would also like to add that this effort has been moving forward and not as a result of its priority. Paul bales just completed the TRD, which was slotted for review yesterday. The ETL work for getting the DNC data into Teradata was completed, tested and put into production on time and the team is ready for next steps. I would suggest waiting until the team provides a timeline before raising an issue we may not have.

Michelle

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

From: Binns, Todd

Sent: Thursday, April 17, 2003 10:15 AM

To: Dimick, Jeff; French, Jennifer; Ghoshal, Snehashis; Hays, Steve; Lascelles, Stephanie; Liu, Julie; Mason, Robert; Rushing, Chad; Szigethy, Stephen; Vigil, George; Fox, Michelle

Cc: Hannappel, Darcy; Roberson, Andre; Tran, Yume; Osborne, Wade; Kerouac, Laura

Subject: DNC Database

Team,

This email is in reference to Michelle's note below about DNC being completed without integration with CRM. We are driving lists from CRM for Acquisition and Retention specific to direct mail, outbound telemarketing, and email. Do Not Contact is a huge issue that we need to manage well. Exporting customer and prospect lists from CRM to bounce manually against Do Not Contact is a process that is prone to human error and will produce violations resulting in legal consequences. I don't understand how this can be labeled a completed project if it is not accessible to the businesses depending on it to ensure we are operating under the letter of the law. We all know tying this to a priority 30-something is the same thing as not doing it at all.

Regards,

Todd A. Binns

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

From: Fox, Michelle

Sent: Tuesday, April 15, 2003 11:43 AM

To: Vigil, George; Dimick, Jeff; French, Jennifer; Ghoshal, Snehashis; Hays, Steve; Lascelles, Stephanie; Liu, Julie; Mason, Robert; Rushing, Chad; Szigethy, Stephen

Cc: Hannappel, Darcy; Roberson, Andre; Tran, Yume

Subject: DCR priority

All,

The DCR report is completed and will be moved to prod today. Thank you all for getting this completed on time and for doing such a great job. Because the report is completed, the DNC project is going to be closed out. The integration of DNC with CRM will continue to move forward, but it will be part of the CRM Analytics project as originally planned. I understand this effort is important, however, it can not stand alone as IT's number one priority.

As the PM for the CRM Analytics project, Darcy will manage this effort moving forward. The team has been making progress on this work and the tasks for this week are not changed. The TRD will be reviewed in the CRM meeting tomorrow and an estimate for completing this work should be created by the end of the week. If you have any questions, please let me know.

Thanks,

Michelle Fox

Program Manager

Information Technologies

EchoStar Communications Corp.

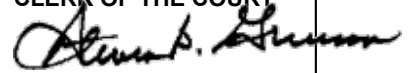
5701 South Santa Fe Drive

Littleton, CO 80120

(303) 723-3648

Todd A. Binns

Database Marketing Manager, Echostar
todd.binns@echostar.com
303.723.2644



1 **APEN**

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3 Robert J. Cassity, Esq. (9779)
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6 Las Vegas, Nevada 89134
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10 bcassity@hollandhart.com

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14 Rodney Square, 1000 North King Street
15 Wilmington, DE 19801
16 Tel: (302) 571-6600
17 Fax: (302) 571-1253

18 *Attorneys for Special Litigation Committee of*
19 *Nominal Defendant DISH Network Corp.*

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

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

27 Plaintiffs,

28 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,

35 Defendants,

36 DISH NETWORK CORP., a Nevada Corp.,

37 Nominal Defendant

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

**VOLUME 29 OF APPENDIX TO
THE REPORT OF THE SPECIAL
LITIGATION COMMITTEE OF
DISH NETWORK CORPORATION**

<u>Ex.</u>	<u>Date</u>	<u>Description</u>	<u>Page No.</u>
512	05/18/2003	EchoStar Retailer Agreement with Star Satellite LLC	9914
513	08/27/2003	Petition for Temporary Restraining Order, Preliminary and Permanent Injunctions, Civil Penalties and Other Relief by State of Missouri	9950
514	09/17/2003	Email from T. Binns to S. Richardson et al.	9969
515		INTENTIONALLY OMITTED	9971
516		INTENTIONALLY OMITTED	9973
517	10/03/2003	Retailer Contact Form with DISH TV Now Inc.	9975
518	10/07/2003	Letter from A. Ahmed to D. Hagen	9982
519	10/07/2003	Letter from D. Hagen to A. Ahmed	9985

DATED this 28th day of November 2018.

By /s/ Robert J. Cassity
J. Stephen Peek, Esq. (1758)
Robert J. Cassity, Esq. (9779)
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

C. Barr Flinn (*Admitted pro hac vice*)
Emily V. Burton (*Admitted pro hac vice*)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square, 1000 North King Street
Wilmington, DE 19801

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

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November 2018, a true and correct copy of the foregoing **VOLUME 29 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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Reno, NV 89501

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Benny C. Goodman III, Esq.
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SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004

Attorneys for Defendants

By: /s/ Valerie Larsen
An Employee of Holland & Hart, LLP

EXHIBIT 512

EXHIBIT 512

JA011126
009914

TX 102-010388

2039969

May 19, 2003

**ECHOSTAR SATELLITE CORPORATION
INCENTIVIZED RETAILER AGREEMENT**

This Agreement (the "Agreement") is made by and between EchoStar Satellite Corporation ("EchoStar") having a principal place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120, and Star Satellite LLC having a principal place of business at 79 W. 1450 N. #80 Provo, UT 84604 ("Retailer").

INTRODUCTION

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

B. Retailer, acting as an independent contractor, desires to become authorized on a non-exclusive basis, to market, promote, and solicit orders for Programming (an "Authorized Retailer").

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

AGREEMENT

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

1.1 Each party represents that the execution, delivery and performance of this Agreement have been duly authorized and that it has the full right, power and authority to execute, deliver and perform this Agreement.

1.2 Each party represents that the signatures hereon are genuine and the person signing on behalf of each party is authorized by the respective party to execute the Agreement on its behalf.

1.3 Retailer represents that (i) it is a valid and existing entity in compliance with all laws and regulations related to maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not violating any federal, state or local law or regulation; (iv) it has never engaged in any of the acts prohibited under Section 3.6, 3.7, 9.2, 9.3 or 9.4 below; (v) it has not engaged in any acts which would have resulted in automatic termination or be considered default or breach under its current or former EchoStar Satellite Corporation Retailer Agreement; and (vi) it is not dependent upon EchoStar or its Affiliates for a major part of Retailer's business and that Retailer either sells or could sell other products or services in addition to EchoStar products or services that compete with EchoStar products or services.

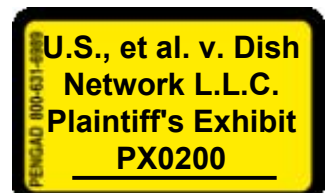
1.4 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT IT UNDERSTANDS FULLY EACH OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

1.5 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE INDEPENDENT COUNSEL REVIEW THIS AGREEMENT PRIOR TO EXECUTION. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT EITHER THIS AGREEMENT HAS BEEN ACTUALLY REVIEWED BY ITS COUNSEL OR THAT SUCH PARTY HAS DECLINED TO HAVE ITS COUNSEL DO SO.

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

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

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



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PX0200-001

AND CONDITIONS AND THE EFFECT OF EACH AND ALL OF SUCH TERMS AND CONDITIONS; (D) THIS AGREEMENT IS MADE AND ENTERED INTO VOLUNTARILY BY EACH PARTY, FREE OF UNDUE INFLUENCE, COERCION, DURESS, MENACE OR FRAUD OF ANY KIND WHATSOEVER, AND HAS BEEN EXECUTED BY EACH PARTY OF THEIR OWN FREE WILL.

THIS AGREEMENT DOES NOT BECOME EFFECTIVE UNTIL EXECUTED BY ECHOSTAR AND RETAILER.

ECHOSTAR SATELLITE CORPORATION

By: _____

Title: _____

Date: _____

RETAILER

Echosphere Retailer Number: _____

Retailer Company Name: Star Satellite LLC
(Please Print)

Signed By: _____

Print Name: _____

Street Address: 79 W. 1450 N. #80
(Please Print)

City, State, Zip Code: Provo, UT 84604

Date: March 11, 2003

May 18 2003

PX0200-002

JA011128
009916

ATTACHMENT A

TRADEMARK LICENSE AGREEMENT

2039368
May 18 2003

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made by and between EchoStar Satellite Corporation, with a place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120 ("ESC") and Star Satellite LLC, having a principal place of business at 79 W. 1450 N. #80 Provo, UT 84604 ("Licensee").

- A. ESC conducts business in worldwide locations as, among other things, a provider of direct broadcast satellite-delivered, multi-channel, digital audio and video services ("Programming"); and
- B. Licensee conducts business as, among other things, a retailer of satellite television products and services; and
- C. Licensee desires to be permitted to use the EchoStar trademarks, service marks and trade names set forth in Exhibit 1 hereto, which may be amended at any time and for any reason in ESC's sole discretion (the "Trademarks") as ESC, in its sole discretion and for any reason, may authorize, from time to time, under a non-exclusive license, to promote and solicit orders for DISH Network Programming.

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

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

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

3. Licensee expressly recognizes and acknowledges that this License, as well as any past use of the Trademarks in any manner whatsoever by Licensee (including but not limited to use on signs, business cards, or in advertisements) or in any form whatsoever by Licensee (including but not limited to typewritten or stylized form), shall not confer upon Licensee any proprietary rights or interest to any Trademarks including, but not limited to any existing or future goodwill in the Trademarks. All goodwill in the Trademarks shall inure to ESC's sole benefit. Further, Licensee waives any and all past, present, or future claims it has or might have to the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between ESC and Licensee, ESC has the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that ESC retains full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein. While Licensee has no right or authority to do so, in the event that Licensee has previously, or in the future reserves, files, or registers any of the Trademarks of ESC (whether in typewritten, stylized or any other form) or registers any domain name which includes any of the Trademarks of ESC, Licensee agrees to notify ESC immediately, and immediately upon request of ESC, to assign any and all interest to ESC that is obtained through the reservation, filing, or registration of the Trademarks in the U.S. or any foreign jurisdiction or through the registration of any domain name, and hereby acknowledges that any such reservation, filing, or registration of the Trademarks or domain name which includes any of the Trademarks, whenever occurring, shall be on behalf of and for the sole benefit of ESC, and Licensee waives all claims or rights to any compensation whatsoever therefore. Licensee's obligations in this paragraph shall survive the expiration or termination of this Agreement indefinitely.

4. Furthermore, Licensee agrees not to hold itself out as DISH Network, ESC or any related or affiliated entity. To avoid any confusion in this respect, Licensee agrees not to use either i) the formative "DISH" in combination with the formative "NET", or ii) the formative "ECHO" as part of its business name. Furthermore, Licensee agrees not to register any domain name which contains either i) the formative "DISH" in combination with the formative "NET", or ii) the formative "ECHO" and Licensee further agrees to immediately transfer to ESC, upon ESC's request, any such domain names which it has registered. Licensee's failure to comply with the provisions of this Section 4 shall constitute a material breach of this Agreement.

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2039969 May 19 2003

5. Nothing in this Agreement shall be construed to bar ESC from protecting its right to the exclusive use of its Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including Licensees, either during the term of this Agreement or following any expiration or termination of Licensee's right to use the Trademarks pursuant to this Agreement. Licensee will promptly and fully advise ESC of any use of any mark that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with ESC in defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESC's expense. Similarly, nothing in this Agreement shall be construed to require that ESC take any action to protect the Trademarks in any instance, and ESC shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

6. (a) This Agreement shall continue for a period of time equal to the term of the Retailer Agreement to which this Agreement is attached, unless terminated earlier for a reason provided herein. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

(b) This Agreement may be terminated by a party (the "Affected Party") in the event that the other party (the "Other Party") defaults on any obligation or breaches any representation, warranty or covenant in this Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right), and such default or breach, if curable, is not cured within thirty (30) days of receipt of written notice from the Affected Party. The parties agree that all obligations, representations, warranties and covenants contained in this Agreement, whether or not specifically designated as such, are material to the agreement of the parties to enter into and continue this Agreement.

(c) This Agreement shall terminate automatically upon termination of the Retailer Agreement to which this Agreement is attached any Other Agreement (as defined in Section 6.8 of the Retailer Agreement) for any reason, unless EchoStar notifies Licensee to the contrary in writing.

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first above written.

ECHOSTAR SATELLITE CORPORATION

By: [Signature]Title: VP SalesDate: 5/19/03

LICENSEE

By: [Signature]Title: PresidentDate: March 11, 2003

PX0200-004

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**COMMERCIAL AMENDMENT TO
ECHOSTAR SATELLITE CORPORATION
INCENTIVIZED RETAILER AGREEMENT**

2039969
May 19 2003

This Amendment (the "Amendment") is made by and between EchoStar Satellite Corporation, having a principal place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120 ("EchoStar") and Star Satellite LLC, having a principal place of business at 79 W. 1450 N. #80 Provo, UT 84604 ("Retailer") (EchoStar and Retailer are occasionally referred to herein individually as "Party" and collectively as the "Parties").

WHEREAS, EchoStar and Retailer have previously entered into a written agreement entitled EchoStar Satellite Corporation Incentivized Retailer Agreement (the "Agreement");

WHEREAS, the Parties wish to amend the Agreement as described below;

NOW, THEREFORE, in consideration of the benefits which will accrue to each Party as a result of the matters described below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree to amend the Agreement as follows:

I. Sections 2.17 through 2.26 shall be added as follows:

2.17 "Commercial Location" shall mean a Public Commercial Location and/or a Private Commercial Location, as those terms are defined below.

2.18 "Public Commercial Location" means a place of business in the Territory which is fully accessible to members of the general public without charge, often classified within the hospitality industry for the purpose of immediate consumption of food and/or liquor. Public Commercial Locations are generally registered with a Fire Occupancy Certificate. No satellite master antenna television or private cable system in a commercial or residential multiple dwelling unit (i.e., hotels, hospitals, dormitories, etc.) shall be considered a Public Commercial Location, however Public Commercial Locations within such multiple dwelling units (e.g., a restaurant within a hotel or hospital) shall be considered a Public Commercial Location. For example, bars, restaurants, clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. EchoStar shall have the right to determine, in its sole discretion, whether a location constitutes a Public Commercial Location, or is more appropriately considered a Residential Location, Private Commercial Location, or other location.

2.19 "Private Commercial Location" means a place of business in the Territory, which may be accessible to members of the general public, and classified outside of the hospitality industry. For example, office reception areas or waiting rooms and the private offices of attorneys, doctors/dentists, and other business professionals are typically Private Commercial Locations. EchoStar shall have the right to determine, in its sole discretion, whether a location constitutes a Private Commercial Location, or is more appropriately considered a residential location, Public Commercial Location, or other location.

2.20 "Institutional/Residential Locations" are properties that broadcast the DISH Network signal in a non-public, common viewing area within a property that is owned or operated by a government or commercial entity, in which employees are being provided residential living accommodations to facilitate the requirements of their job responsibilities. These properties may include fire stations, oil rigs, coast guard stations, as determined in EchoStar's sole discretion.

2.21 "Guest Property" means a hotel, motel, hospital or other healthcare facility, or such other similar type of facility regularly permitting overnight or otherwise short-term stays by individuals, as EchoStar may determine in its sole discretion.

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XV. All terms not defined herein shall have the meaning ascribed to them in the Agreement.

XVI. This Amendment constitutes the entire agreement between the parties with respect to the subject matter hereof. The parties specifically acknowledge there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Amendment.

RETAILER AND ECHOSTAR HEREBY REPRESENT, WARRANT, ACKNOWLEDGE AND AGREE THAT: (A) THEIR INDEPENDENT COUNSEL HAS REVIEWED, OR THEY HAVE BEEN GIVEN A REASONABLE OPPORTUNITY FOR THEIR INDEPENDENT COUNSEL TO REVIEW (BUT DECLINED SUCH REVIEW), THIS AMENDMENT; (B) THE TERMS AND CONDITIONS OF THIS AMENDMENT, AND EACH AND EVERY PARAGRAPH AND EVERY PART HEREOF, HAVE BEEN COMPLETELY AND CAREFULLY READ BY, AND EXPLAINED TO, THE PARTIES; (C) THE TERMS AND CONDITIONS OF THIS AMENDMENT ARE FULLY AND COMPLETELY UNDERSTOOD BY EACH PARTY AND EACH PARTY IS COGNIZANT OF ALL OF SUCH TERMS AND CONDITIONS AND THE EFFECT OF EACH AND ALL OF SUCH TERMS AND CONDITIONS; (D) THIS AMENDMENT IS MADE AND ENTERED INTO VOLUNTARILY BY EACH PARTY, FREE OF UNDUE INFLUENCE, COERCION, DURESS, MENACE OR FRAUD OF ANY KIND WHATSOEVER, AND HAS BEEN EXECUTED BY EACH PARTY OF THEIR OWN FREE WILL.

THIS AMENDMENT DOES NOT BECOME EFFECTIVE UNTIL EXECUTED BY ECHOSTAR AND RETAILER.

ECHOSTAR SATELLITE CORPORATION

By: 

Title: VP Sales

Date: 5/19/03

RETAILER

Echosphere Retailer Number: 2039969

Retailer Company Name: Star Satellite LLC
(Please Print)

Signed By: 

Print Name: Daniel Myers

Street Address: 71 W. 1450 N. #80
(Please Print)

City, State, Zip Code: Provo, UT 84604

Date: March 11, 2003

May 19 2003

PX0200-006

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ECHOSTAR SATELLITE CORPORATION INCENTIVIZED RETAILER AGREEMENT

This Agreement (the "Agreement") is made by and between EchoStar Satellite Corporation ("EchoStar") having a principal place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120, and Star Satellite LLC having a principal place of business at 79 W 1450 N. #80 Provo, UT. 84604 ("Retailer").

INTRODUCTION

- A. EchoStar is engaged, among other things, in the business of providing digital direct broadcast satellite (DBS) services under the name DISH Network.
- B. Retailer, acting as an independent contractor, desires to become authorized on a non-exclusive basis, to market, promote, and solicit orders for Programming (an "Authorized Retailer").
- C. EchoStar desires to appoint Retailer as an Authorized Retailer in accordance with and subject to the terms and conditions of this Agreement.

AGREEMENT

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

1.1 Each party represents that the execution, delivery and performance of this Agreement have been duly authorized and that it has the full right, power and authority to execute, deliver and perform this Agreement.

1.2 Each party represents that the signatures hereon are genuine and the person signing on behalf of each party is authorized by the respective party to execute the Agreement on its behalf.

1.3 Retailer represents that (i) it is a valid and existing entity in compliance with all laws and regulations related to maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not violating any federal, state or local law or regulation; (iv) it has never engaged in any of the acts prohibited under Section 3.6, 3.7, 9.2, 9.3 or 9.4 below; (v) it has not engaged in any acts which would have resulted in automatic termination or be considered default or breach under its current or former EchoStar Satellite Corporation Retailer Agreement; and (vi) it is not dependent upon EchoStar or its Affiliates for a major part of Retailer's business and that Retailer either sells or could sell other products or services in addition to EchoStar products or services that compete with EchoStar products or services.

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

1.5 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE INDEPENDENT COUNSEL REVIEW THIS AGREEMENT PRIOR TO EXECUTION. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT EITHER THIS AGREEMENT HAS BEEN ACTUALLY REVIEWED BY ITS COUNSEL OR THAT SUCH PARTY HAS DECLINED TO HAVE ITS COUNSEL DO SO.

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

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

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

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5. Nothing in this Agreement shall be construed to bar ESC from protecting its right to the exclusive use of its Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including Licensee, either during the term of this Agreement or following any expiration or termination of Licensee's right to use the Trademarks pursuant to this Agreement. Licensee will promptly and fully advise ESC of any use of any mark that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with ESC in defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESC's expense. Similarly, nothing in this Agreement shall be construed to require that ESC take any action to protect the Trademarks in any instance, and ESC shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

6. (a) This Agreement shall continue for a period of time equal to the term of the Retailer Agreement to which this Agreement is attached, unless terminated earlier for a reason provided herein. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

(b) This Agreement may be terminated by a party (the "Affected Party") in the event that the other party (the "Other Party") defaults on any obligation or breaches any representation, warranty or covenant in this Agreement (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right), and such default or breach, if curable, is not cured within thirty (30) days of receipt of written notice from the Affected Party. The parties agree that all obligations, representations, warranties and covenants contained in this Agreement, whether or not specifically designated as such, are material to the agreement of the parties to enter into and continue this Agreement.

(c) This Agreement shall terminate automatically upon termination of the Retailer Agreement to which this Agreement is attached any Other Agreement (as defined in Section 6.8 of the Retailer Agreement) for any reason, unless EchoStar notifies Licensee to the contrary in writing.

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

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

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first above written.

ECHOSTAR SATELLITE CORPORATION

LICENSEE

By: _____

By: Daniel Myers

Title: _____

Title: President

Date: _____

Date: March 11, 2003

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**ARTICLES OF ORGANIZATION
OF
Star Satellite LLC**

inc
203 9969

We, the undersigned persons, do hereby adopt the following Articles of Organization for the purpose of forming a Utah Limited Liability Company.

Article I NAME

76 2039969-3/11/03-113

The name of the limited liability company is to be Star Satellite LLC.

Article II BUSINESS PURPOSE

The Company is organized to perform any and all lawful acts pertaining to the management of any lawful business as well as to engage in and to do any lawful act concerning any and all lawful business for which a Limited Liability Company may be organized under the Utah Limited Liability Company Act and any amendments thereto.

Article III REGISTERED AGENT

The address of the Limited Liability Company's initial registered office, the name of the Registered Agent and his/her signature acknowledging acceptance as such MUST be included. The address must be a street address in Utah; a Post Office Box is not permitted.

The Company shall continuously maintain an agent in the State of Utah for service of process who is an individual residing in said state. The name and address of the initial registered agent shall be Katie S. Myers, 1760 E. Downington Ave., Salt Lake City, Utah 84108.

ACCEPTANCE OF APPOINTMENT:

Katie S. Myers
Katie S. Myers

The Director of the Division of Corporations and Commercial Code of the Department of Commerce for the State of Utah is appointed the registered agent of the Company for the service of process if the registered agent has resigned, the registered agent's authority has been revoked, or the registered agent cannot be found or served with the exercise of reasonable diligence.

Article IV MEMBERS

RECEIVED

JAN 16 2003

UTAH STATE TAX COMMISSION
180 EAST CENTER
SALT LAKE CITY, UTAH 84103

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Article IV MEMBERS (*MEMBERS NEEDS TO BE AMMENDED*)

[The identity as well as the addresses of each member is listed:]

The names and street addresses of Members who shall constitute the initial Members of the Company are as follows:

Daniel R. Myers

1760 E. Downington Ave.

Salt Lake City, Utah 84108.

Article V MANAGEMENT

(Management NEEDS TO BE AMMENDED Daniel Myers is president)

The Company shall have Centralization of Management. The Company is to be managed by a sole President until the first annual meeting of the Members which shall be held within sixty (60) days of filing of the Articles of Organization with the Division of Corporations, at which time the Members shall elect and appoint a President. Until that time Daniel R Myers, 1760 E. Downington Ave. Salt Lake City, Utah shall be the president. The term of the elected Manager shall be for one (1) year, at which time the Members shall conduct an election to either continue the term of the President or elect and appoint a new President. The Company shall be managed pursuant to the terms of the Operating Agreement, or any amendments thereto.

V.1

The presidents fees will be indicated in the meeting withing 60 days of filing.

Article VI DESIGNATED OFFICE

The company's registered office shall be its designated office.

Article VII RECORDS

The Company shall keep at its designated office or a statement that the company's registered office shall be its designated office, which records include, but are not limited to the following:

VII.1

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inc
A current list, in alphabetical order, of the names and current business street address of each Organizer who is not a member or manager.

VII.2

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A copy of the stamped Articles of Organization and all *certificates of amendment thereto*.

VII.3

Copies of all tax returns and financial statements of the Company for the past 3 years. A Limited Liability Company is also required to maintain copies of financial statements, if any, for the three most recent years, as well as a copy of the operating agreement.

Article VIII CONTRIBUTIONS

No Member shall be obligated to make any contribution to the Company except those specifically set forth in the Operating Agreement adopted by the Members of the Company.

Article IX DISSOLUTION

This Company shall be dissolved with the written consent of all its Members.

Article X ANNUAL REPORT

The Company shall file all annual reports required by Utah Law during the month of its anniversary date of formation as required by Section 48-2c-203, Utah Code Annotated.

Article XI AMENDMENTS

The Articles of Organization shall be amended from time to time as required by Section 48-2c-408, Utah Code Annotated.

Article XII ARBITRATION

Any controversy or claim arising out of or relating to these Articles, or the breach thereof shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

The decision of the arbitrator(s) shall be final and binding upon the parties, subject to rights pursuant to the Utah Arbitration Act as set out in the Utah Code, sections 78-31a-1 through 78-31a-20.

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Article XIII SIGNATURES (*Signatures NEEDS TO BE AMMENDED*)

All Members of the Company shall sign these Articles of Organization.

inc


Daniel R. Myers

2039869

DATED this 11 day of March, 2003.

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PERSONAL GUARANTEE

2039969

In order to induce EchoStar Satellite Corporation ("EchoStar") to enter into the EchoStar Satellite Corporation Incentivized Retailer Agreement between Star Satellite LLC ("Retailer") and EchoStar dated March 11, 2003 (the "Retailer Agreement") and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned guarantor, Daniel Myers, ("Guarantor") hereby personally, unconditionally and irrevocably guarantees the full and timely performance of and by Retailer for all purposes under the Retailer Agreement and the Customer Acquisition and Retention Agreement ("CARA") executed by Retailer on or about March 11, 2003 and the terms, covenants and conditions of each such document, including without limitation the satisfaction of any adverse judgments.

Guarantor hereby waives all statutory and common law rights and defenses of guarantors and notices thereto, including but not limited to presentment, notice of dishonor, and exhaustion of remedies against Retailer.

This Guarantee, together with any documents and exhibits given or delivered pursuant to this Guarantee, constitutes the entire agreement between the parties to this Guarantee. Except as expressly provided by this Guarantee, no party shall be bound by any communications between them on the subject matter of this Guarantee unless the communication is (a) in writing, (b) bears a date contemporaneous with or subsequent to the date of this Guarantee, and (c) is agreed to by all parties to this Agreement. Guarantor specifically acknowledges there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Guarantee.

This Guarantee shall inure to the benefit of EchoStar's assigns, successors, parents, subsidiaries, predecessors and Affiliates.

Any and all disputes, controversies or claims arising out of or in connection with this Guarantee shall be resolved by arbitration in accordance with Title 9 of the U.S. Code (Federal Arbitration Act) and the Commercial Arbitration Rules of the American Arbitration Association. The Arbitration shall be initiated by written notice from the initiating party to the other party stating the initiating party's intent to initiate arbitration ("Notice of Arbitration"). The Arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected as follows: (i) one arbitrator shall be selected by the claimant(s) within 30 days of sending the Notice of Arbitration; (ii) one arbitrator shall be selected by the respondent(s) within 30 days of the claimant(s) notifying respondent of the identity of claimant's arbitrator; and (iii) the third arbitrator shall be selected by the arbitrators chosen by the claimant(s) and the respondent(s) within 30 days of their appointment. The decision of the arbitrators shall be final and binding on the parties and any award of the arbitrators may be entered and enforced as a final judgment in any state or Federal court of competent jurisdiction in the United States. The cost of any arbitration hereunder, including without limitation the cost of the record or transcripts thereof, if any, administrative fees, and all other fees involved, shall be paid by the party(ies) determined by the arbitrators to not be the prevailing party(ies), or otherwise allocated in an equitable manner as determined by the arbitrators. Nothing in this Agreement shall prevent EchoStar from filing suit for injunctive and/or equitable relief in any state or Federal court of competent jurisdiction. EchoStar may immediately enforce this Agreement upon breach by Retailer without regard to the dispute resolution procedures or claim process requirements set forth in the Incentivized or Non-Incentivized Retailer Agreement between Retailer and EchoStar. Nothing contained herein shall alter, amend or supercede Retailer's requirement to adhere to the Notice of Claim, Mediation and Arbitration provisions set forth in the Incentivized or Non Incentivized Retailer Agreements with respect to any claim by Retailer that it is due any payments, or that any chargeback was incorrect, under the Retailer Agreement, any Promotional Program or business rules. Such claims by retailers shall be governed by the dispute resolution procedures set forth in the Retailer Agreement.

The guarantee shall be governed by and construed in accordance with the laws of the State of Colorado, applicable to contracts to be made and performed entirely within the State of Colorado by residents of the State of Colorado, without giving any effect to its conflict of law provisions. The parties and their present and future Affiliates consent to the *in personam* jurisdiction of the United States District Court for the District of Colorado and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C.S. 1404 or 1406 (or any successor statute). In the event the United States

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District Court for the District of Colorado does not have subject matter jurisdiction over any such matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado

Guarantor hereby acknowledges and agrees that, in the event that EchoStar and/or its Affiliates prevails in any suit or action to enforce or interpret this Guarantee or any provision hereof, EchoStar and/or its Affiliates shall be entitled to recover its costs, expenses and reasonable attorney fees, both at trial and on appeal, in addition to all other sums allowed by law.

RETAILER HEREBY REPRESENTS, WARRANTS, AND ACKNOWLEDGES THAT: (A) HIS/HER INDEPENDENT COUNSEL HAS REVIEWED, OR HE/SHE HAS BEEN GIVEN A REASONABLE OPPORTUNITY FOR HIS/HER INDEPENDENT COUNSEL TO REVIEW (BUT DECLINED SUCH REVIEW), THIS GUARANTEE; (B) THE TERMS AND CONDITIONS OF THIS GUARANTEE, AND EACH AND EVERY PARAGRAPH AND EVERY PART HEREOF, HAVE BEEN COMPLETELY AND CAREFULLY READ BY, AND EXPLAINED TO, HIM/HER; (C) THE TERMS AND CONDITIONS OF THIS GUARANTEE ARE FULLY AND COMPLETELY UNDERSTOOD BY EACH PARTY AND EACH PARTY IS COGNIZANT OF ALL OF SUCH TERMS AND CONDITIONS AND THE EFFECT OF EACH AND ALL OF SUCH TERMS AND CONDITIONS; (D) THIS GUARANTEE IS MADE AND ENTERED INTO VOLUNTARILY BY GUARANTOR, FREE OF UNDUE INFLUENCE, COERCION, DURESS, MENACE OR FRAUD OF ANY KIND WHATSOEVER, AND HAS BEEN EXECUTED BY GUARANTOR OF HIS/HER OWN FREE WILL.

March, 2003. IN WITNESS WHEREOF, Guarantor has executed this Guarantee as of this 11 day of

GUARANTOR

Daniel Myers

In his/her individual capacity
President

STATE OF District of Columbia
COUNTY OF _____)

Personally came before me this 11th day of March, 2003, the above named Daniel Myers, to me known to be the person who executed the foregoing Guarantee and acknowledged the same. Witness my hand and official seal.

Petrina Thompson
Name: Petrina Thompson
Notary Public

My Commission Expires: 9-30-05

PETRINA THOMPSON:
Notary Public District of Columbia
My Commission Expires September 30, 2005

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

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

2.2 "Business Rule" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule by EchoStar which is communicated to Retailer by EchoStar or an Affiliate of EchoStar either directly (including email) or through any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a "Charlie Chat", email, fax blast, or posting on EchoStar's retailer web site. Retailer agrees that EchoStar has the right to modify the Business Rules at any time and from time to time in its sole discretion for any reason, upon notice to Retailer.

2.3 "Certificate Program" means any Promotional Program offered by EchoStar wherein Retailer purchases a serialized certificate (a "Promotional Certificate") from EchoStar, any Affiliate of EchoStar, or a Third Party Manufacturer for resale to a consumer which, among other things, entitles such consumer to a DISH DBS System (or the use of such system, if the program involves leasing the equipment to the consumer) and installation.

2.4 "Chargeback" means EchoStar's right to reclaim Incentives to which Retailer is not entitled pursuant to the terms and conditions of this Agreement, any Promotional Program, or applicable Business Rules.

2.5 "DISH DBS System" means an MPEG-2 DVB compliant satellite receiver and related components (if any) packaged therewith, intended to be utilized for the reception of Programming delivered by satellite transponders owned and operated by EchoStar or its Affiliates, which is: (i) sold directly to Retailer by EchoStar or an EchoStar Affiliate under the "EchoStar" brand name or the brand name of an EchoStar Affiliate; or (ii) sold directly to Retailer by a Third Party Manufacturer pursuant to authorization granted by EchoStar under the brand name of such Third Party Manufacturer.

2.6 "EchoStar Subscriber" shall have the meaning set forth in Section 7.4.

2.7 "Eligible Programming" means the Programming packages designated by EchoStar as qualifying for the payment of Incentives under this Agreement, as set forth in the Business Rules, as such Business Rules may be modified in whole or in part at any time and for any reason in EchoStar's sole discretion, upon notice to Retailer.

2.8 "EFT" means the electronic transfer of funds from one financial institution to another.

2.9 "Incentives" mean the Monthly Incentives together with any Additional Incentives, as such terms are defined in Section 6, below.

2.10 "Programming" means the DISH Network video, audio, data and interactive programming services which EchoStar makes generally available to the public for viewing in Residential Locations, subject to any restrictions (geographic, blackout or otherwise) as EchoStar may impose on some or all such Programming services for any reason in its sole discretion. EchoStar reserves the right to change the Programming services offered and/or any restrictions applicable to such Programming services at any time and for any reason in EchoStar's sole discretion.

2.11 "Promotional Program" means: (i) a promotional offer, as determined by EchoStar, which Retailer may present to consumers in connection with Retailer's promotion and solicitation of orders for Programming; (ii) the Incentives, as determined by EchoStar, which Retailer may receive in connection with such promotional offer; and (iii) the Business Rules, as determined by EchoStar, setting forth the terms and conditions governing the promotional offer and corresponding Incentives. EchoStar reserves the right to discontinue any Promotional Program or change the Business Rules associated therewith at any time and for any reason in its sole discretion, upon notice to Retailer.

2.12 "Qualifying Residential Subscriber" means an individual at a Residential Location in the Territory who orders Eligible Programming, who timely pays for the Programming in full and who has not violated any of the terms and conditions set forth in the EchoStar Residential Customer Agreement, and who has never previously received any audio, video, data, or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole discretion, declines to activate for any reason.

2.13 "Residential Location" means a single family residential dwelling (i.e. single family houses, apartments, condominiums or other dwellings used primarily for residential purposes), located in the Territory; provided, however, in no case shall any satellite master antenna television system or private cable system in a residential multiple dwelling unit or any similar programming reception system (e.g., dormitories, etc.) be considered a Residential Location. EchoStar reserves the right to determine, in its sole discretion for any reason, whether a location constitutes a Residential Location, or is more appropriately considered a commercial or other non-residential location.

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

2.15 "Subscriber Account" means the account set up and maintained by EchoStar for a Qualifying Residential Subscriber who purchased a DISH DBS System from Retailer and for whom Eligible Programming has been activated by EchoStar and which account remains active and in good standing.

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

3. APPOINTMENT; TERRITORY

3.1 Appointment. EchoStar appoints Retailer as a non-exclusive Authorized Retailer to promote and solicit orders for Programming, subject to all of the terms and conditions of this Agreement. The appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same DBS service which may be operated by EchoStar or its Affiliates under a different name in the future. Retailer's authorization herein is limited to the solicitation of orders for Programming from, and the marketing, advertising and promotion of Programming to, consumers at Residential Locations unless EchoStar, in its sole discretion (which may be exercised for any reason), specifically agrees in writing to permit Retailer to solicit orders from, or promote Programming to, others.

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

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

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

3.5 Purchase of DISH DBS Systems by Retailer from EchoStar. In the event that Retailer orders any DISH DBS Systems or Promotional Certificates from Echosphere Corporation or any other Affiliate of EchoStar (collectively, "Echosphere" for purposes of this section), Retailer shall order such products by written purchase order ("Purchase Order") issued during the term of this Agreement. A Purchase Order shall be a binding commitment by Retailer. Any failure to confirm a Purchase Order shall not be deemed acceptance by Echosphere. Purchase Orders of Retailer shall state only the: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. Any additional terms stated in a Purchase Order shall not be binding upon Echosphere unless expressly agreed to in writing by Echosphere. In no event shall EchoStar or Echosphere be liable for any delay, or failure to fulfill, any Purchase Order (or any portion thereof), regardless of the cause of such delay or failure. In the event of any conflict

between the terms of a Purchase Order and the terms of this Agreement, the terms of this Agreement shall prevail. Echosphere shall be considered a third party beneficiary of Retailer's obligations under this Agreement. Retailer hereby acknowledges and agrees that EchoStar and its Affiliates have no obligation to re-purchase DISH DBS Systems or Promotional Certificates back from Retailer at any time for any reason.

3.6 Sale of DISH DBS Systems. Retailer agrees that as a condition precedent to eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease, or otherwise transfer possession of a DISH DBS System or Promotional Certificate to any person or entity whom Retailer knows or reasonably should know: (i) is not an end-user and/or intends to resell, lease or otherwise transfer it for use to another individual or entity; or (ii) intends to use it, allow others to use it, or to resell, lease or otherwise transfer it for use in any location other than a Residential Location; or (iii) intends to use it, or to allow others to use it, or to resell, lease or otherwise transfer it for use in Canada, Mexico or at any other location outside of the Territory; or (iv) intends to have, to allow others to have, or to resell, lease or otherwise transfer it to others who will have Programming authorized for it under a single DISH Network account that has or will have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location and connected to the same phone line. It shall be Retailer's responsibility to investigate and determine whether any sale by Retailer would be in violation of this Section. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who uses it, allows others to use it, or resells, leases or otherwise transfers it for use to permit the viewing of Programming in a non-Residential Location or any other area open to the public, then Retailer agrees to pay to EchoStar upon demand: (a) the difference between the amount actually received by EchoStar for the Programming authorized for the DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (b) the total amount of any admission charges or similar fees imposed for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who has, allows others to have, or resells, leases or otherwise transfers it to others who have Programming authorized for it under a single DISH Network account that at any time has Programming authorized for multiple DISH DBS Systems that are not all located in the same Residential Location and connected to the same phone line, and Retailer knew or reasonably should have known that the person or entity intended to have, allow others to have or resell, lease or otherwise transfer it to others who would have Programming authorized for the DISH DBS System under such an account, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate DISH Network account. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 3.6, ECHOSTAR SHALL BE ENTITLED TO CHARGE BACK AT ANY TIME (EVEN AFTER THE TERMINATION OR EXPIRATION OF THIS AGREEMENT) THE INCENTIVES, IF ANY, PAID TO RETAILER BY ECHOSTAR WITH RESPECT TO ANY SUBSCRIBER ACCOUNT AFFECTED BY SUCH BREACH OR DEFAULT. IN THE EVENT RETAILER WISHES TO DISPUTE ANY SUCH CHARGEBACK, RETAILER SHALL FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 15 BELOW. ECHOSTAR'S CALCULATION OF AMOUNTS OWING TO ECHOSTAR FROM RETAILER UNDER THIS SECTION 3.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 3.6 are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).

3.7 Pre-Activations. Retailer shall not directly or indirectly activate (a "Pre-activation") any DISH DBS System or DISH DBS receiver prior to installation of such DISH DBS System and/or receiver at a Residential Location.

3.8 Financing; Making Payments on Behalf of End-Users. Retailer shall not directly or indirectly provide financing for the purchase of any Programming or make any payment to EchoStar for Programming services or otherwise on behalf of any retail end-user of a DISH DBS System.

3.9 Installation Services. Retailer represents, warrants, covenants and agrees that all installation and after-sales services (collectively, "Services") performed by Retailer in connection with the sale or lease of DISH DBS Systems will be performed by Retailer in accordance with all applicable laws, codes and regulations, and subject to all of the terms, conditions, standards and guidelines set forth in the DISH Network Installation Manual (located on the retailer web site), as such terms, conditions, standards and specifications may be changed at any time and for any reason by DISH Network Service Corporation in its sole discretion, upon notice to Retailer.

3.10 Prior Retailer Agreement. IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY AGREEMENT WITH ECHOSTAR RELATING TO THE MARKETING, PROMOTION, ADVERTISING OR SOLICITATION OF ORDERS FOR PROGRAMMING BY RETAILER AND THE PAYMENT OF CERTAIN AMOUNTS BY ECHOSTAR THEREFOR (A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE OF THIS AGREEMENT, THEN UPON EXECUTION OF THIS AGREEMENT BY RETAILER AND ECHOSTAR: (I) THE PRIOR RETAILER AGREEMENT SHALL BE AUTOMATICALLY TERMINATED, EXCEPT THAT THE PROVISIONS (EXCLUDING ANY PROVISIONS RELATED TO THE PAYMENT OF COMMISSIONS OR INCENTIVES) IN THE PRIOR RETAILER

AGREEMENT WHICH EXPRESSLY SURVIVE, AND SUCH OTHER RIGHTS AND OBLIGATIONS THEREUNDER AS WOULD LOGICALLY BE EXPECTED TO SURVIVE TERMINATION OR EXPIRATION SHALL CONTINUE IN FULL FORCE AND EFFECT; AND (II) ALL COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE DUE TO RETAILER UNDER THE PRIOR RETAILER AGREEMENT SHALL BE PAYABLE BY ECHOSTAR TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) ALL RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THE PRIOR RETAILER AGREEMENT SHALL BE OF NO FORCE OR EFFECT. IN FURTHERANCE OF, AND NOT IN LIMITATION OF, THE FOREGOING, ANY DISPUTE WHICH MAY HAVE ARISEN UNDER THE PRIOR RETAILER AGREEMENT SHALL BE RESOLVED IN ACCORDANCE WITH SECTION 15 BELOW. IN ACCORDANCE WITH SECTION 15.1, RETAILER SHALL HAVE NINETY (90) DAYS (OR THE SHORTEST PERIOD ALLOWED BY LAW IF MORE THAN 90 DAYS) FROM THE DATE OF THIS AGREEMENT TO NOTIFY ECHOSTAR OF ANY CLAIM THAT IT MAY HAVE AGAINST ECHOSTAR UNDER THE PRIOR RETAILER AGREEMENT. HOWEVER, NOTWITHSTANDING ANY TERMS OF THIS AGREEMENT, NOTHING CONTAINED IN THIS AGREEMENT WILL WAIVE ANY RIGHT RETAILER MAY HAVE IN THE CLAIMS BROUGHT IN THE FOLLOWING CLASS ACTION LAWSUITS IN THE EVENT THE FOLLOWING LAWSUITS ARE CERTIFIED: Case No. 00-CV-1989; *Styled John DeJong, d/b/a "Nexwave," and Joe Kelly, d/b/a "Kel-tronics," and Jaguar Technologies, Inc. v. EchoStar Satellite Corporation*, United States District Court, District of Colorado; Case No. 00-CV-3130, *Styled Air Communication & Satellite, Inc. et al. v. EchoStar Satellite Corporation*, In the District Court, Arapahoe County, Colorado; Case No. 500-CV-268, *Styled Satellite Dealers Supply, Inc. v. EchoStar Communications Corp.*, United States District Court, Eastern District of Texas. In the event that no Prior Retailer Agreement is in effect as of the effective date of this Agreement, Retailer shall only be eligible to receive Incentives for new Subscriber Accounts activated after the date of this Agreement, notwithstanding payment by EchoStar of any commissions to Retailer prior to the date of this Agreement. This Agreement shall not amend, modify, alter or change any terms or conditions of any Lease Plan Dealer Agreement, or any similar agreement relating to leasing, which is now existing or later made with EchoStar or any of its Affiliates.

4. **PROGRAMMING**

4.1 **Programming.** EchoStar shall determine, in its sole discretion for any reason, the Programming for which Retailer may solicit orders. EchoStar may expand, reduce or otherwise modify the content of any Programming packages or add or delete any Programming (either in a package or a-la-carte) at any time and for any reason in its sole discretion. Any changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date.

4.2 **Changes.** If at any time or for any reason EchoStar changes the content of any Programming package, Retailer's authority to solicit orders for the prior Programming package shall immediately cease.

5. **PRICES.** EchoStar shall determine the retail prices for Programming in its sole discretion. Retailer will only solicit orders for Programming at the retail prices set by EchoStar from time to time. EchoStar may increase, decrease or otherwise modify those prices at any time and for any reason in its sole discretion. Any price changes shall be effective immediately upon notification by EchoStar, unless EchoStar notifies Retailer of a different effective date. Retailer shall not represent that Programming may be purchased or obtained on any other terms except as authorized in writing by EchoStar.

6. **INCENTIVES.**

6.1 **Monthly Incentives.**

6.1.1 **Definition; Terms.** Subject to the terms and conditions of this Agreement and any applicable Business Rules, for each DISH DBS System or Promotional Certificate that during the Term of this Agreement: (i) is sold to Retailer by EchoStar or any of its Affiliates, or a Third Party Manufacturer; and (ii) is re-sold by such Retailer directly to a Qualifying Residential Subscriber; and (iii) results in the activation of Eligible Programming for a new Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Incentive"). The amount of such Monthly Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed by EchoStar from time to time in accordance with Section 2.2, above. EchoStar in its sole discretion shall determine whether a particular EchoStar Subscriber is a new Subscriber Account eligible for the payment of Incentives hereunder. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1.

6.1.2 **Charge Back on Monthly Incentives.** IN THE EVENT THAT RETAILER IS PAID A MONTHLY INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK SUCH MONTHLY INCENTIVE PAID TO RETAILER. ECHOSTAR'S CALCULATION AND ASSESSMENT OF ANY CHARGEBACK SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1. ECHOSTAR'S DETERMINATION THAT A CHARGE BACK IS PROPER, SHALL BE CONTROLLING, ABSENT FRAUD, MALICE OR WANTON AND WILLFUL MISCONDUCT ON THE

PART OF ECHOSTAR. THE PROVISIONS OF THIS SECTION 6.1.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT INDEFINITELY (EVEN IF TERMINATION IS DUE TO A DEFAULT OR BREACH BY ECHOSTAR).

6.2 Additional Incentives.

6.2.1 Definition; Terms. During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Incentives including, but not limited to, activation fee payments, flex payments, equipment discounts, and free professional installation payments ("Additional Incentives") under such Promotional Programs as EchoStar may make available to Retailer in its sole discretion from time to time. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Incentive shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 2.2 above. RETAILER ACKNOWLEDGES AND AGREES THAT: (I) UNDER NO CIRCUMSTANCES SHALL ECHOSTAR HAVE AT ANY TIME ANY OBLIGATION TO OFFER ADDITIONAL INCENTIVES TO RETAILER, OR IF ADDITIONAL INCENTIVES ARE OFFERED TO OTHERS, TO ALTER OR AMEND THE BUSINESS RULES TO PERMIT RETAILER TO BE ELIGIBLE TO RECEIVE THEM; (II) IF ECHOSTAR OFFERS ANY ADDITIONAL INCENTIVES TO RETAILER THROUGH ANY PROMOTIONAL PROGRAM, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE THE ADDITIONAL INCENTIVES IF AND TO THE EXTENT THAT IT MEETS ALL OF THE QUALIFICATION CRITERIA AND OTHER TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BUSINESS RULES AND THIS AGREEMENT; (III) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER THE TERMS AND CONDITIONS OF THE RELEVANT PROMOTIONAL PROGRAM, ADDITIONAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS OR PROMOTIONAL CERTIFICATES THAT: (A) ARE SOLD TO RETAILER BY ECHOSTAR OR ANY OF ITS AFFILIATES, OR A THIRD PARTY MANUFACTURER; (B) ARE RE-SOLD BY SUCH RETAILER DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE PROGRAMMING FOR A NEW SUBSCRIBER ACCOUNT. ECHOSTAR IN ITS SOLE DISCRETION SHALL DETERMINE WHETHER A PARTICULAR ECHOSTAR SUBSCRIBER IS A NEW SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF INCENTIVES HEREUNDER. RETAILER ACKNOWLEDGES AND AGREES THAT IF IT CHOOSES TO PARTICIPATE IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW AND ADHERE TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE BUSINESS RULES RELATED THERETO. FURTHERMORE, RETAILER'S PARTICIPATION IN ANY PROMOTIONAL PROGRAM OR RECEIPT OF ADDITIONAL INCENTIVES THEREUNDER SHALL SERVE AS RETAILER'S ACKNOWLEDGEMENT OF THE TERMS AND CONDITIONS SET FORTH IN THE RELEVANT BUSINESS RULES AND RETAILER'S AGREEMENT TO BE BOUND THERETO. ECHOSTAR'S CALCULATION AND PAYMENT OF ADDITIONAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1.

6.2.2 Charge Backs on Additional Incentives. IN THE EVENT THAT RETAILER IS PAID AN ADDITIONAL INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK SUCH ADDITIONAL INCENTIVE PAID TO RETAILER. ECHOSTAR'S CALCULATION AND ASSESSMENT OF ANY CHARGEBACK SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1. ECHOSTAR'S DETERMINATION THAT A CHARGE BACK IS PROPER, SHALL BE CONTROLLING, ABSENT FRAUD, MALICE OR WANTON AND WILLFUL MISCONDUCT ON THE PART OF ECHOSTAR. THE PROVISIONS OF THIS SECTION 6.2.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT INDEFINITELY (EVEN IF TERMINATION IS DUE TO A DEFAULT OR BREACH BY ECHOSTAR).

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

6.3.1 Electronic Funds Transfer. Until Retailer provides EchoStar with the Retailer Account information in the manner prescribed by EchoStar ("EFT Instructions"), or in the event that Retailer elects to receive payments by check, EchoStar shall pay Incentives to Retailer by check and Retailer will be assessed EchoStar's standard processing fee, which may be changed by EchoStar at any time and for any reason in its sole discretion upon notice to Retailer. For a period of approximately thirty (30) days after EchoStar receives initial EFT Instructions from Retailer, EchoStar will make all payments of Incentives to Retailer hereunder by check, and mail the same free of charge.

6.3.2 Reliance on Retailer Account Information. With respect to Retailer's EFT Instructions, and any purported changes or modifications thereof by Retailer, EchoStar may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument and may assume that any person purporting to give any such writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so.

6.3.3 **EchoStar EFT Liability Limitation.** Retailer agrees that in no event shall EchoStar have any liability under this Agreement for any Incentives not received by Retailer as a result of an error in any way attributable to: (i) any bank or financial institution; (ii) Retailer; or (iii) any other person, entity or circumstance outside of EchoStar's direct control. The provisions of this Section 6.3.3 shall survive expiration or termination of this Agreement, for any reason whatsoever, indefinitely (even if termination is due to a default or breach by EchoStar).

6.4 **Statements.** EchoStar shall make available to Retailer, in an electronic format determined by EchoStar in its sole discretion, periodic statements reflecting the Monthly Incentives and Additional Incentives (if any) payable to Retailer as well as any chargebacks assessed against Retailer. Retailer acknowledges that EchoStar is not required to provide Retailer with any additional information, including but not limited to communications between EchoStar and any EchoStar Subscriber or any Subscriber Account information.

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

6.5.1 Retailer shall not be entitled to either Monthly Incentives (at anytime) or Additional Incentives (to the extent the relevant chargeback period set forth in the Business Rules has not expired) with respect to any Subscriber Account for which: (i) the Eligible Programming has been cancelled by anyone; (ii) payment in full for the Eligible Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Residential Customer Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the discretion to issue a credit or refund in its sole judgment); (iv) the subscriber would otherwise be a Qualifying Residential Subscriber, but is already receiving—or previously received at any time—any of the Programming, or any other audio, video, data or other programming services from EchoStar or any of its Affiliates on the date of the order; (v) the Subscriber Account is otherwise terminated, disconnected or deactivated for any reason, without limitation; or (vi) the Qualifying Residential Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

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

6.6 **Suspension and Termination of Incentives.**

6.6.1 **Suspension.** In addition to any other rights and remedies available, EchoStar shall not be required to pay any Incentives to Retailer which would otherwise be due to Retailer during any period in which Retailer is in breach or default of this Agreement, the Trademark License Agreement (Attachment A) or any Other Agreement (as defined in Section 6.8 below), and EchoStar shall have no liability to Retailer as a result of such suspension of payment. Specifically, and without limitation of the foregoing, Retailer shall have no right at any time to recoup any Incentives not paid during a period of breach or default. The foregoing provisions of this Section 6.6.1 may be exercised without terminating this Agreement and are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise. The provisions of this Section 6.6.1 shall survive expiration or termination of this Agreement, for any reason whatsoever, indefinitely (even if termination is due to a default or breach by EchoStar).

6.6.2 **Termination.** In the event this Agreement or any Other Agreement (as defined in Section 6.8, below) expires or is terminated for any reason whatsoever, EchoStar shall have the right, in addition to any other rights and remedies it may have, to terminate immediately all payments of Incentives then presently due and owing, or thereafter due, to Retailer under this Agreement.

6.7 **Non-Incentivized Activations by EchoStar.** In the event that Retailer for any reason does not qualify for an Incentive with respect to any Qualifying Residential Subscriber or any DISH DBS System, EchoStar shall be entitled to activate Programming for that Qualifying Residential Subscriber without payment of any Incentive to Retailer, even if Retailer solicited the Qualifying Residential Subscriber to order Programming from EchoStar.

6.8 **Offsets.** In no event shall Retailer offset any Programming payment which might be collected by Retailer, or any other amounts due to EchoStar or any of its Affiliates from Retailer for any reason, against any Incentives owed to Retailer by EchoStar or any other sums owed to Retailer by EchoStar or any of its Affiliates. In the event that the Incentives paid by EchoStar to Retailer

exceed the amount to which Retailer was entitled, or if Retailer is indebted to EchoStar or its Affiliates under Section 13 below or for any other reason, Retailer acknowledges and agrees that EchoStar and its Affiliates shall have the right, but not the obligation, to offset any such amounts due to EchoStar or its Affiliates from Retailer for any reason against any Incentives or other money otherwise due to Retailer from EchoStar or any of its Affiliates. Further, should one or more contracts now or hereafter exist between EchoStar and/or an Affiliate of EchoStar on the one hand and Retailer and/or an Affiliate of Retailer on the other hand, or if EchoStar or any such Affiliate is holding funds or equipment to be paid or disbursed to Retailer pursuant to business dealings between the parties not reflected in any contract (all such other contracts and business dealings with EchoStar and/or any Affiliate are herein collectively referred to as the "Other Agreements"), EchoStar or such Affiliate may, but shall have no obligation to, deduct from any amounts due or to become due to Retailer under this Agreement any sums which Retailer owes to EchoStar or such Affiliate, whether or not then due arising out of this Agreement or the Other Agreements, as well as any and all amounts for which EchoStar or such Affiliate may become liable to third parties by reason of Retailer's acts in performing, or failing to perform, Retailer's obligations under this Agreement or any of the Other Agreements. Further, EchoStar may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as EchoStar, in its sole discretion and for any reason, deems necessary to protect EchoStar or any Affiliate from any loss, damage, or expense relating to or arising out of Retailer's actions or performance hereunder, or in response to any claim or threatened claim of which EchoStar becomes aware concerning Retailer or the performance of Retailer's duties hereunder. EchoStar's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim, or recoupment of Retailer whatsoever, including, but not limited to, any which might arise from a breach of this Agreement by EchoStar or any of its Affiliates. The provisions of this Section 6.8 shall survive expiration or termination of this Agreement, for any reason whatsoever, indefinitely (even if termination is due to a default or breach by EchoStar).

6.9 **Collection of Programming Fees.** Retailer acknowledges and agrees that, except for the installation of DISH DBS Systems which may be provided by Retailer, under no circumstances shall Retailer collect any payment for Programming or any other money due to EchoStar and/or any of EchoStar's Affiliates directly from any EchoStar Subscriber or other person, and all Programming fees will be billed directly to EchoStar Subscribers by EchoStar. In the event that, notwithstanding Retailer's best efforts to comply with this requirement, any EchoStar Subscriber or other person forwards any payment to Retailer rather than to EchoStar directly, Retailer shall immediately forward the payment, together with any applicable sales or similar taxes, to EchoStar without deduction or offset of any kind, and shall instruct the EchoStar Subscriber or other person that all future payments for Programming must be made to EchoStar directly.

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

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

6.12 **Acknowledgement.** Retailer hereby acknowledges and agrees that the Incentives paid to Retailer under this Agreement do not represent deferred compensation in any form whatsoever and are not being paid to Retailer with respect to the procurement of EchoStar Subscribers or the activation of EchoStar Subscriber Accounts, but rather are being paid to Retailer as an incentive to market, promote, and solicit orders for Programming from future subscribers and to provide continuing service to subscribers after initial activation.

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

7. **ORDERS.**

7.1 Retailer agrees to use its reasonable commercial efforts to promote and enhance EchoStar's business, reputation and goodwill. Retailer shall not use any independent contractors, Affiliates or sub-agents to fulfill its obligations hereunder without EchoStar's specific prior written consent, which consent may be withheld in EchoStar's sole judgment for any reason whatsoever. In the event EchoStar does grant consent to Retailer to use persons not employed by Retailer to perform activities contemplated hereunder, Retailer shall be responsible for the acts and omissions of such persons under this Agreement to the same extent it is responsible for the acts and omissions of its own employees.

7.2 Retailer shall not sell Programming under any circumstances. All sales of Programming are transactions solely between EchoStar and EchoStar Subscribers. Retailer shall promptly forward to EchoStar all orders for Programming in the manner prescribed by EchoStar from time to time. Retailer understands that EchoStar shall have the right, in its sole discretion and for any reason, to accept or reject, in whole or in part, all orders for the Programming. Retailer also agrees that it shall not condition, tie or

otherwise bundle any purchase of Programming with the purchase of other services or products other than as specifically agreed to in writing by EchoStar in advance.

7.3 Retailer shall comply with each Business Rule, including without limitation all Business Rules which govern or are applicable to any Promotional Program in which Retailer elects to participate. Retailer shall disclose to each prospective EchoStar Subscriber the terms as are relevant to the Promotional Program in which the prospective EchoStar Subscriber is interested as well as any other terms as set forth in any applicable Business Rule. Furthermore, Retailer shall take all actions and refrain from taking any action, as reasonably requested by EchoStar in connection with the marketing, advertisement, promotion and/or solicitation of orders for Programming and sale of equipment and Retailer shall cooperate by supplying EchoStar with information relating to those actions as EchoStar reasonably requests. Failure to adhere to any Business Rules may result in disciplinary action up to and including termination and any other remedy provided in this Agreement.

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

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

9. **CONDUCT OF BUSINESS.**

9.1 **Compliance with Laws.** Retailer shall comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise) and all amendments thereto, now enacted or hereafter promulgated, in force during the Term (hereinafter "Laws"), and Retailer is solely responsible for its compliance with all Laws which apply to its obligations under this Agreement.

9.2 **Signal Theft.** Retailer shall not directly or indirectly: (i) engage in any signal theft, piracy or similar activities; (ii) engage in any unauthorized reception, transmission, publication, use, display or similar activities with respect to Programming; (iii) use a single DISH Network account for the purpose of authorizing Programming for multiple DISH DBS Systems that are not all located in the same Residential Location and connected to the same phone line; (iv) alter any DISH DBS Systems or "Smart Cards", or any other equipment compatible with programming delivered by EchoStar or any of its Affiliates to be capable of signal theft (or for any other reason without the express written consent of EchoStar); (v) manufacture, import, offer to the public, sell provide or otherwise traffic in any technology, product, service, or device which is primarily designed or produced for the purpose of, or is marketed for use in, or has a limited commercially significant purpose other than, assisting in or facilitating signal theft or other piracy; or (vi) aid any others in engaging in, or attempting to engage in, any of the above described activities. Retailer shall immediately notify EchoStar if it becomes aware of any such activity by any person or entity.

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

9.4 **Bounty Programs; Subscriber Information.** Retailer acknowledges that it is in the best interest of both EchoStar and Retailer for EchoStar Subscribers to be long-term customers of EchoStar and/or its Affiliates. Retailer acknowledges that churning of EchoStar Subscribers is detrimental to EchoStar and negatively affects EchoStar's ability to offer Monthly Incentives and/or Additional Incentives. Retailer acknowledges that for any Promotional Program to be viable, EchoStar Subscribers must be long-term subscribers to DISH Network. Therefore, Retailer agrees that, during the Term and for a period of five (5) years following the expiration or termination thereof for any reason whatsoever, Retailer and its Affiliates will not directly or indirectly operate, offer to any other person or entity, participate in, or assist any other person or entity to participate in, any promotion or program offered by any person or entity other than EchoStar or any of its Affiliates which provides for the delivery of an economic incentive or other benefit to Retailer, an

EchoStar Subscriber or any third party that is tied or connected to the solicitation of existing EchoStar Subscribers to cancel their EchoStar service and/or switch to a service offered by any other multi-channel video programming service provider (hereinafter a "Bounty Program"). Furthermore, Retailer agrees that, during the Term and for a period of five (5) years following the expiration or termination thereof for any reason whatsoever, Retailer and its Affiliates will not directly or indirectly produce, place, display or use any advertising or marketing material that explicitly references DISH Network, EchoStar, an Affiliate of EchoStar or EchoStar Subscribers and attempts to persuade EchoStar Subscribers to cancel their EchoStar service and/or switch to a service offered by any other multi-channel video programming service provider. In addition to and without limitation of the foregoing, Retailer acknowledges and agrees that the names, addresses and other identifying information of EchoStar Subscribers ("Subscriber Information") are proprietary to EchoStar and that Subscriber Information shall be treated with the highest degree of confidentiality by Retailer. During the Term and a period of five (5) years following the expiration or termination of this Agreement, Retailer will not, without the express prior written consent of EchoStar, which EchoStar may withhold in its sole discretion and for any reason, directly or indirectly: (i) make use of any list of past or current EchoStar Subscribers (whether developed by Retailer, obtained from EchoStar or obtained from any other source); (ii) use any Subscriber Information for the direct or indirect benefit of any individual or entity, other than EchoStar; or (iii) reveal any Subscriber Information to any third party for any reason, provided, however, that nothing herein shall prohibit Retailer from utilizing its own list of persons who have purchased any products or services from Retailer (but not a discrete portion thereof identifying only EchoStar Subscribers) for its general business operations if such operations are unrelated to the delivery of audio, video or data programming services or the provision of the hardware necessary to receive such services. Nothing in this Agreement shall preclude Retailer from receiving payments from another multi-channel video programming service provider in connection with the sale of that service provider's programming services to consumers who are not EchoStar Subscribers. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement, for any reason whatsoever, for five (5) years (even if termination is due to a default or breach by EchoStar).

9.5 **Remedies.** Retailer agrees that any breach of its obligations set forth in this Section 9 will cause substantial and irreparable harm and injury to EchoStar for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Retailer agrees that EchoStar shall have the right, in addition to any other remedies available, to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Retailer, its employees or agents, as well as other equitable relief allowed by the federal and state courts. The provisions of this Section shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

9.6 **Economic Benefits Derived Held in Trust.** In the event that Retailer derives an economic benefit, in any form, from a violation of its obligations under this Section 9, it is hereby agreed that such economic benefit is the property of EchoStar and that Retailer shall deliver the cash value of the economic benefit to EchoStar immediately upon receipt of the economic benefit. It is further agreed that Retailer shall hold such economic benefit in trust for the benefit of EchoStar until such time as its cash value is delivered to EchoStar. The foregoing is agreed to without prejudice to EchoStar to exercise any other rights and remedies it may have, including without limitation, the right to terminate this Agreement and seek damages or other legal or equitable relief. The provisions of this Section shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

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

10. **TERM AND TERMINATION.**

10.1 **Term.** This Agreement shall commence on the date of execution by both parties and shall continue until December 31, 2004 (the "Term") unless earlier terminated by either party in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable and neither party hereto shall be under any obligation whatsoever to offer or to accept an agreement to renew or replace this Agreement upon its expiration. RETAILER RECOGNIZES THAT THIS AGREEMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE TERM AND THAT NO REPRESENTATIONS HAVE BEEN MADE TO RETAILER THAT RETAILER WILL REMAIN AN AUTHORIZED RETAILER DURING THE ENTIRE TERM OR THAT THE AGREEMENT WILL NOT BE TERMINATED PRIOR TO EXPIRATION OF THE TERM PURSUANT TO SECTIONS 10.2, 10.3, 10.4 OR 10.5 BELOW.

10.2 **Termination by Either Party Without Cause.** Either party may, in its sole discretion, terminate this Agreement for its convenience (without cause) by giving the other party no less than sixty (60) days prior written notice, except that EchoStar may not terminate Retailer without cause pursuant to this Section 10.2 during the first twelve calendar months of this Agreement if immediately prior to executing this Agreement, Retailer was an Authorized Retailer in good standing and not in breach or default under a Prior Retailer Agreement. EchoStar acknowledges and agrees that Retailer may choose to sell products or programming which compete

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

10.3 Termination By Either Party Upon Default. This Agreement may be terminated by a party (the "Affected Party"), if the other party (the "Other Party") has failed to cure any Default (as defined below) within twenty (20) days of receipt of a written notice of such Default from the Affected Party. For the purposes of this Agreement a Default shall occur when the Other Party: (i) fails to pay any amount to either party or its Affiliates when due; (ii) fails to perform any obligation or breaches any representation, warranty or covenant in this Agreement, or the Trademark License Agreement (Attachment A) (regardless of whether breach or default of such obligation, representation, warranty or covenant is designated as giving rise to a termination right); (iii) becomes insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings are instituted against it; (iv) fails to maintain operations as a going business; (v) ceases to continuously and actively market and promote Programming; (vi) makes any representation or promise on behalf of the Affected Party inconsistent with the representations or promises that the Affected Party has specifically authorized.

10.4 Automatic Termination. This Agreement shall terminate automatically should any of the following occur, unless EchoStar notifies Retailer to the contrary in writing: (i) Retailer, or any officer, director, substantial shareholder or principal of the Retailer is convicted in a court of competent jurisdiction of any criminal offenses greater than a Class C Misdemeanor; (ii) Retailer fails to comply with any federal, state or local law or regulation; (iii) Retailer engages in any practice, related to the business conducted by the Retailer in connection with this Agreement, which is determined to be an illegal, deceptive or unfair trade practice in violation of any applicable federal, state or local law or regulation; (iv) Retailer falsifies any records or reports required hereunder or under any Business Rule; (v) the Trademark License Agreement (Attachment A) or any Other Agreement (as defined in Section 6.8 above) terminate for any reason; (vi) any actual or alleged fraud, misrepresentation, or illegal action of any sort by Retailer; (vii) Retailer fraudulently receives, or attempts to receive, an Incentive or payment to which it is not entitled under this or any Other Agreement (as defined in Section 6.8 above); (viii) Retailer fraudulently receives, or attempts to receive, an Incentive or payment by misrepresenting any information concerning a prior EchoStar Subscriber to make that person or entity appear to be a new EchoStar Subscriber; (ix) Retailer fails to activate the applicable minimum number of new subscribers (the "New Subscriber Minimum") set forth in any applicable Business Rules; (x) any of the representations or warranties made by Retailer in this Agreement are false; (xi) Retailer is in breach or default of its obligations under Section 3.6, 3.7, 3.8, 3.9, 6.13, 9.2, 9.3, 9.4, or 9.7; or (xii) pursuant to Section 17.4.

10.5 Termination of Agreement. The parties hereto agree that if this Agreement terminates for any reason: (i) Retailer shall immediately discontinue the marketing, promotion, and solicitation of orders for Programming, and immediately cease to represent and/or imply to any person or entity that Retailer is an Authorized Retailer of EchoStar; (ii) Retailer shall immediately discontinue all use of the trademarks associated or included in any way whatsoever with the Programming, including, without limitation, DISH; (iii) Retailer shall deliver to EchoStar, or destroy, at EchoStar's option, all tangible things of every kind (excluding DISH DBS Systems) in Retailer's possession or control that bear any of the trademarks; (iv) Retailer shall upon request by EchoStar, certify in writing to EchoStar that such delivery or destruction has taken place; and (v) Retailer shall pay all sums due EchoStar under this Agreement, or any Other Agreement, within thirty (30) days of the date of termination.

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

12. LIMITATION OF LIABILITY. The provisions of this Section 12 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

12.1 Upon termination of this Agreement for any reason set forth herein, Retailer shall have no right to require EchoStar to continue to allow Retailer to act as an Authorized Retailer to solicit orders on behalf of EchoStar. Retailer agrees that in the event of termination of this Agreement for any reason, no amounts spent in its fulfillment will be recoverable from EchoStar or any of its Affiliates by Retailer.

12.2 IN NO EVENT SHALL PROJECTIONS OR FORECASTS MADE BY EITHER PARTY BE BINDING AS COMMITMENTS OR PROMISES. IN NO EVENT SHALL ECHOSTAR OR ANY AFFILIATE OF ECHOSTAR BE LIABLE FOR

ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO RETAILER (WHETHER FORESEEABLE OR NOT), INCLUDING WITHOUT LIMITATION ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, LOSS OF GOODWILL, REIMBURSEMENT FOR EXPENDITURES OR INVESTMENTS MADE OR COMMITMENTS ENTERED INTO, CREATION OF CLIENTELE, ADVERTISING COSTS, TERMINATION OF EMPLOYEES OR EMPLOYEES SALARIES, OVERHEAD OR FACILITIES INCURRED OR ACQUIRED BASED UPON THE BUSINESS DERIVED OR ANTICIPATED UNDER THIS AGREEMENT, CLAIMS UNDER DEALER TERMINATION, PROTECTION, NON-RENEWAL OR SIMILAR LAWS, FOR ANY CAUSE WHATSOEVER WHETHER OR NOT CAUSED BY NEGLIGENCE.

12.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ECHOSTAR AND ITS AFFILIATES UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID TO RETAILER BY ECHOSTAR UNDER THE TERMS OF THIS AGREEMENT.

13. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold EchoStar and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively the "EchoStar Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorneys' fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) Retailer's performance or failure of performance under this Agreement and any direct or indirect results thereof, including but not limited to Retailer's sale and installation of DISH DBS Systems; (ii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees or agents, whether or not such acts are within the scope of employment of such employees or agents) relating to the sale, marketing, advertisement, promotion or distribution of Programming, Promotional Certificates and/or DISH DBS Systems and related equipment; (iii) the failure of Retailer to comply with any provision of this Agreement or any Business Rule; (iv) the breach of any of Retailer's representations or warranties contained herein; (v) all purchases, contracts, debts and/or obligations made by Retailer; (vi) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable laws, statute, ordinance, governmental administrative order, rule or regulation; (vii) any claim brought by Retailer's employees or agents for compensation and/or damages arising out of the expiration or termination of this Agreement; or (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers (except with respect to any marketing materials supplied to Retailer by EchoStar). In the event of any claim for indemnification by the EchoStar Group under this Section 13, the EchoStar Group shall be entitled to representation by counsel of its own choosing, at Retailer's sole cost and expense. The EchoStar Group shall have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such claim and Retailer shall, at its own cost and expense, render all assistance requested by EchoStar in connection with any such negotiation, litigation, settlement or other proceeding. Each indemnity obligation herein shall be in addition to and not in limitation of any other indemnity obligation set forth herein. The provisions of this Section 13 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

14. **CONFIDENTIALITY.** Except as otherwise set forth in Section 9.4, at all times during the term of this Agreement and for a period of three (3) years thereafter, Retailer and its employees will maintain, in confidence, the terms and provisions of this Agreement, the terms and provisions of any and all Business Rules and Promotional Programs, as well as all data, summaries, reports, communications or information of all kinds, whether oral or written, acquired, devised or developed in any manner from EchoStar's personnel or files, or as a direct or indirect result of Retailer's actions or performance under this Agreement, and Retailer represents that it has not and will not reveal the same to any persons not employed by Retailer, except: (i) at the written direction of EchoStar; (ii) to the extent necessary to comply with law, the valid order of a court of competent jurisdiction or the valid order or requirement of a governmental agency or any successor agency thereto, in which event Retailer shall notify EchoStar of the information in advance, prior to making any disclosure, and shall seek confidential treatment of such information; (iii) as part of its normal reporting or review procedure to its parent company, its auditors and its attorneys, provided such parent company, auditors and attorneys agree to be bound by the provisions of this paragraph; or (iv) to the extent necessary to permit the performance of obligations under this Agreement.

15. **DISPUTE RESOLUTION.**

Retailer acknowledges that EchoStar deals with thousands of Retailers and that hundreds of thousands of Incentive payments are made annually. Retailer acknowledges that any delay in notifying EchoStar of any alleged shortage or non payment, allegedly incorrect chargeback, or any other claim that may result in EchoStar's liability to Retailer for damages may impede EchoStar's ability to fully and timely investigate any such claim by Retailer. Retailer agrees that it is in each party's best interest to give EchoStar control over claims that have to be investigated and to allow EchoStar to investigate any such claim at the earliest possible moment as well as maintain an orderly method for handling Retailer claims. Accordingly, Retailer agrees to immediately inspect and review the statements described in Section 6.4 to determine any claims or disputes the Retailer believes exist and, in the event of any claim or dispute, to follow the procedures set forth below. Retailer also agrees to follow the below claims procedures for all other claims that may result in EchoStar's liability to Retailer for damages.

15.1 **Claims for Breach or Default.** IN THE EVENT OF AN OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR LIABLE TO RETAILER FOR ANY DAMAGES OR INJUNCTIVE RELIEF AS A RESULT OF ANY ALLEGED BREACH OR DEFAULT OF THIS AGREEMENT, RETAILER SHALL GIVE WRITTEN NOTICE OF SUCH OCCURRENCE AS SOON AS PRACTICABLE TO ECHOSTAR (A "NOTICE OF CLAIM"). IN NO EVENT SHALL ANY NOTICE OF CLAIM BE PROVIDED LATER THAN NINETY (90) DAYS AFTER THE DATE OF THE RELEVANT OCCURRENCE, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE). THE NOTICE OF CLAIM SHALL STATE: (A) THE DATE, TIME AND NATURE OF THE OCCURRENCE; (B) THE TOTAL AMOUNT CLAIMED BY RETAILER, IF ANY, IN CONNECTION WITH SUCH OCCURRENCE AND THE BASIS FOR ANY AMOUNT CLAIMED, AND (C) IDENTIFICATION OF ALL DOCUMENTS AND OTHER INFORMATION IN RETAILER'S CONTROL OR POSSESSION RELATING TO SUCH OCCURRENCE. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING INCENTIVE PAYMENTS THROUGH ECHOSTAR'S RETAILER WEBSITE (<https://retailer.echostar.com>) IN ACCORDANCE WITH THE NOTICE OF CLAIM BUSINESS RULES. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING ANY OTHER OCCURRENCE VIA ELECTRONIC MAIL TO executiveresolution@echostar.com WITH THE SUBJECT LINE "NOTICE OF CLAIM." AFTER SUBMITTING A NOTICE OF CLAIM, RETAILER SHALL PROVIDE ECHOSTAR WITH ANY AND ALL ADDITIONAL INFORMATION REQUESTED BY ECHOSTAR WITHIN THIRTY (30) DAYS AFTER RECEIPT OF ECHOSTAR'S REQUEST. ECHOSTAR SHALL BE ENTITLED TO HAVE ACCESS TO RETAILER'S BOOKS AND RECORDS DURING ITS INVESTIGATION OF RETAILER'S CLAIM. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 15.1 WITH RESPECT TO A PARTICULAR OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES, SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING ANY DAMAGES RELATED THERETO.

15.2 **Mediation.** The parties agree to submit any and all disputes, controversies or claims not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4, which may arise between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all disputes, controversies, and claims arising in connection with this Agreement including, without limitation, all disputes, controversies or claims related to: (i) the execution of this Agreement; (ii) the interpretation of this Agreement; (iii) a party's performance or failure to perform hereunder; (iv) the termination of this Agreement; and (v) any rights Retailer may have under dealer termination or non-renewal laws (collectively "Disputes"), to mandatory non-binding mediation (the "Mediation") in front of a single mediator. Either party may initiate a mediation by giving written notice to the other party describing the Dispute (a "Notice of Mediation"). The Notice of Mediation shall include (1) a statement of the initiating party's position and a summary of arguments supporting that position, and (2) the name and title of the executive who will represent that party and of any other persons who will accompany the executive. The Mediation must be initiated within one (1) year of the event(s) giving rise to the Dispute. The Mediation shall take place in the city and County of Denver, Colorado at a mutually agreeable time and location before a mediator chosen by mutual agreement of the parties. Each party shall participate through a representative with full settlement authority and shall bear its own costs and expenses and one-half of the costs and expenses of the mediator. Any such Mediation must be concluded within 60 days of the Notice of Mediation. Nothing contained herein shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for either party's and/or its Affiliates' violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.9, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 11, and 14 or any provisions of any Other Agreement (as defined in Section 6.8).

15.3 **Arbitration.** Except as set forth in Section 15.4, below, any and all disputes, controversies or claims between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including without limitation any and all disputes, controversies or claims arising out of or in connection with this Agreement, including but not limited to the validity of section 15.3, the circumstances concerning the execution of this Agreement, and allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any state or federal law, which are not settled through negotiation, the claim process above, or the mediation process set forth above, shall be resolved solely and exclusively by binding arbitration in accordance with both the substantive and procedural laws of Title 9 of the U.S. Code ("Federal Arbitration Act") and the Commercial Arbitration Rules of the American Arbitration Association. In the event of any conflict between the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association, the Federal Arbitration Act will control. The Arbitration must be initiated within ninety (90) days from the final day of mediation, or 150 days from the Notice of Mediation in the event Mediation is not concluded within 60 days of the Notice of Mediation, and shall be initiated by written notice from the initiating party to the other party stating the initiating party's intent to initiate arbitration ("Notice of Arbitration"). The Arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected as follows: (i) one arbitrator shall be selected by the claimant(s) within 30 days of sending the Notice of Arbitration; (ii) one arbitrator shall be selected by the respondent(s) within 30 days of the claimant(s) notifying respondent of the identity of claimant's arbitrator; and (iii) the third arbitrator shall be selected by the arbitrators chosen by the claimant(s) and the respondent(s) within 30 days of their appointment. The decision of the arbitrators shall be final and binding on the parties and any award of the arbitrators may be entered and enforced as a final judgment in any state or Federal court of competent jurisdiction in the United States. The parties agree that, in no event, shall the arbitrators' decision include a recovery under any theory of liability, or award in any amount, not expressly allowed under this Agreement, any Promotional Program or applicable Business Rules. In furtherance and without limitation of the foregoing, any award made by the arbitrators shall be within the limitations set forth in Section 12. The cost of any arbitration hereunder, including without limitation the cost of the record or transcripts thereof, if any, administrative fees, and all other fees involved, shall be paid by the party(ies) determined

by the arbitrators to not be the prevailing party(ies), or otherwise allocated in an equitable manner as determined by the arbitrators. NEITHER PARTY HERETO NOR ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ITS AFFILIATES IF IT AND/OR ITS AFFILIATES HAVE: (i) FAILED TO FULLY COMPLY WITH THE PROCEDURES SET FORTH IN SECTIONS 15.1 AND 15.2 provided, however, that nothing contained herein shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for either party's and/or its Affiliates' violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.9, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 11, and 14 or any provisions of any Other Agreement (as defined in Section 6.8).

15.4 **Exceptions.** Notwithstanding the foregoing, the request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to mediation or arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Colorado or in the appropriate state court of competent jurisdiction located in Arapahoe County, Colorado pursuant to Section 15.5, below. Furthermore, notwithstanding anything to the contrary in this Agreement, either party and/or its Affiliates may, at any time without regard for the time limitations or restrictions set forth above and without regard for Section 15.2, file a Notice of Arbitration and/or bring a request for injunctive relief against either party and/or its Affiliates for either party's and/or its Affiliates' violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6.9, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 11, and 14 or any of the provisions of any Other Agreement (as defined in Section 6.8).

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

15.6 **Survival.** The provisions of this Section 15 shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

16. **INSURANCE.**

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

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

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

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

16.2 All such policies and coverages shall be primary and non-contributory, issued by insurers, licensed to do business in any state in which Retailer conducts business operations in connection with this Agreement, and endorsed to provide EchoStar at least 30-days prior notification of cancellation or material change in coverage.

17. **MISCELLANEOUS.**

17.1 **Waiver.** Except as otherwise set forth to the contrary in Section 15.1, the failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature. All rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity.

17.2 **Successor Interests; No Assignment by Retailer; Third Party beneficiaries.** This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of EchoStar and Retailer. In addition to, and not in limitation of the prohibition against assignment of payments set forth in Section 6.13, above, neither party shall assign this Agreement without the prior written consent of the other party, except that EchoStar may assign this Agreement to an Affiliate in whole or in part at any time without the consent of Retailer. Because this Agreement is made by EchoStar in reliance on the financial, business and personal reputation of Retailer and its ownership and management, any merger, reorganization or consolidation of Retailer shall be deemed an assignment and if any person not a substantial stockholder of Retailer (someone with less than a 25% interest) as of the date of this Agreement becomes a substantial stockholder of Retailer (equal to, or greater than a 25% interest), that shall be considered an assignment requiring EchoStar's consent hereunder. The provisions of this Agreement are for the exclusive benefit of the parties hereto, EchoStar's Affiliates and their heirs, legal representatives, successors and permitted assigns, and nothing in this Agreement, express or implied, is intended, or shall be deemed or construed, to confer upon any third party (other than as expressly set forth for Affiliates of EchoStar) any rights, benefits, duties, obligations, remedies or interests of any nature or kind whatsoever under or by reason of this Agreement.

17.3 **Construction and Interpretation.** Retailer and EchoStar hereby represent, warrant, acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or the Business Rules, any amendments or addendums hereof or Exhibits hereto.

17.4 **Severability.** The parties agree that each provision contained herein is material to each party's decision to enter into this agreement and therefore, this Agreement shall automatically terminate upon the issuance of a final judgment holding that any one or more of the provisions contained herein, or the application thereof to any person, entity, or circumstance, for any reason is invalid, illegal, or unenforceable in any respect, except for any provisions that this Agreement expressly states shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

17.5 **Entire Agreement.** This Agreement, together with any documents and exhibits given or delivered pursuant to this Agreement, constitutes the entire agreement between the parties to this Agreement. Except as expressly provided by this Agreement, no party shall be bound by any communications between them on the subject matter of this Agreement unless the communication is (a) in writing, (b) bears a date contemporaneous with or subsequent to the date of this Agreement, and (c) is signed by all parties to this Agreement. On the date this Agreement becomes effective as provided herein, all prior agreements (with the exception of the Business Rules, Other Agreements as defined in Section 6.8, and any previous Exclusive Bounty Hunter Agreement) or understandings between the parties shall be null and void. The parties specifically acknowledge there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Agreement. Any provision of this Agreement which logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement (even if termination is due to a default or breach by EchoStar).

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

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

17.8 **Remedies Cumulative.** It is agreed that the rights and remedies herein provided in case of default or breach by Retailer of this Agreement are cumulative and shall not affect in any manner any other remedies that EchoStar may have by reason of such default or breach by Retailer. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

17.9 **Records and Audit Rights.** During the Term of this Agreement and for a period of three (3) years thereafter, Retailer shall keep and maintain at its principal place of business complete and accurate records and books of account in connection with its performance under this Agreement. Such books and records shall be in sufficient detail to show all information necessary to support Retailer's claim, request or entitlement to any payments from EchoStar. EchoStar shall have the right, upon two (2) days prior written notice, to review, audit and make copies of Retailer's books and records for the purpose of determining Retailer's compliance with its duties and obligations under this Agreement (an "Audit"). EchoStar shall be entitled to conduct an Audit regardless of the existence of

any claim, dispute, controversy, mediation, arbitration or litigation between the parties. In the event Retailer refuses to allow EchoStar to conduct an Audit, Retailer acknowledges that EchoStar shall be entitled to obtain immediate relief in the form of specific performance from either the panel of arbitrators (if arbitration has been commenced pursuant to Section 15, above) or a court of competent jurisdiction. Any audit conducted by EchoStar shall be conducted by EchoStar or its representative(s) at Retailer's offices during normal business hours. If an Audit reveals that Retailer has miscalculated any item bearing upon the Incentives paid to Retailer resulting in an overpayment of Incentives by EchoStar, Retailer agrees to: (i) repay to EchoStar the amount of any overpayment made together with interest thereon at the highest rate allowed by law computed from the date of the overpayment; and (ii) pay all reasonable costs and expenses, including reasonable attorney's fees and accountants fees incurred by EchoStar in connection with its Audit and with enforcing the collection of such amounts. The provisions of this Section are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).

17.10 Notices. Except as otherwise provided in section 15.1, all notices to be given to EchoStar pursuant to this Agreement shall be in writing, signed by the Retailer, and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid, to EchoStar, attention Mary Davidson, or current Director of Retail Services at the address listed on the first page of this Agreement with a copy to David K. Moskowitz, General Counsel at the same address, or such other address(es) as EchoStar may designate in writing to Retailer in accordance with this Section. Such notice shall be deemed given upon its receipt. Except as set forth in Section 6.2, all notices to be given to Retailer pursuant to this Agreement shall be in writing and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid to Retailer at the address listed on the first page of this Agreement or such other address as Retailer may designate in writing delivered to EchoStar in accordance with this Section; or (iii) with the exception of notices given pursuant to Sections 10, 13 or 15, any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a fax blast, email or posting on EchoStar's retailer web site. Such notice shall be deemed given upon receipt in the case of first class mail or overnight courier service, fax blast or email and upon posting in the case of posting on EchoStar's retailer web site. It shall be Retailer's sole responsibility to keep itself informed of all notices, changes, or other information set forth in any fax blast, Charlie Chat or on EchoStar's retailer web site.

17.11 Attorneys' Fees In the event of any suit, action or arbitration between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all suits, actions or arbitrations to enforce this Agreement, any Business Rules, any Promotional Program or any provisions thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees, at arbitration, at trial and on appeal, in addition to all other sums allowed by law. The provisions of this Section shall survive expiration or termination of this Agreement indefinitely (even if termination is due to a default or breach by EchoStar).

17.12 Modifications Retailer acknowledges that EchoStar competes in the multi-channel video distribution market, which is highly competitive, fluid and volatile and that EchoStar must make changes to its marketing, promotion and sales of products from time to time to stay competitive. Therefore, Retailer agrees that EchoStar may, at any time and for any reason in its sole discretion, change or modify Incentives, Incentive schedules, Incentive structures, Promotional Programs, Business Rules, payment terms, or the chargeback rules associated therewith, upon notice to Retailer, without the need for any further consent, written or otherwise, from Retailer. IF ANY SUCH MODIFICATION OR CHANGE IS UNACCEPTABLE TO RETAILER, RETAILER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. RETAILER'S CONTINUED PERFORMANCE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF NOTICE OF A CHANGE OR MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE OR MODIFICATION. Except for such changes, and any other changes identified in this Agreement, any Promotional Program, Business Rules, or Other Agreement (as defined in Section 6.8) which may be made by either party in its sole discretion, any modification to this Agreement must be in writing and signed by both parties.

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

17.14 General Provisions. The exhibits attached hereto are fully incorporated into this Agreement.

RETAILER AND ECHOSTAR HEREBY REPRESENT, WARRANT, ACKNOWLEDGE AND AGREE THAT: (A) THEIR INDEPENDENT COUNSEL HAS REVIEWED, OR THEY HAVE BEEN GIVEN A REASONABLE OPPORTUNITY FOR THEIR INDEPENDENT COUNSEL TO REVIEW (BUT DECLINED SUCH REVIEW), THIS AGREEMENT; (B) THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND EACH AND EVERY PARAGRAPH AND EVERY PART HEREOF, HAVE BEEN COMPLETELY AND CAREFULLY READ BY, AND EXPLAINED TO, THE PARTIES; (C) THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE FULLY AND COMPLETELY UNDERSTOOD BY EACH PARTY AND EACH PARTY IS COGNIZANT OF ALL OF SUCH TERMS

EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT

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2.22 "MDU Property" means a dormitory, apartment building, condominium or retirement community, or other type of multifamily living establishment that affords residents living quarters, as EchoStar shall determine in its sole discretion.

2.23 "Qualifying Commercial Subscriber" means a commercial enterprise operating a Guest Property, a business at a Commercial Location or an MDU Property in the Territory who orders Commercial Programming or Bulk Programming packages designated by EchoStar as qualifying for the payment of Incentives under this Agreement and as set forth in the Business Rules (which may be changed in EchoStar's sole discretion at any time for any reason), who timely pays for the Commercial Programming or Bulk Programming in full and who has not violated any of the terms and conditions set forth in the EchoStar Commercial Customer Agreement, and who has never previously received any audio, video, data, or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Commercial Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole discretion for any reason, declines to activate for any reason.

2.24 "Commercial Programming" means the DISH Network Programming services which EchoStar makes generally available for viewing in Commercial Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming services for any reason at its sole discretion. EchoStar reserves the right to change the Commercial Programming services offered and/or any restrictions applicable to such Commercial Programming services at any time and for any reason in EchoStar's sole discretion. Unless specifically authorized by a separate written agreement between the Retailer and EchoStar, Retailer: (i) shall only solicit orders for Commercial Programming which are specifically designated and authorized by EchoStar for reception at Commercial Locations; and (ii) shall not be entitled to any Incentive related to the delivery of Programming to Commercial Locations which was intended for Residential Locations.

2.25 "Bulk Programming" means the DISH Network Programming services EchoStar makes generally available for viewing in Guest Properties, and in some cases MDU Properties, subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all such programming services at any time for any reason at its sole discretion. EchoStar reserves the right to change the Bulk Programming services offered and/or any restrictions applicable to such Bulk Programming services at any time and for any reason in EchoStar's sole discretion.

2.26 "Unit" means: (i) for hospitals and other healthcare facilities, each television on the premises, (ii) for hotels, motels, and all other Guest Buildings, each room in the Guest Building, and (iii) for MDU Properties each separate living quarters.

II. Section 2.10 shall be deleted in its entirety and replaced with the following:

2.10 "Programming" means the DISH Network video, audio, data and interactive programming services which EchoStar makes generally available to the public for viewing in Residential Locations, Commercial Locations, Institutional/Residential Locations, Guest Properties and MDU Properties, subject to any restrictions (geographic, blackout or otherwise) as EchoStar may impose on some or all such Programming services at any time for any reason in its sole discretion. Programming shall include, but not be limited to, Commercial Programming and Bulk Programming. EchoStar reserves the right to change the Programming services offered and/or any restrictions applicable to such Programming services at any time and for any reason in EchoStar's sole discretion.

III. Section 2.12 shall be deleted in its entirety and replaced with the following:

2.12 "Qualifying Residential Subscriber" means an individual at a Residential Location, an Institutional/Residential Location or an MDU Property in the Territory who orders Eligible Programming, who timely pays for the Programming in full and who has not violated any of the terms and conditions set forth in the EchoStar Residential Customer Agreement, and who has never previously received any audio, video, data, or any other programming services from EchoStar or any Affiliate of EchoStar. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its sole discretion for any reason, declines to activate for any reason.