

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.

Electronically Filed
Mar 30 2021 11:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 81704

District Court No.
A-17-763397-B

JOINT APPENDIX
Vol. 49 of 85
[JA011248-JA011488]

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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.

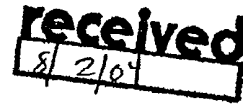
EXHIBIT 528

EXHIBIT 528

JA011248
010033

TX 102-010510

Ryan Alan Swanberg
Consumer Rights Advocate
13050 Harriet Ave S #247
Burnsville, MN 55337
952-736-7998
952-890-7358



July 26th, 2004

Dish Network
Attn.: Legal Department
5701 S. Santa Fe Drive
Littleton, CO 80120

VIA U.S. MAIL

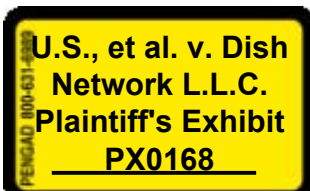
Re: Ryan Swanberg v. Dish Network

RULE 408 SETTLEMENT COMMUNICATION

To the Above:

Please be advised that I Ryan Swanberg have drafted a Complaint to sue Dish Network regarding violations of the 47 U.S.C. § 227 (b)(1)(B), 47 C.F.R. § 64.1200.(a)(2), 47 C.F.R. § 64.1200.(d)(1), (d)(2), (d)(3), (d)(4) and 47 C.F.R. § 64.1601.(e)(1) claims against your organization arising out of an illegal prerecorded telemarketing message on July 19th 2004. Such actions by one of your retailers (Dish TV Now, Inc.) were egregious, negligent, careless and I'm befuddled by the manner in which your telemarketing agents handle "Do Not Call" requests and other related "Do Not Call" procedures. I have never seen such non-compliance with the TCPA and FCC Regulations and the events that transpired on July 19th 2004 will be litigated with immense vigor in hopes to eliminate such practices. In addition, as detailed in the enclosed draft Complaint, Dish Network has vicarious liability with respect to any violations of the TCPA and FCC regulations committed by their retailers (Dish TV Now, Inc.). Furthermore, as detailed in the enclosed draft Complaint, the FCC ruled in a decision in one of its Orders clarifying its regulations: *"Decision. Our rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations."* In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 13, Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995). You are hereby notified that Dish Network is equally liable as a matter of factual occurrence and as a matter of law.

Please review the enclosed draft Complaint for the legal and factual basis for my claims. It is to be filed in the United States District Court District of Minnesota if this matter is not settled. Prior to filing suit, I'm offering a single attempt at settlement. Furthermore, please find the enclosed documentation of "Do Not Call" policy compliances from other entities that have complied with my request and most importantly, complied with the FCC and TCPA regulations. *(Please note, Plaintiff will produce over 200 examples of compliances at trial and the compliances attached herein*



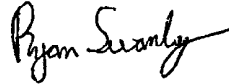
PX0168-001

FTC/DOJ 01124000789
010034

only represent a diminutive portion of Plaintiff's work as a Consumer Rights Advocate thus far)

Contact me to discuss this matter. If I have not heard from your organization by **August 6th 2004**, I will assume that you are not interested in a settlement of this matter and will immediately file suit in Minnesota District Court. I will vigorously pursue all of my legal rights under 47 U.S.C. § 227.(b)(1)(B), 47 C.F.R. § 64.1200.(a)(2), (d)(1), (d)(2), (d)(3), (d)(4) and 47 C.F.R. § 64.1601.(e)(1) as well as under other applicable federal and state law in the pursuit of my claims against your organization. Once again, I'm giving you one opportunity to resolve this matter prior to litigation. I look forward to hearing from you and or your litigation counsel in the very near future.

Very Truly Yours,



Ryan Swanberg, Consumer Rights Advocate

PX0168-002

FTC/DOJ 01125000790
010035

United States District Court
State of Minnesota
County of Dakota
Court File No.: CV-_____

Ryan Swanberg,

Plaintiff,

v.

Dish Network,

Defendant.

Complaint

Pro Se

Jurisdiction

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331, Minn. Stat. § 543.19 and pursuant to 47 U.S.C. § 227 (3) et.seq.

Parties

2. Plaintiff Ryan Swanberg (hereinafter, "Plaintiff") person who resides in the City of Burnsville, County of Dakota, State of Minnesota.
3. Defendant Dish Network (hereinafter, "Defendant") operating from the address 5701 S. Santa Fe Drive, Littleton, CO 80120.

Factual Allegations

4. On or about July 19th 2004, Plaintiff received a phone call from Defendant's retailer (Dish TV Now) soliciting Defendant's services. (Dish Network products and or services) *(See Attached Exhibit 1)*
5. The FCC's regulations impose vicarious liability on telemarketers and or companies that do telemarketing on behalf of themselves for regulatory violations. This provision for vicarious liability includes telemarketing firms

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PX0168-003

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010036

and or entities that act as a telemarketer, as stated by the FCC in a decision in one of its Orders clarifying its regulations: "*Decision. Our rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.*" In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 13, Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995). This clarification prevents the excuse "*it was not us, it's not our fault*", that could be used by Defendant to try to escape liability under the statute.

6. Defendant is liable for all violations contained herein this Complaint based upon the abovementioned citation in conjunction with, it was Defendant's products and or services that were being solicited upon Plaintiff even though a retailer of Defendant did the solicitation. Defendant is equally liable as a matter of factual occurrence and as a matter of law. Clearly, the solicitation was made on behalf of Defendant and Defendant "*bears ultimate responsibility for any violations*" made by entities soliciting Defendant's products and or services.
7. Defendant called Plaintiff at (952)-890-7358 which is Plaintiff's residential telephone number. (*See Attached Exhibit 2*)
8. Defendant called Plaintiff at Plaintiff's residence in which Defendant violated 47 U.S.C. § 227 (b)(1)(B) & 47 C.F.R. § 64.1200.(a)(2), (*See Exhibit 3, CD, Track 1*)
9. Defendant has violated 47 U.S.C. § 227 (b)(1)(B).
10. According to 47 U.S.C. § 227 (b)(1)(B): "*It shall be unlawful for any person within the United States to initiate any telephone call to any residential phone*

line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B)".

11. Defendant has violated 47 C.F.R. § 64.1200.(a)(2).
12. According to 47 C.F.R. § 64.1200.(a)(2): *No person may: Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by sec. 64.1200(c).*
13. The TCPA is divided into two sections, live telephone solicitations and automated solicitations. For a consumer to have a private right of action under live telephone solicitations, they must be called more than once within a twelve month period. For a consumer to have a private right of action under automated solicitations (i.e. facsimile transmittal solicitations and prerecorded messages), they only need to be called once.
14. Under 47 U.S.C. § 227 (b)(1) et seq.: *"It shall be unlawful for any person within the United States to: "* . This wording doesn't state that *"it shall be unlawful only after the first call"*, it explicitly states that *"It shall be unlawful"* period.
15. Plaintiff contacted multiple Consumer Rights Attorneys on this very issue in which they concluded the same about the abovementioned citation, prerecorded messages as well as junk faxes only need one solicitation for there to be a private right of action.

16. The TCPA has two sections on private right of action, the first only covers automated telephone solicitations (47 U.S.C. § 227 (3) et seq.) and the second only covers live telephone solicitations (47 U.S.C. § 227 (5) et seq.).
17. During the illegal prerecorded message, Defendant and or their agent, failed to state Defendant's address, telephone number, as well as his complete name which is required by 47 C.F.R. § 64.1200.(d)(4). *(Identification requirements)* *(See Attached Exhibit 3, CD, Track 1)* Defendant has violated 47 C.F.R. § 64.1200.(d)(4)
18. According to 47 C.F.R. § 64.1200.(d)(4): *Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.*
19. Defendant has violated 47 C.F.R. § 64.1601(e)(1). *(See Attached Exhibit 1)*. As of January 29, 2004, telemarketers are required by rules to transmit caller ID information when making telemarketing calls, regardless of their calling system. These requirements also apply to companies with whom the called party has an established business relationship. The caller ID information must include the name of the telemarketer (when available by the telemarketer's carrier) and can include any number associated with the telemarketer or party on whose behalf the call is made, that allows the consumer to identify the caller. This includes a number assigned to the telemarketer by its carrier, the

specific number from which a sales representative placed a call, the number for the party on whose behalf the telemarketer is making the call, or the seller's customer service number. *Any number supplied must permit an individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.*

20. Plaintiff attempted several times to call Defendant's phone number provided on Plaintiff's identification system (1-800-778-0532) only to receive a disconnection notice from the operator. *(See Attached Exhibit 3, CD, Track 2)*
21. According to 47.C.F.R. § 64.1601(e)(1): *"(e) Any person or entity that engages in telemarketing, as defined in section 64.1200 (f)(7) must transmit caller identification information. (1) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. The telephone number so provided must permit any individual to make a do-not-call request during regular business hours".*
22. On or about July 19th 2004, Plaintiff contacted Defendant via telephone requesting to be added to Defendant's database/list and to receive a written copy of Defendant's "Do Not Call" policy. *(See Exhibit 4, CD)*
23. Plaintiff called Defendant on four separate occasions at 1-800-388-1899 and 1-800-535-1929 in which Plaintiff was hung up on by Defendant. *(See Attached Exhibit 4, CD, Tracks 1, 2, 3 & 4)*
24. Defendant's actions were egregious, irresponsible and careless, with total disregard of the TCPA, FCC and other related federal telemarketing laws.

25. Plaintiff need only ask for such documentation once, during the first contact, however, Plaintiff went above and beyond his duty to request such information only to be hung up on four times.
26. Plaintiff's request are rights given to him under 47 C.F.R. § 64.1200 (d)(1), (d)(2) and (d)(3) and such request must be obeyed and adhered to otherwise the violating party will be held liable under these same sections.
27. The FCC has published an opinion letter regarding making DNC policies available. Staff opinion letter from Geraldine A. Matisse, Chief, Network Services Division, Common Carrier Bureau, FCC, to Janice M. Parker, Assistant Attorney General, Consumer Fraud Bureau, Chicago, IL, June 11, 1996. The FCC letter states that *"We find nothing in our rules that would limit disclosure of the do-not-call policy to any person or circumstance. For example, persons who have been solicited by a business or entity have the right to obtain that entity's written do-not-call policy in order to confirm that entity's compliance with our rules. . . . Additionally, we believe that failure to provide a do-not-call policy is a prohibited act under the TCPA."* (See Attached Exhibit 5)
28. Agency letters interpreting their own regulations are to be given deference: *"provided an agency's interpretation of its own regulation does not violate the constitution or a federal statute, it must be given 'controlling weight unless it is plainly erroneous or inconsistent with the regulation'". Stinson v. United States, 508 U.S. 36, 45 S.Ct. 1913, 1919, 123 L.Ed.2d 598 (1993) (internal quotations and citations omitted).*

29. The FCC regulations are an expansion of the TCPA laws, offering more in-depth analysis and explanation of the rules, laws, provisions and prohibitions. The requirement to provide a DNC policy is not in the TCPA law itself. It is only in the FCC regulations. The FCC letter illustrates that a violation of the FCC's regulations - here the failure to provide a "Do Not Call" policy upon demand is a violation of the TCPA.
30. Courts have specifically granted damages for violations of the FCC regulations. In *Szefczek v. Hillsborough Beacon*, 668 A.2d 1099 (N.J. Super. 1996), the court stated that it *"finds that plaintiff has properly stated a claim under this section, for defendant's violation of the FCC regulations, specifically § 64.1200(d)(2) and (3) . . .* The court later noted that *"Defendant's conduct clearly violates (d)(3) of the regulations . . . [and in addition] defendant violated § 64.1200(d)(2), entitled 'Training of personnel engaged in telephone solicitation.'"* There is simply no question that there are violations of the FCC regulations which are actionable, and for which damages can be awarded.
31. Plaintiff's "Do Not Call" policy request was not adhered to by Defendant. Plaintiff's request to receive written verification that Plaintiff is now included on Defendant's database/list was not adhered to by Defendant. Plaintiff never received any correspondence from Defendant stating that the abovementioned requests were complied with.
32. As of yet, Plaintiff has not received the aforementioned items as required by 47 C.F.R. § (d)(1) and (d)(3).

33. According to 47 C.F.R. § (d)(1): *"Written policy. Persons or entities making telephone solicitations must have a written policy, available upon demand, for maintaining a do-not-call list"*.
34. Plaintiff's demand was to have Defendant's "Do Not Call" policy sent to him within five days. Courts have concluded that a reasonable person would expect and interpret "upon demand" to mean within five days although a strong case could be made for demanding the "Do Not Call" policy via next day deliver based upon the interpretation of "upon demand" through state motor vehicle licensing statutes as stated below. Plaintiff only requested that such items be mailed within five days.
35. The words "on demand" are critical to the interpretation of this law. It is the same wording used in Minn.Stat. §171.08 requiring a person to provide their driver's license to a police officer upon demand.
36. According to Minn.Stat. §171.08: *"Licensee to have license in possession. Every licensee shall have the license in immediate possession at all times when operating a motor vehicle and shall display it **upon demand** of a peace officer, an authorized representative of the department, or an officer authorized by law to enforce the laws relating to the operation of motor vehicles on public streets and highways"*.
37. Defendant has violated 47 C.F.R. § 64.1200.(d)(2).
38. According to 47 C.F.R. § 64.1200 (d)(2): *"Training of personnel engaged in telephone solicitation. Personnel engaged in any aspect of telephone solicitation must be informed and trained in the existence and use of the do-not-call list."*

39. Defendant clearly demonstrated their lack of compliance with the TCPA and FCC rules by failing to train personnel to comply with Plaintiff's wishes to send Plaintiff a copy of Defendant's "Do Not Call" policy as well as written verification that Plaintiff is included on Defendant's database/list. Plaintiff called Defendant on four separate occasions to request the abovementioned only to have Defendant egregiously hang up on Plaintiff in direct violation of the TCPA and FCC Regulations. Defendant is clearly negligent by failing to properly train "*personnel engaged in any aspect of telephone solicitation*" as prescribed by 47 C.F.R. § 64.1200.(d)(2).

Causes of Action

Count 1:

Violations of:

47 U.S.C. § 227 (b)(1)(B), 47 C.F.R. § 64.1200 (a)(2), 47 C.F.R. § 64.1200 (d)(1), 47 C.F.R. § 64.1200(d)(2), 47 C.F.R. § 64.1200. (d)(3), 47 C.F.R. § 64.1200.(d)(4) and 47 C.F.R. § 64.1601.(e)(1).

40. Plaintiff incorporates by reference paragraphs and all preceding paragraphs as though fully stated herein.
41. The foregoing acts and omissions of the Defendant constitute multiple and distinct violations of 47 U.S.C. § 227 (b)(1)(B), 47 C.F.R. § 64.1200.(a)(2), 47 C.F.R. § 64.1200 (d)(1), 47 C.F.R. § 64.1200.(d)(2) and 47 C.F.R. § 64.1200.(d)(3), 47 C.F.R. § 64.1200.(d)(4) and 47 C.F.R. § 64.1601.(e)(1) against the Plaintiff.

42. Defendant willfully and knowingly violated the above said provisions as a matter of factual occurrence and as a matter of law. Plaintiff seeks statutory / treble damages in the amount of \$7,500 for Defendant's willful and knowing acts as detailed below.
43. The TCPA provides private citizens a private right of action for treble damages *"If the court finds that defendant willfully or knowingly violated the regulations."* 47 U.S.C. § 227(3)(C). Plaintiff need only prove Defendant's actions were done willfully or knowingly, not both. Plaintiff alleges Defendant's actions were done willfully ("willful") or knowingly ("knowing") as the FCC defines and interprets these terms at 47 U.S.C. § 312(f). This code section does not define knowing, but does define willful as: *The term 'willful', when used with reference to the commission or omission of an act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this chapter or any rule or regulation of the Commission authorized by this chapter or by a treaty ratified by the United States.* Thus, by statute there is no intent requirement for an FCC violation to be "willful." There is no restriction limiting the application of this definition to FCC licensees or common carriers.
44. The term "knowingly" has been interpreted as "knew or should have known", July 27, 1999 opinion letter from the FCC which discusses the definitions of the terms "willfully" and "knowingly." Letter to Robert Biggerstaff from Glenn T. Reynolds, Common Carrier Bureau, FCC, July 27, 1999. Courts normally give significant deference to such letters. *See e.g. Coca Cola Co. v. Atchison, Topeka, and Santa Fe R.R. Co., 608 F.2d 213 (5th Cir, 1979)*

holding that agency opinion letters *"although less authoritative than regulations or formal decisions, are entitled to be 'weighted carefully' and to 'great deference' if they state a reasonable conclusion."*

45. The 1934 Communications Act was amended in 1982 to provide a statutory definition of "willful" for use in the Act. The plain statutory language in 47 U.S.C. § 312(f) unambiguously states that "willful" does not include an intent requirement. The Congressional purpose behind § 312(f) is confirmed in the statutory history: "willful" means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. *H.R. Conf. Rep. No. 765, 97th Cong., 2nd Sess. (1982), 1982 U.S.C.C.A.N. 2261 at 50-51.*
46. Section 227 is just one of numerous sections of Title 47 of the U.S. Code that contain the word "willful" or "willfully," and to which the definition in 47 U.S.C. § 312(f) applies. *See 47 U.S.C. §§ 21, 220(e), 227, 303(m)(1), 312(f), 333, 339(a), 362, 386, 501, 502, 503, 507, 510(a), 553, 554(f)(1), 605(e)(1) & (2), 606(h), and 612.* It does not matter that Congress did not specifically define "willfully" in section 227 or any of these other sections, since Congress already did so in section 312(f), and stated that this definition applies to other sections of the Communications Act. Similarly, the terms "knowing" or "knowingly" are located in numerous provisions throughout Title 47 of the U.S. Code. *See 47 U.S.C. §§ 37, 202, 205(b), 223(a) and (b), 226(b)(1)(G), 227, 231(a), 303(m), 312, 325(a), 339(a), 501, 502, 503, 509(a), 510(a), 554(f)(2), 605, 606(h).* Of particular note is 47 U.S.C. § 231(a), which

distinguishes between prohibiting conduct done knowingly in § 231(a)(1), and provides additional penalties for conduct done intentionally in § 231(a)(2).

47. *See also 47 U.S.C. § 503(b)(1).* The Commission has the authority under this section of the Act to assess a forfeiture against any person who has “*willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act*”. A party need not have known that it was acting unlawfully to support a finding of willfulness under section 503(b) of the Act. That section requires only a showing that the party knew it was doing the acts in question. *See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).* For the reasons stated above, § 503(b) only requires a showing that the party knew it was doing the acts it in fact did.
48. Defendant willfully and knowingly used a predictive dialer / “automatic telephone dialing system” to call Plaintiff and connect both parties once a connection was established. Defendant willfully and knowingly used voice broadcasting software to deliver an illegal prerecorded message to Plaintiff’s residence.
49. Defendant’s willful and knowing intent was to, call Plaintiff using a predictive dialer / “automatic telephone dialing system”, and deliver an unsolicited prerecorded message using voice broadcasting software.
50. As a result of the above said violations, Plaintiff is entitled to statutory / treble damages of \$1,500 (\$500 x 3) pursuant to 47 U.S.C. § 227 et.seq.

51. Defendant willfully and knowingly failed to provide Plaintiff with a written copy of their "Do Not Call" policy in direct violation of 47 C.F.R. § 64.1200.(d)(1) after Plaintiff made four requests.
52. As a result of the above said violations, (47 C.F.R. § 64.1200.(d)(1)), Plaintiff is entitled to statutory / treble damages of \$1,500 (\$500 x 3) pursuant to 47 U.S.C. § 227 et.seq.
53. Defendant willfully and knowingly failed to properly train "*personnel engaged in telephone solicitation*" in direct violation of 47 C.F.R. § 64.1200.(d)(2).
54. As a result of the above said violations, (47 C.F.R. § 64.1200.(d)(2)), Plaintiff is entitled to statutory / treble damages of \$1,500 (\$500 x 3) pursuant to 47 U.S.C. § 227 et.seq.
- 55.. Defendant willfully and knowingly failed to provide Plaintiff written verification that Plaintiff is included on Defendant's "Do Not Call" database/list and upon information and belief, failed to include Plaintiff altogether and failed to maintain its "Do Not Call" database/list.
56. As a result of said violations (47 C.F.R. § 64.1200.(d)(3)), Plaintiff is entitled to statutory / treble damages of \$1,500 (\$500 x 3) pursuant to 47 U.S.C. § 227 et.seq.
57. Defendant willfully and knowingly failed to provide Plaintiff with Defendant's address and telephone number as well as the complete name of its agent during the illegal prerecorded message.
- 58.. As a result of the above said violations, Plaintiff is entitled to statutory / treble damages of \$1,500 (\$500 x 3) pursuant to 47 C.F.R. § 64.1200. et.seq.

59. The TCPA provides relief on a “per violation” basis as stated in 47 U.S.C. § 227 (3) et.seq. and 47 U.S.C. § 227 (5) et.seq. which states “*for each such violation*”. Defendant willfully and knowingly committed five distinctive and separate violations which are actionable under the TCPA as a matter of factual occurrence and as a matter of law.
60. In *Szefczek v. Hillsborough Beacon*, 668 A.2d 1099 (N.J. Super. 1996), Szefczek illustrates that each violation of a subsection of the FCC’s TCPA regulations is a separate actionable offense. To hold otherwise would render the regulations null. This concept has been recognized in other statutes: “*The regulatory scheme at issue here clearly states discrete harms. A person who complies with some of the manual requirements, for example, but fails to furnish a copy to the FAA, is subject to a fine for that one discrete violation. It would be anomalous to reward the person who totally ignores the manual requirements by concluding that he, too, is subject to but a single fine when he simultaneously violates several regulations.*” Other juries have found multiple violations. See, e.g., *United States v. Lockheed L-188 Aircraft*, 656 F.2d 390, 393 (9th Cir. 1979) (\$165,000 in fines for 552 separate violations of Part 121 regulations). *FAA v. Landy*, 705 F.2d 624, 543 (2nd Cir. 1983). Landy, which references a requirement to furnish a manual to the FAA, is analogous to the instant dispute, in which Defendant violated the FCC requirement to furnish Plaintiff a “Do No Call” policy upon Plaintiff’s demand.

Prayer For Relief

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FTC/ECHOSTAR000804
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Wherefore, Plaintiff respectfully prays that this court enter the following
Judgment, in Plaintiff's favor:

Count 1:

Relief Sought For:

47 U.S.C. § 227 (b)(1)(B), 47 C.F.R. § 64.1200.(a)(2), 47 C.F.R. §

64.1200.(d)(1), 47 C.F.R. § 64.1200.(d)(2), 47 C.F.R. §

64.1200.(d)(3) and 47 C.F.R. § 64.1200.(d)(4) and 47 C.F.R. §

64.1601.(e)(1) violations.

- for an award of statutory / treble damages of \$7,500, for Plaintiff, for violations of 47 U.S.C. § 227 (b)(1)(B), 47 C.F.R. § 64.1200.(a)(2), 47 C.F.R. § 64.1200.(d)(1), 47 C.F.R. § 64.1200.(d)(2), 47 C.F.R. § 64.1200.(d)(3), 47 C.F.R. § 64.1200.(d)(4), 47 C.F.R. § 64.1601.(e)(1) against the Defendant,
- for a written copy of Defendant's "Do Not Call" policy pursuant to 47 C.F.R. § 64.1200.(d)(1).
- for written verification that Plaintiff is now included on Defendant's "Do Not Call" database/list pursuant to 47 C.F.R. § 64.1200.(d)(3).

Such Other Relief

- for such other and further relief as may be just and proper.

Dated: 7-26-04

Signed By: Ryan Swanberg

Ryan Alan Swanberg
Consumer Rights Advocate
13050 Harriet Ave S # 247
Burnsville, MN 55337
(952)-736-7998
Pro Se



FTC/ECHOSTAR000806

EXHIBIT: 1

Confidential-US v. Dish

Dish-00004705

PX0168-018

JA011266
010051

TX 102-010528



RYAN SWANBERG
Bill Date: Jun 10, 2004
Account No: 952 890-7358 216

www.qwest.com

Balance Forward	New Charges	Total Amount Due	Due Date for New Charges
\$107.71	\$50.32 _R	\$57.39	Jun 30, 2004

Account Summary

▼ Previous Balance

Charges		269.46
Adjustments		121.75 _R
Payment	Thank you for your payment	40.00 _R
Balance Forward		\$107.71

▼ New Charges

Qwest		50.32 _R
<i>For questions call 1-800-244-1111</i>		
Total New Charges		\$50.32_R
TOTAL AMOUNT DUE		\$57.39

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Qwest, PO Box 173826, Denver, CO 80217-3826

EXHIBIT: 2

PX0168-019

FTC/ED 01126700807
010052

Exhibit 3

Track 1 :

Agent : Hello? Hello? Excuse me sir? Excuse me sir?

Track 2

(You hear the operator)

pre-recorded message

Transcribed from CD recording

PX0168-020

LA011268
FTC/ECH051268000808
010053

transcribed from CD recording

Exhibit 4

Track 1

Agent: Thanks for calling, how can I help you?

Customer: Is your website Dish TV.com?

Agent: Correct.

Customer: My name is Ryan Swanberg and I have received a telephone marketing call from your company.

Agent: Umhm.

Customer: Now I would like to be added to your do not call list.

Agent: We don't have one.

Customer: How can you not have a do not call list?

Agent: I don't know...we just ain't got one.

Customer: So, I take it you don't have....excuse me sir? Sir?

Track 2

Agent: Is this regarding your free satellite system?

Customer: Ah yes, is this Dish TV Now.com...is that your website?

Agent: Yes

Customer: It is? Um I would like to be added to your do not call list.

Agent: Can you give me your number starting with area code first?

Customer: 952-890-7358

Agent: K

Customer: And the other one is 952-736-7998 and I have a couple of additional requests with that. I would like a copy of your do not call policy as well as rate verification included on your database do not call list. I would like those items mailed to me within 5 days as well.

Agent: ok.

Customer: Do you have my address? Excuse me sir? Excuse me sir?

- call disconnected -

Track 3

Agent: Hello this is regarding free satellite system.

Customer: Uh yes...I made a do not call request and I was hung up on this person before me and I need to be provided with a written copy of your do not call policy as well as rate verification included on your database do not call list.

Agent: Sir we do not do that...let me give you Dish Network's main number.

Customer: Is this not Dish TV Now?

Agent: Yes it is, but we really don't track do not call.

Customer: Oh no ma'am. It's actually...it's telemarketer or a company that uses this telemarketing service and must have a company specific do not call policy available upon demand. And currently...hello? Ma'am?

- call disconnected -

Track 4

Agent: Thank you for calling. This is regarding your free satellite system?

Customer: Uh no this is not actually, I was just hung up on by an agent of your company. Your website is Dish TV Now.com correct?

PX0168-021

LA011260
FTC/ECN 010054
0000809

Agent: No, we are not.

Customer: Everybody's telling me you are, but you're website is Dish TV Now.com.
Am I getting confused or what is your web address? Ma'am?

— disconnected —

PX0168-022

LA011270
FTC/ECHOSTAR000810
010055

Federal Communications Commission
Washington, D.C. 20554

June 11, 1996

Janice M. Parker
Assistant Attorney General
Consumer Fraud Bureau
100 West Randolph
12th floor
Chicago, Illinois 60601-3175

Dear Ms. Parker:

I am writing in response to your December 7, 1995 letter requesting that the Commission issue an opinion clarifying certain sections of the Commission's rules implementing the Telephone Consumer Protection Act of 1992 (TCPA). Specifically, you asked whether a private individual has a right to obtain a copy of a telemarketer's do-not call policy, and under what circumstances are they entitled to do so.

In your letter you stated that an Illinois consumer alleges that Household Credit Services and Household International (Household) failed, upon request, to provide him with a copy of their do-not call policy. You also state that the consumer had not received a telemarketing call from Household. Household's position, as reflected in its December 6, 1995 letter to your office, is that while the FCC and state Attorneys General are entitled to receive a copy of the do-not call policy, private individuals do not have such a right. Household believes that because the TCPA authorizes consumers to file state court actions for certain telemarketing acts - and failure to provide a do-not call policy is not one of the prohibited acts - the consumer is not entitled to receive Household's policy. Household additionally states that the consumer filed his complaint against Household International, Inc. and Household Retail Services, but that neither of these entities engage in telemarketing. Household does indicate that several other of its affiliate companies do engage in telemarketing and thus do maintain written policies.

The TCPA recognizes the legitimacy of the telemarketing industry but notes that unrestricted telemarketing could be an intrusive invasion of privacy and, in some instances, a risk to public safety. One of the Commission's tasks with regard to implementing the TCPA was to consider which method would best accommodate telephone subscribers who do not wish to receive unsolicited advertisements, including live voice solicitations, while not unduly hampering the telemarketing industry.

After considering a number of options, the Commission concluded that company-specific do-not-call lists would be the most effective, least costly, and most easily implemented means of curbing unwanted telephone solicitations.¹ In the *Notice of Proposed Rulemaking*, the Commission stated that under a do-not call list framework a company that does engage in telemarketing would be required to produce evidence of compliance

EXHIBIT:

5

FTC/ECA011271
010056 00811

PX0168-023

with this requirement in the event of a complaint.² The Commission noted that such lists would satisfy the statutory requirements of the TCPA because such lists were already voluntarily maintained by many telemarketers and allow residential subscribers to selectively halt calls from telemarketers.³ Similarly, telemarketers with do-not-call lists are required to have written do-not call policies. The *Report and Order*, however, did not specifically say what evidence would have to be produced to confirm compliance.

We find nothing in our rules that would limit disclosure of the do-not-call policy to any person or circumstance. For example, persons who have been solicited by a business or entity have the right to obtain that entity's written do-not call policy in order to confirm that entity's compliance with our rules. In one case, a failure to provide a copy of the written policy was held actionable where a consumer had been called more than once within a 12 month period in violation of the telemarketer's do-not call rules.⁴ Thus, even where a company does not solicit a particular consumer, we find nothing in our rules that limits a company's duty to disclose its policy if it does engage in telephone solicitation. Additionally, we believe that failure to provide a do-not-call policy is a prohibited act under the TCPA.

I hope that this information is helpful.

Sincerely,

/s/ Geraldine A. Matise

Geraldine A. Matise
Chief, Network Services Division
Common Carrier Bureau

PX0168-024

FTC/DOJ 011272
DOJ 010057
00812

CODE OF FEDERAL REGULATIONS: RESTRICTIONS ON TELEMARKETING AND TELEPHONE SOLICITATION

CODE OF FEDERAL REGULATIONS
TITLE 47--TELECOMMUNICATION
CHAPTER I--FEDERAL COMMUNICATIONS COMMISSION
SUBCHAPTER B--COMMON CARRIER SERVICES
PART 64--MISCELLANEOUS RULES RELATING TO COMMON CARRIERS
SUBPART L--RESTRICTIONS ON TELEMARKETING AND TELEPHONE
SOLICITATION

Current through August 5, 2003; 68 FR 46431

B 64.1200 Delivery restrictions.

(a) No person or entity may:

(1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call,

(i) Is made for emergency purposes,

(ii) Is not made for a commercial purpose,

(iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation,

(iv) Is made to any person with whom the caller has an established business relationship at the time the call is made, or

(v) Is made by or on behalf of a tax-exempt nonprofit organization.

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine,

(i) For purposes of paragraph (a)(3) of this section, a facsimile advertisement is not "unsolicited" if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender.

(ii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

(4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(5) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.

(6) Abandon more than three percent of all telemarketing calls that are answered live by a person, measured over a 30-day period. A call is "abandoned" if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two (2) seconds after the called person's completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for "telemarketing purposes." The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. The seller or telemarketer must maintain records establishing compliance with paragraph (a)(6) of this section.

(i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who either has granted prior express consent for the call to be made or has an established business relationship with the caller shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(ii) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by

paragraph (a)(6) of this section.

(7) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(9) of this section, to:

(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), or

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored for a period of 5 years. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(A) Written procedures. It has established and implemented written procedures to comply with the national do-not-call rules;

(B) Training of personnel. It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) Recording. It has maintained and recorded a list of telephone numbers that the seller

may not contact;

(D) Accessing the national do-not-call database. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process; and

(E) Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of

such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

(7) Tax-exempt nonprofit organizations are not required to comply with 64.1200(d).

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

(f) As used in this section:

(1) The terms automatic telephone dialing system and autodialer mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term emergency purposes means calls made necessary in any situation affecting the health and safety of consumers.

(3) The term established business relationship means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the

subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(4) The term facsimile broadcaster means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(5) The term seller means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(6) The term telemarketer means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(7) The term telemarketing means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term telephone facsimile machine means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(9) The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(10) The term unsolicited advertisement means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(11) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

(g) Beginning January 1, 2004, common carriers shall:

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR 64.1200 and 16 CFR 310. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of any database, list or listing system maintained by such State for the regulation of telephone solicitations.

[57 FR 53293, Nov. 9, 1992; 60 FR 42069, Aug. 15, 1995; 68 FR 44177, July 25, 2003]

◇

47 C. F. R. § 64.1200
47 CFR § 64.1200

Telephone Consumer Protection Act of 1991
47 U.S.C. 227

§ 227. Restrictions on use of telephone equipment

(a) Definitions

As used in this section--

(1) The term "automatic telephone dialing system" means equipment which has the capacity--

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

(2) The term "telephone facsimile machine" means equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(3) The term "telephone solicitation" means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

(4) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(b) Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States--

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice--

(i) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine; or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(2) Regulations; exemptions and other provisions

The Commission shall prescribe regulations to implement the requirements of this subsection. In implementing the requirements of this subsection, the Commission--

(A) shall consider prescribing regulations to allow businesses to avoid receiving calls made using an artificial or prerecorded voice to which they have not given their prior express consent;

(B) may, by rule or order, exempt from the requirements of paragraph (1)(B) of this subsection, subject to such conditions as the Commission may prescribe--

(i) calls that are not made for a commercial purpose; and

(ii) such classes or categories of calls made for commercial purposes as the Commission determines--

(I) will not adversely affect the privacy rights that this section is intended to protect; and

(II) do not include the transmission of any unsolicited advertisement; and

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that

are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.

(3) Private right of action

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State--

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(c) Protection of subscriber privacy rights

(1) Rulemaking proceeding required

Within 120 days after December 20, 1991, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. The proceeding shall--

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-specific "do not call" systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

(B) evaluate the categories of public and private entities that would have the capacity to establish and administer such methods and procedures;

(C) consider whether different methods and procedures may apply for local telephone solicitations, such as local telephone solicitations of small businesses or holders of second class mail permits;

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of

this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

(E) develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish the purposes of this section.

(2) Regulations

Not later than 9 months after December 20, 1991, the Commission shall conclude the rulemaking proceeding initiated under paragraph (1) and shall prescribe regulations to implement methods and procedures for protecting the privacy rights described in such paragraph in an efficient, effective, and economic manner and without the imposition of any additional charge to telephone subscribers.

(3) Use of database permitted

The regulations required by paragraph (2) may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase. If the Commission determines to require such a database, such regulations shall--

(A) specify a method by which the Commission will select an entity to administer such database;

(B) require each common carrier providing telephone exchange service, in accordance with regulations prescribed by the Commission, to inform subscribers for telephone exchange service of the opportunity to provide notification, in accordance with regulations established under this paragraph, that such subscriber objects to receiving telephone solicitations;

(C) specify the methods by which each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection under subparagraph (A), and (ii) the methods by which such right may be exercised by the subscriber;

(D) specify the methods by which such objections shall be collected and added to the database;

(E) prohibit any residential subscriber from being charged for giving or revoking such notification or for being included in a database compiled under this section;

(F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database;

(G) specify (i) the methods by which any person desiring to make or transmit telephone solicitations will obtain access to the database, by area code or local exchange prefix, as required to avoid calling the telephone numbers of subscribers included in such database; and (ii) the costs to be recovered from such persons;

(H) specify the methods for recovering, from persons accessing such database, the costs involved in identifying, collecting, updating, disseminating, and selling, and other activities relating to, the operations of the database that are incurred by the entities carrying out those activities;

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for purposes of compliance with the regulations prescribed under this subsection;

(J) be designed to enable States to use the database mechanism selected by the Commission for purposes of administering or enforcing State law;

(K) prohibit the use of such database for any purpose other than compliance with the requirements of this section and any such State law and specify methods for protection of the privacy rights of persons whose numbers are included in such database; and

(L) require each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of this section and the regulations thereunder.

(4) Considerations required for use of database method

If the Commission determines to require the database mechanism described in paragraph (3), the Commission shall--

(A) in developing procedures for gaining access to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level;

(B) develop a fee schedule or price structure for recouping the cost of such database that recognizes such differences and--

(i) reflect the relative costs of providing a national, regional, State, or local list of phone numbers of subscribers who object to receiving telephone solicitations;

(ii) reflect the relative costs of providing such lists on paper or electronic media; and

(iii) not place an unreasonable financial burden on small businesses; and

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories

are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(5) Private right of action

A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State--

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(6) Relation to subsection (b)

The provisions of this subsection shall not be construed to permit a communication prohibited by subsection (b) of this section.

(d) Technical and procedural standards

(1) Prohibition

It shall be unlawful for any person within the United States--

(A) to initiate any communication using a telephone facsimile machine, or to make any telephone call using any automatic telephone dialing system, that does not comply with the technical and procedural standards prescribed under this subsection, or to use any telephone facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and

time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

(2) Telephone facsimile machines

The Commission shall revise the regulations setting technical and procedural standards for telephone facsimile machines to require that any such machine which is manufactured after one year after December 20, 1991, clearly marks, in a margin at the top or bottom of each transmitted page or on the first page of each transmission, the date and time sent, an identification of the business, other entity, or individual sending the message, and the telephone number of the sending machine or of such business, other entity, or individual.

(3) Artificial or prerecorded voice systems

The Commission shall prescribe technical and procedural standards for systems that are used to transmit any artificial or prerecorded voice message via telephone. Such standards shall require that--

(A) all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the business, individual, or other entity initiating the call, and (ii) shall, during or after the message, state clearly the telephone number or address of such business, other entity, or individual; and

(B) any such system will automatically release the called party's line within 5 seconds of the time notification is transmitted to the system that the called party has hung up, to allow the called party's line to be used to make or receive other calls.

(e) Effect on State law

(1) State law not preempted

Except for the standards prescribed under subsection (d) of this section and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits--

(A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;

(B) the use of automatic telephone dialing systems;

(C) the use of artificial or prerecorded voice messages; or

(D) the making of telephone solicitations.

(2) State use of databases

If, pursuant to subsection (c)(3) of this section, the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

(f) Actions by States

(1) Authority of States

Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

(2) Exclusive jurisdiction of Federal courts

The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Rights of Commission

The State shall serve prior written notice of any such civil action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(4) Venue; service of process

Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or where the defendant may be found.

(5) Investigatory powers

For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) Effect on State court proceedings

Nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(7) Limitation

Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

(8) "Attorney general" defined

As used in this subsection, the term "attorney general" means the chief legal officer of a State.

Added by Pub. L. 102-243, § 3(a), 105 Stat. 2395 (Dec. 20, 1991); amended by Pub. L. 102-556, Title IV, § 402, 106 Stat. 4194 (Oct. 28, 1992), and Pub. L. 103-414, Title III, § 303(a)(11), (12), 108 Stat. 4294 (Oct. 25, 1994).



Results Oriented Sales Specialists

June 4, 2004

Ryan A. Swanberg
13050 Harriet Ave S #247
Burnsville, MN 55337

Dear Mr. Swanberg,

As you requested, enclosed you will find a copy of Ross Marketing, Inc.'s "Do Not Call" policy. I sincerely apologize for any inconvenience our phone call may have caused you. We will honor your request to be placed on our "Do Not Call" list following the procedures outlined in our Do Not Call policy.

Sincerely,

Mike Day
Client Services

Enclosure: Do Not Call Policy

CORPORATE OFFICE
1395 Stamy Road
Hiawatha, Iowa 52233
Ph: 319.294.8080
Fax: 319.294.8111

2214 Main Street, Suite A
Cedar Falls, Iowa 50613
Ph: 319.266.5881
Fax: 319.266.5932

425 Bailey Avenue
New Hampton, Iowa 50659
Ph: 641.394.6364
Fax: 641.394.2995

PX0168-041

FTC/EO 12812-00829
010074

ROSS MARKETING, INC. DO NOT CALL POLICY

It is Ross Marketing, Inc.'s policy that if any customer requests not to receive any future calls from a company we represent we will honor that request in the following manner:

1. If at any time during an outbound call a customer indicates that they do not wish to receive any future calls from the client we represent the representative must record the telephone number and name of the customer. This information will be secured in the database.
2. Upon completion of step number one, the customer will be informed that their name and telephone number are being placed in the "Do Not Call" database of the client we are representing. Their name and phone number will remain in the "Do Not Call" database until such time as they contact the company, and that, should they move or change their telephone number they would be responsible for contacting the company to ensure that they will not receive any telephone solicitations from the client company. It may take up to 30 days for a "Do Not Call" request to go into effect.

In the event that a customer indicates that they do not wish to receive any future calls from Ross Marketing, Inc. we will honor that request in the following manner:

1. If at any time during an outbound call a customer indicates that they do not wish to receive any future calls from Ross Marketing, Inc., the representative must record the telephone number and name of the customer. This information will be secured in Ross Marketing, Inc.'s company- wide "Do Not Call" database.
2. Upon completion of step number one, the customer will be informed that their name and telephone number are being placed in the Ross Marketing, Inc. database. Their name and telephone number will remain in the "Do Not Call" database until such time as they contact the company, and that, should they move or change their telephone number they would be responsible for contacting Ross Marketing, Inc. to ensure that they will not receive any telephone solicitations from Ross Marketing, Inc. It may take up to 30 days for a "Do Not Call" request to go into effect.

1-1-2004

PX0168-042

FTC/DOJ 128000830
010075

Teleservices, LLC dba Intelesure

Do Not Call Policy and Procedure

Included in the procedural training at Teleservices, LLC dba Intelesure, is a fully informative section that presents the telemarketing laws regulated by the Federal Communications Commission. The training consists of, but is not limited to, the Do Not Call List".

Each representative must adhere to the regulations as stated in the Telephone Consumer Protections Act. Failure to comply with, or disregarding, the regulations will result in immediate action toward the offending representative(s). The severity of the consequences will be thoughtfully arbitrated through management and acknowledged by the independent contractor in a neutral conference. A probationary period may be requested by management or the use of the independent contractors services may be terminated at that time.

In the event that a consumer on the Do Not Call List is unknowingly contacted, Teleservices, LLC dba Intelesure will promptly remove any consumer who requests to be removed from the current calling list. The consumers name, address, phone number, and day on which the request was given will be noted and saved in a company database. The consumer will be immediately deleted from the calling list and transported into a continual database of Do Not Call numbers.

Each newly obtained call list is electronically compared to the updated Do Not Call List for duplicate numbers. In the even that a Do Not Call number is found on a new list, the number will be effectively removed so that the consumer will not receive additional phone solicitations from Teleservices, LLC dba Intelesure.

PX0168-043

FTC/ED 01128100831
010076



2045 Hallmark Drive
Suite Five
Sacramento, CA 95825-2207

Phone 916/974.6969
800/909.2626
Fax 916/974.6974

May 19, 2004

Mr. Ryan Alan Swanberg
13050 Harriet Ave S #247
Burnsville, MN 55337

Re: "Do Not Call" Request

Dear Mr. Swanberg,

Thank you for your request to be added to the Direct Marketing Partners consumer "Do Not Call List" and your demand for a copy of the Direct Marketing Partners written "Do Not Call Policy."

The following is in response to your request and demand dated May 18, 2004:

1. Direct Marketing Partners is a business-to-business direct marketing company and currently does not engage in consumer telemarketing programs.
2. A search of our most recent telemarketing campaign databases and phone logs indicates that we have NOT called a person with your name, address or phone numbers as listed on your fax.
3. Please find attached a copy of our written "Do Not Call Policy" as demanded.
4. Please consider this letter as verification that you have been added to our consumer "Do Not Call List."

Regards,

Direct Marketing Partners (DMP) "Do Not Call" Department

PX0168-044

FTC/DOJ 12-000832
010077

Direct Marketing Partners (DMP) Do Not Call Policy

Direct Marketing Partners (DMP) is a business-to-business direct marketing company. However, it is possible that DMP could engage in a consumer campaign in the future, or inadvertently contact a person at a residential phone number, so in the interest of respecting the privacy of all consumers, DMP has established the following Consumer Do Not Call Policy.

DMP respects the privacy of all consumers. If you do not want to receive direct marketing communications regarding DMP, or DMP representation of our client's products or services, request to be placed on Direct Marketing Partners' Do Not Call List ("Do Not Call List") or Do Not Mail List ("Do Not Mail List") (collectively the "Do Not Call/Mail Lists"). Allow up to thirty (30) days after you have made your request for your name to be removed from any sales/marketing programs currently underway.

How to Be Placed on Direct Marketing Partners' Do Not Call/Do Not Mail Lists

1. If you receive a call from a Direct Marketing Partners sales/marketing person, ask to be placed on the "Do Not Call List" and provide the sales/marketing person with the following:

Name
Address
Telephone Number(s) (including area codes)

And/or

2. Submit your request for placement on the Do Not Call List and/or Do Not Mail List by calling the main phone number for Direct Marketing Partners at 916-974-6969 and speaking to a representative. State that you wish to be placed on the Do Not Call List and/or Do Not Mail List. You will need to provide the representative with the following:

Name
Address
Telephone Number(s) (including area codes)

And/or

3. Submit your request for placement on the Do Not Call List and/or Do Not Mail List in writing and include your name, address and telephone number(s) along with a statement indicating that you would like to be placed on the Do Not Call List and/or Do Not Mail List. Send your written request to:

Direct Marketing Partners
2045 Hallmark Ste 5
Sacramento, CA 95825
Attn: Do Not Call List

We will maintain the telephone number(s), address and name on our Company Do Not Call List and/or Do Not Mail List for five (5) years. If a person's name, telephone number(s) and/or address changes, another request must be submitted to have the new number and/or address added to our Company Do Not Call List or Do Not Mail List. Any questions concerning Direct Marketing Partners Do Not Call Policy may be directed to the company address listed in #3.

Last updated May 2004.

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PX0168-045

FTC/ECA/DOJ 28900833
010078

Telenational Marketing



International Headquarters Omaha Nebraska USA

June 9, 2004

Ryan Alan Swanberg
13050 Harriet Avenue So., # 247
Burnsville, MN 55337

Dear Mr. Swanberg:

It is my understanding that on May 22, 2004, you requested via a phone call and E-mail to our sales department to be added to Telenational Marketing's "Do Not Call" list. Confirmation of your request to be added to our "Do Not Call" list was E-mailed to you on May 27, 2004.

At the same time you requested a copy of Telenational Marketing's written "Do Not Call" Policy. I have enclosed a copy of our policy as well as a copy of our e-mail to you confirming you have been added to our "Do Not Call" list.

Telenational Marketing is primarily an inbound Direct Response Center focusing on information and product requests via 800 numbers. Rest assured if and when we engage in Outbound Telemarketing your name will be removed along with those who have signed up at the State and Federal level.

Sincerely,

Mark Blankenau
President

Enc.

2918 North 72nd Street • Omaha, Nebraska 68134-5107 • 402-548-1100

PX0168-046

FTC/EO 12812-2
CA 0128400834
010079

Confidential-US v. Dish

Dish-00004733
TX 102-010556

DO NOT CALL POLICY

Telenational Marketing respects the privacy of all consumers. We will comply with all state and federal laws concerning privacy rights of consumers.

Request to be put on Do Not Call List:

Requests may be made by phone (402) 548-1125 or by mail to:

Telenational Marketing
2918 N 72 St.
Omaha, NE 68134

When we receive your request, your telephone number is added to our "Do Not Call" list within one week.

We will maintain the telephone number(s), address, and name on our "Do Not Call" list for a period of five (5) years.

In the event that a consumer, which is contacted by our agents, requests to be added to our "Do Not Call" list, his/her name, address, phone number and day the request is made will be promptly forwarded to the Operations Manager. The Operations Manager is responsible for having the information added to our "Do Not Call" list and for maintaining the list.

Telemarketers Procedures:

Every employee of Telenational Marketing who makes telephone calls on behalf of Telenational Marketing clients is required to undergo training on "Do Not Call" requirements and procedures.

These procedures are stated in the Telephone Consumer Protections Act and every effort is made to comply.

Policies and procedures are reviewed and updated periodically.

It is not our practice to offer written confirmation of the "Do Not Call" fulfillment. However, in the event that a consumer request a copy of our corporate "Do Not Call" policy, the agent will contact the Operations Manager and a copy will be sent to the requesting party in a timely manner.

As you requested, the following is a copy of the Do Not Call policy for America's Choice Readers Service. This policy is current as of 03/10/2004.

Consumers who wish to receive a copy of our Do Not Call policy or who wish to be placed on our company's Do Not Call list may do so by contacting us:

By mail:
P. O. Box 89
Great Falls, MT 59403

By phone: 800-288-4941
By email: dncpolicy@americanreader.com
Web site: <http://www.americanreader.com>

Upon receipt of a Do Not Call policy request we will mail the policy promptly to the consumer by regular US mail provided the complete mailing information is provided. Upon receipt of a request for a phone number to be placed on our Do Not Call list it will be placed on our list within 5 business days from the date of the request. Further, it will take up to a total of 10 days from the receipt of your request to completely remove a phone number from all our calling lists. Please keep in mind that by placing your number on our Do Not Call list you may be excluded from certain offers that are presented by telephone in the future.

At a minimum, a request to be placed on our Do Not Call list must include a legible phone number that is to be placed on the list. We prefer all requests to be placed on our Do Not Call list include the full and complete requestor's information.

If a consumer's number has been placed on our Do Not Call list and the consumer changes their phone number or establishes any new phone numbers at their location it is the consumer's responsibility to contact us at the above listed location to place their new number(s) on our Do Not Call list.

If you have an existing business relationship with us, by placing your name on our Do Not Call list, you are simply excluding your number from future calls and offers by telephone. Being on our Do Not Call list does not affect your status as our customer. Your number will remain on our Do Not Call list for 10 years from the time you place the number on the list or update it.

Telephone Representatives are trained on our Do Not Call policies at the time of their initial training. Further, Telephone Representatives are retrained on our Do Not Call policy every 6 months.

In the unlikely event a consumer receives a phone call from our company after they have requested to be placed on the Do Not Call list, an internal investigation will be performed upon receipt of the report.

Please keep in mind that placing your phone number on our Do Not Call list only excludes our company from calling you and does not exclude other telephonic solicitors. This is not a global Do Not Call list.

We sincerely appreciate the opportunity to have served you and if we can be of any further assistance please do not hesitate to contact us.

Best regards,

America's Choice Readers Service

PX0168-048

FTC/ECA/NO. 12900836
010081

ON-SITE TM DO NOT CALL POLICY

Revised: June 9, 2004

1. All consumer based lists are to be "scrubbed" on a current basis against the National Do Not Call Registry prior to purchase.
2. An ON-SITE TM DO NOT CALL LIST containing the individual's name, company name (if applicable), address, and phone numbers as well as the date of request is to be created and maintained on an on-going basis.
3. If during any campaign, either a business or a consumer requests that we cease calling, we are to add that record to the ON-SITE TM DO NOT CALL LIST.
4. Once purchased, all new consumer and business lists are to be run against the ON-SITE TM DO NOT CALL LIST prior to beginning any new campaign. Any numbers that are found are removed from the campaign database so that they are not called.
5. We are not to call consumers before 9 am EST or after 9 pm EST.
6. Since we do not utilize predictive dialers so we will not automatically abandon any consumer call. However, every telemarketer must take care to insure that any dialed consumer number ring at least 4 times prior to hanging up.
7. All outgoing calls must contain our caller ID information and all telemarketers are to announce their first name in the call introduction.
8. To the best of our knowledge, we will never make false or misleading statements nor do we misrepresent any of the products or services we are contracted to sell.
9. We will never interfere with any consumer's right to be placed on a do not call list.

PX0168-049

FTC/CA 05128700837
010082



Innovative Telebusiness Solutions

DO NOT CALL POLICY

Bolder Calls follows the Code of Ethics of the Direct Marketing Association in regards to ethical telemarketing. Article 12 of the Code, Restricted Contacts, states the following:

"Telephone marketers should remove the name of any customer from their telephone lists when requested by the individual. A telephone marketer should not knowingly call anyone who has an unlisted or unpublished number except in instances when the number was provided by the customer to that marketer."

Bolder Calls also abides by the tenets of the Federal Trade Commission's telemarketing regulations, which state that it is an abusive telemarketing act or practice and a violation of the regulations to initiate "an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered."

If a Bolder Calls employee places a call to a person who requests that we place them on our "do not call" list, the telemarketer enters a call result on the person's record of "do not call" and updates the database. New calling lists received from our clients are de-duplicated against the database to ensure the same individuals are not called again. We also regularly furnish a list of "do not call" requests to our clients so they can update their own internal databases.

Bolder Calls currently subscribes to the "do not call" lists maintained by Colorado, Kansas, Missouri, Montana, Oklahoma, Oregon, Tennessee, Wisconsin, the National No Call list maintained by the FTC and the Direct Marketing Association's No Call List.

3300 Arapahoe Ave., #213, Boulder, CO 80303
303-415-9830 • 303-415-9025 fax • 800-379-3438 toll free • www.boldercalls.com

PX0168-050

FTC/EA 01-120800838
010083



Global Services Corporation
Lighting the way to successful Customer Relations

Customer Contact Center
Beacon Global Services
14 Catherine Street

5/12/2004

RE: Do Not Call Policy Request. Ref#: 53-4

Recently you asked our company to provide you with a copy of our "Do Not Call" Policy.
The Following information represents our "Do Not Call" policy at the time of your request:

"Do Not Call" Policy

Policy last updated: 04/01/04
Policy version #: 4

If a consumer requests a copy of our "Do Not Call" policy, we will send a copy via U.S. mail or electronic mail.

Consumers may request, by telephone or in writing, that our company stop calling them and place their name on a "Do Not Call" list. Although we may ask for your name, address and telephone number, we will accept your request even if you only provide your telephone number. You have a right to have calls stopped and to be put on our "Do Not Call" list even if you are still a customer.

When we receive your request, your telephone number is added to our "Do Not Call" list within 5 business days. In some cases it may take up to 2 business days for your telephone number to be removed from other company wide calling lists. Your request will stay on our list for at least 5 years. If you move, change your telephone number, or add an additional telephone number, you must provide us with the new telephone number in order for us to prevent calls to that number. We will not share the information you provide with anyone except affiliated companies or subsidiaries without your prior written permission.

We may perform telemarketing services for other companies. In this case, we will also forward our updated "Do Not Call" list(s) to these companies on a monthly basis, unless the client requests otherwise or refuses to accept these updates from us.

All employees that engage in outbound telephone solicitation are trained in this policy and made aware of these procedures before they are allowed to place calls to consumers. Managers, supervisors, or trainers review the policy with these employees monthly.

The Direct Marketing Association (DMA) offers a free service to consumers called the "Telephone Preference Service" (TPS), which will typically reduce, but not eliminate the number of telemarketing calls received. Consumers may have their name added to the TPS at no charge by sending a written request to the DMA. Your written request must include your name, complete address, telephone number and signature, and should be sent to: DMA Telephone Preference Service; PO Box 9014; Farmingdale, NY 11735. The DMA states that the TPS is updated quarterly and it may take up to three months after your name is entered before you begin to see a reduction in calls. To learn more about this service, visit <http://www.the-dma.org/consumers>.

The methods and procedures in this "Do Not Call" policy are reviewed by our company quarterly.

Sincerely,

Owen Murray
Manager of Operations

Beacon Global Services Corporation, Poughkeepsie, NY 12601 - Telephone: (845) 473-1137 Fax: (845) 625-2122

FTC/ECHOSTAR000839
JA011299
010084

PX0168-051



"DO NOT CALL" POLICY

If a consumer requests a copy of our "Do Not Call" policy, we will send a copy via U.S. mail or electronic mail.

Consumers may request, by telephone or in writing, that our company stop calling them and place their name on a "Do Not Call" list within 5 business days.

A consumer request will stay on our list for at least 10 years. If they move, change their telephone number, or add an additional telephone number, they must provide us with the new telephone number in order for us to prevent calls to that number.

All employees that engage in outbound telephone solicitation are trained in this policy and made aware of this policy before they are allowed to place calls to consumers.

Managers, supervisors, or trainers review the policy with these employees quarterly.

If the consumer notifies us that they have received a telephone call from us after they have already requested to be placed on the "Do Not Call" list, we will apologize for the intrusion and have a manager or supervisor investigate. The manager or supervisor will also confirm that the telephone number is on the "Do Not Call" list.

The methods and procedures in this "Do Not Call" policy are reviewed by the Compliance Manager quarterly.

614.224.4534

614.464.4730

800.369.8908

41 S. GRANT AVE.
COLUMBUS
OHIO
43215

FTC/ECHOSTAR000840
JA011300
010085

PX0168-052



PARKER, MURRAY & ASSOCIATES, INC.

Ryan Alan Swanberg
13050 Harriet Ave S #247
Burnsville, MN 55337
952.890.7358
952.736.7998

Monday, May 24, 2004

Dear Mr. Swanberg:

As per your request, I have placed the two above phone numbers in our national "Do Not Call" list.

In addition, you requested our "Do Not Call" Policy: "Parker, Murray & Assoc., Inc. applies the state and national "Do Not Call" lists that apply to its clients. These lists are updated regularly and the calling software we use is expressly designed to prevent numbers from being called that are on these lists. In addition, all employees receive training regarding the Do Not Call requirements, and make every effort to comply."

Should you need further information or have any questions, please do not hesitate to call me at 504.523.4408 and I can be reached at extension 204.

Kindest Regards,

Marsha Johnson Ferguson
Vice-President

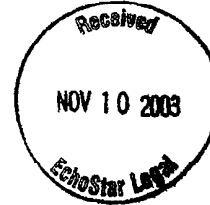
Keeping People in Touch With People

1820 St. Charles Ave., Suite 203 New Orleans, LA 70130
(800) 825-4284 (504) 523-4408 (504) 523-3450

PX0168-053

FTC/ECHOSTAR000841
JA011301
010086

Ryan Alan Swanberg
Consumer Rights Advocate
13050 Harriet Ave S #247
Burnsville, MN 55337
952-736-7998



November 4th, 2003

Echostar Satellite Corp. / Dish Network
Attn.: Legal Department
5701 S. Santa Fe. Dr.
Littleton, CO 80120

VIA U.S. MAIL

Re: Ryan Swanberg v. Echostar Satellite Corp. / Dish Network

RULE 408 SETTLEMENT COMMUNICATION

To the Above:

Please be advised that I Ryan Swanberg have drafted a Complaint to sue Echostar Satellite Corp. / Dish Network regarding violations of the US Code Title 47, Sec.227 et. seq., 16 CFR § 310 et.seq. and Minn. Stat. § 325E. 312 et. seq. claims against your organization arising out of a telemarketing sales call on October 6th 2003.

Please review the enclosed draft Complaint for the legal and factual basis for my claims. It is to be filed in state court if this matter is not settled. Prior to filing suit, I'm offering a single attempt at settlement.

Contact me to discuss this matter. If I have not heard from your organization by **November 13th 2003**, I will assume that you are not interested in a settlement of this matter and I will place it into immediate suit in court. I will vigorously pursue all of my legal rights under the US Code Title 47, Sec.227, 16 CFR § 310 et.seq. and Minn. Stat. § 325E. 312 et. seq. as well as under other applicable federal and state law in the pursuit of my claims against your organization.

I look forward to hearing from you and or your litigation counsel in the very near future. For your information as of the date of this letter I have not notified any Consumer Rights Attorneys, members of the media or any state (MN or CO State Attorney General) or federal (Federal Trade Commission) regulatory agencies.

Very Truly Yours,

A handwritten signature in cursive script that reads "Ryan Swanberg".

Ryan Swanberg, Consumer Rights Advocate

PX0168-054

FTC/ECHOSTAR000842
JA011302
010087

**State of Minnesota
County of Dakota
Court File No.: CV-_____**

Ryan Swanberg, Plaintiff, v. Echostar Satellite Corp. / Dish Network, Defendant.	 Complaint Pro Se
--	---

Jurisdiction

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 47 U.S.C. 227 (3) et. seq.

Parties

2. Plaintiff Ryan Swanberg person who resides in the City of Burnsville, County of Dakota, State of Minnesota.
3. Defendant Echostar Satellite Corp. / Dish Network (hereinafter, "Defendant") is a corporation operating from the addresses of 5701 S. Santa Fe Dr. Littleton, Colorado 80120

Factual Allegations

4. On or about October 28th 2003, Plaintiff received a phone call from Defendant.
5. Defendant called Plaintiff at Plaintiff's home at which an unidentified agent was offering a satellite dish service to Plaintiff.
6. After hearing the parameters of the service, Plaintiff immediately rejected the unsolicited offer.

- 1 -

PX0168-055

FTC/ECHOSTAR000843
JA011303
010088

7. Defendant's unidentified agent then barraged Plaintiff with the following statements: *"You would have to be stupid to not take this deal. You are too uptight and paranoid. Since you don't want this offer, I guess you are stupid".*
8. The abovementioned comments violate many provisions of 16 CFR § 310 et. seq. and 47 U.S.C. 227 et. seq.
9. During the brief unsolicited conversation, Defendant's agent failed to state her identity as well as Defendant's address and phone number which is required by 47 U.S.C. 227 et. seq.
10. Defendant has violated Minn. Stat. 325E. 312 et. seq.
11. Defendant called Plaintiff's home and interfered with Plaintiff's caller I.D. by blocking Defendant's business name and telephone number from the caller identification device.
12. According to Minn. Stat. 325E. 312 subd. 3 : *"No caller who makes a telephone solicitation to a residential subscriber in this state shall knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service."*

Causes of Action

Count 1.

Violations of 47 U.S.C. 227 et. seq.

13. Plaintiff incorporates by reference paragraphs and all preceding paragraphs as though fully stated herein.

14. The foregoing acts and omissions of the Defendant constitute multiple and distinct violations of 47 U.S.C. 227 et.seq., 16 CFR § 310 et.seq. and Minn. Stat. 325E. 312 et.seq. against the Plaintiff.
15. As a result of said violations, Plaintiff is entitled to statutory damages of \$1,500 pursuant to 47 U.S.C. 227 et.seq..

Prayer For Relief

Wherefore, Plaintiff respectfully prays that this court enter the following Judgment, in Plaintiff's favor:

Count 1: 47 U.S.C. 227 and CFR 16 § 310 violations.

- for an award of statutory damages of \$1,500.00, for Plaintiff, for violations of 47 U.S.C. 227 et. seq. and CFR 16 § 310 et.seq., against the Defendant,

Such Other Relief

- for such other and further relief as may be just and proper.

Dated: 11-4-03

Signed By: Ryan Swanberg

Ryan Alan Swanberg
13050 Harriet Ave S # 247
Burnsville, MN 55337
(952)-736-7998
Pro Se

EXHIBIT 529

EXHIBIT 529

JA011306
010091

TX 102-010568

From: Oberbillig, Mike
Sent: Tuesday, January 30, 2007 5:25:30 PM
To: Werner, Bruce
Subject: FW: Satellite Systems Network OE Tool # 821970

From: Ahmed, Amir
Sent: Thursday, July 29, 2004 1:41 PM
To: Mills, Mike; Oberbillig, Mike
Cc: Spreitzer, Jim
Subject: RE: Satellite Systems Network OE Tool # 821970

You guys need to spend time with Alex on the whole program. Make sure he understands the exception process. Make sure he does not just give us apartment sales. I am hearing a lot of complaints on Sat Systems on telemarketing calls to customers.

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

From: Mills, Mike
Sent: Thursday, July 29, 2004 12:25 PM
To: Oberbillig, Mike; Ahmed, Amir
Cc: Spreitzer, Jim
Subject: RE: Satellite Systems Network OE Tool # 821970

Mike –

Get me the deals they don't think they're getting credit for and we'll check it out. Whatever they have done through the exceptions line, they will get paid for.

Mike

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

From: Oberbillig, Mike
Sent: Thursday, July 29, 2004 12:23 PM
To: Ahmed, Amir
Cc: Spreitzer, Jim; Mills, Mike
Subject: RE: Satellite Systems Network OE Tool # 821970

Amir,



JA011307
010092

PX0503-001

Confidential - U.S. v. DISH

DISH11-029658

TX 102-010569

spoke with Alex again and he likes the increased economics. His only complaint with the OE tool is that it goes down often, and when they call in the deals he claims that they never receive credit for them. I requested a spread sheet of the deals he has called in, so we can see if we have a breakage somewhere in this process.

Thanks

MJO

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

From: Ahmed, Amir

Sent: Monday, July 19, 2004 7:51 PM

To: Ahmed, Amir; Spreitzer, Jim; Oberbillig, Mike; Miller, Erik

Cc: Hinson, Matthew; Mills, Mike; Novotny, Dana

Subject: RE: Satellite Systems Network OE Tool # 821970

Mike and Jim,

Please call Alex in the morning and give them some good news. We are increase Satellite Systems Network OE activation payment from **\$150.00 to \$175.00** effective immediately.

Also, effective immediately we will pay Satellite Systems Network a \$25.00 bonus on all primary activations with DVR attachment.

Also, Satellite Systems Network will receive a \$15.00 bonus for any DHA with 24 month commitment activation starting August 1. I want you to call Alex tomorrow and pitch DHA24 with all the benefits of the DHPPP program for the consumer. It is free for the consumer; make sure they understand all the benefits.

I do not want to lose anymore business to DTV, please execute and get them pitching DVR and DHA 24.

Please confirm when you have spoken to both accounts and make sure the proper people behind driving sales understand.

Erik Miller, please confirm when you have changed the activation payment **from \$150.00 to \$175.00 and have added the \$25.00 bonus on DVR** activation via the OE Tool for Satellite Systems Network.

If Satellite Systems Network activates on DHA with DVR, their economics increases from \$150.00 to \$200.00. Effective, August 1, if they sell DHA 24 with DVR, their economics increase by another \$15.00. Please close the deal

PX0503-002

JA011308
010093

Confidential - U.S. v. DISH

DISH11-029659

TX 102-010570

and get Alex excited. I want minimum 2500 activations in August.

Thanks,

Amir

EXHIBIT 530

EXHIBIT 530

JA011310
010095

TX 102-010572

From: Binns, Todd
Sent: Wednesday, August 11, 2004 12:22:44 PM
To: Parekh, Maulik; Gonzalez, Melissa; Kondilas, Robert; Ahmed, Amir; Schaefer, Germar; Elswick, Curtis; Larson, Larry; Stingley, Tom
CC: Pacini, Brian; Bangert, Russell; Casson, Jen; Gattone, Tim
Subject: RE: Dish Taking a DTV Sale

In reference to the business rules here are the latest and greatest.

- Radio Shack – Radio Shack leads are suppressed via a join to the Commissions National Stores table. The phone numbers of Radio Shack leads are loaded into the Do Not Contact (DNC) database automatically. These are suppressed from any outbound telemarketing during the DNC scrub that occurs on our Lead Tracking extracts. This went into effect around January of 2003. It was not explicitly stated for anyone but Radio Shack but I believe this was to include any organization represented in the Commissions National Stores table.
- Partner Web – Represents about 13% of encounters for August.
 1. SBC – We have been suppressing SBC leads via the DNIS codes associated to the toll frees used by SBC. This does not identify any leads created via the Partner Tool only those coming in via DISH Promo which is the minority. Broadband has been working with IT to implement a code change to correct this issue. These changes were supposed to go live on 8/1/04 and were represented by having the Partner Tool tag SBC leads as Encounter_Type_Code_ID = 415. There is only 1 lead in the database that has this encounter code assigned so the changes do not seem to have gone live yet.
 2. Sprint/Others – Business rules pending. Lead management rules are being defined partner by partner. These come directly from Tom Stingley's group.
- Virtual Certs – These are currently fair game and represent less than 1% of encounters for August. We will exclude these moving forward based on the email chain below.
- Consumer Web (Dishnetwork.com) – These are shopping cart leads and are fair game.
- DISH Promo – These represent over 86% of our encounters for August. The issue we have is all the encounters that show up in Lead Tracking for the account in question (Mark Lawson) are represented as DISH Promo encounters. This leads me to believe the retailers OE tool is creating leads with encounter_channel of DISH Promo. I am trying to confirm but have not heard back.
- Credit – We currently exclude any lead that has had a credit score attempt and does not have a passing code associated. As the Mark Lawson example illustrates several credit runs can exist for the same lead and if we get a pass that will override any fails we may encounter in reference to lead selection.

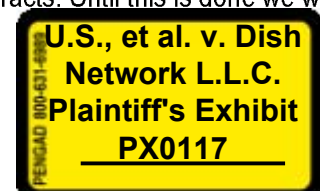
In reference to the scenario in the email chain below I've attached the history shown in Lead Tracking.

1. Encounter occurs on 7/10 from Encounter Channel DISH Promo.
2. Per email at beginning of this chain Mark Lawson failed credit score on 7/17 via the OE tool. Based on phone number search we show no encounters for this day by any Encounter Channel within Lead Tracking.
3. Encounter on 7/19 via DISH Promo.
4. Encounter on 7/22 via DISH Promo. Three credit codes are associated – Declined-No Hit, Declined, and Approved.

Recommendations:

1. Moving forward we suppress all Encounter Channels except DISH Promo and Consumer Web/Dishnetwork.com. We will reduce lead counts by roughly 13% - 15% but will be sure to exclude SBC and other partners. Tom Stingley will need to confirm or deny this rule.
2. Have IT folks confirm which Encounter Channel is being used for the retailer OE tool. If this is the DISH Promo code we will need development to change the OE code so that we can filter this from our extracts. Until this is done we will continue to contact retailer leads and have no way to identify them.

PX0117-001



3. Moving forward please involve my team in any changes made to Lead Tracking as we find out about these modifications after the fact and have no way of knowing our leads are contaminated until an issue such as this arises.

Let me know how this team would prefer to move forward in reference to recommendation #2.

Call me with any questions.

Todd A. Binns

Database Marketing Manager, Echostar

todd.binns@echostar.com

303.723.2644

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

From: Parekh, Maulik
Sent: Tuesday, August 10, 2004 11:50 AM
To: Pacini, Brian; Binns, Todd
Cc: Bangert, Russell
Subject: FW: Dish Taking a DTV Sale

Brian/Todd: do you have any insights as to what the business rule was?

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

From: Gonzalez, Melissa
Sent: Tuesday, August 10, 2004 11:08 AM
To: Schaefer, Germar; Kondilas, Robert; Parekh, Maulik; Ahmed, Amir
Cc: Elswick, Curtis
Subject: RE: Dish Taking a DTV Sale

I believe the rule was to shelve it for X days if it was Radio Shack , Certificate or sales partner. Is this happening?

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

From: Schaefer, Germar
Sent: Tuesday, August 10, 2004 11:05 AM
To: Kondilas, Robert; Parekh, Maulik; Ahmed, Amir
Cc: Gonzalez, Melissa; Elswick, Curtis
Subject: RE: Dish Taking a DTV Sale

PX0117-002

JA011312
010097

Confidential-US v. DISH

DISH5-0000066934
TX 102-010574

I disagree with this general rule.

E.G. DishTVnow is not selling FFA but we might be willing to take the risk on a direct customer.

-- Germar --

Dr.-Ing. Germar Schaefer
CIO & SVP

EchoStar Satellite L.L.C.
9601 S. Meridian Blvd.

Englewood, CO 80112

Phone: +1 (303) 723-1140
Fax: +1 (303) 723-3607
Mobile: +1 (303) 478-6503
Text Pager: [3034786503@mobile.att.net](tel:3034786503)

Germar.Schaefer@EchoStar.com

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

From: Kondilas, Robert
Sent: Tuesday, August 10, 2004 10:56 AM
To: Parekh, Maulik; Ahmed, Amir; Schaefer, Germar
Cc: Gonzalez, Melissa
Subject: RE: Dish Taking a DTV Sale

Any lead a retailer generates which does not end in a sale should be shelved for at least 60 days...What we are seeing now is Dish is calling a potential customer 48-72 hours after the retailer has contacted them...

Robert

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

From: Parekh, Maulik
Sent: Tuesday, August 10, 2004 10:54 AM
To: Ahmed, Amir; Schaefer, Germar; Kondilas, Robert
Subject: FW: Dish Taking a DTV Sale

PX0117-003

JA011313
010098

Confidential-US v. DISH

DISH5-0000066935
TX 102-010575

Fyi.

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

From: Pacini, Brian

Sent: Tuesday, August 10, 2004 09:44

To: Bangert, Russell

Cc: Binns, Todd

Subject: RE: Dish Taking a DTV Sale

If the failed created score shows up in the lead tracking database then it should be taken out. I will check with IT to see if that is the case. I will be gone the next couple of days so I recommend following up with Todd and/or Kathy Tate in IT.

Brian

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

From: Bangert, Russell

Sent: Tuesday, August 10, 2004 7:58 AM

To: Pacini, Brian

Subject: FW: Dish Taking a DTV Sale

Mr. Pacini,

I believe we are scrubbing anyone who didn't pass the credit score out of LTS right? Does this apply only to internal calls or to entries from the OE tool as well? If not, do we have the ability to?

Thank you for your time,

PX0117-004

JA011314
010099

Confidential-US v. DISH

DISH5-0000066936
TX 102-010576

Russell

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

From: Parekh, Maulik

Sent: Tuesday, August 10, 2004 07:54

To: Bangert, Russell

Subject: FW: Dish Taking a DTV Sale

Russell: Do we have a way to differentiate these customers? Thanks.

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

From: Ahmed, Amir

Sent: Monday, August 09, 2004 11:57 PM

To: Elswick, Curtis; Kondilas, Robert; Parekh, Maulik

Cc: Bangert, Russell; Schaefer, Germar

Subject: RE: Dish Taking a DTV Sale

A customer gets credit declined via the OE Tool, so what does Direct Sales do with the lead if the customer has already failed credit score.

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

From: Elswick, Curtis

Sent: Monday, August 09, 2004 1:00 PM

To: Kondilas, Robert; Parekh, Maulik

Cc: Bangert, Russell; Schaefer, Germar; Ahmed, Amir

PX0117-005

Confidential-US v. DISH

JA011315
010100

DISH5-0000066937
TX 102-010577

Subject: RE: Dish Taking a DTV Sale

Yes at the time you have done a Credit Score through the OE tool we have created a lead. If the partner does not create an account in the flow the lead is left in an open state and is pulled for outbounding. This is how the tool has always worked. The only retailer that is exempt from this behavior is Radio Shack. And because you are going to ask, no it is not easy for us to extend this to cover a variable list of retailers. It would require coding to do this.

Curtis

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

From: Kondilas, Robert

Sent: Monday, August 09, 2004 12:47 PM

To: Parekh, Maulik; Elswick, Curtis

Cc: Bangert, Russell; Schaefer, Germar; Ahmed, Amir

Subject: FW: Dish Taking a DTV Sale

Maulik/Curtis -

Need to know the answer here...When someone fails in the OE tool, do we capture their information? If so, do we do anything with this data? Retailers are finding us contacting customers who have failed the credit check getting a call from Dish trying to sell them...

Robert

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

From: Ahmed, Amir

Sent: Saturday, August 07, 2004 4:35 PM

To: Kondilas, Robert; Ring, Shadd

PX0117-006

JA011316
010101

Confidential-US v. DISH

DISH5-0000066938
TX 102-010578

Subject: RE: Dish Taking a DTV Sale

Please check and get back to me. Lot's co complaints from all my partners.

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

From: Kondilas, Robert

Sent: Saturday, August 07, 2004 4:34 PM

To: Ahmed, Amir; Ring, Shadd

Subject: Re: Dish Taking a DTV Sale

Amir -

We'll look into it...I know Curtis told me we capture unfinished transactions from dishnetwork.com...I'll check on OE tool transactions...

Robert

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

From: Ahmed, Amir <Amir.Ahmed@echostar.com>

To: Kondilas, Robert <Robert.Kondilas@echostar.com>; Ring, Shadd <Shadd.Ring@echostar.com>

Sent: Sat Aug 07 16:30:38 2004

Subject: FW: Dish Taking a DTV Sale

Can you please look into this customers account? How does this work? A customer gets credit declined and than we try to sell them directly.

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

From: David Hagen [mailto:d.hagen@gatelinx.com]

Sent: Saturday, August 07, 2004 3:50 PM

PX0117-007

JA011317
010102

Confidential-US v. DISH

DISH5-0000066939
TX 102-010579

To: Ahmed, Amir

Subject: FW: Dish Taking a DTV Sale

This is another example of the unanswered complaint of Dish Network circumventing Dish TV Now offering deals to our customers who fail credit or where the OE Tool has errored out. Our customers costs Dish TV Now an average of \$75 to generate. This just isn't right.

> -----Original Message-----

> From: Allen Peoples

> Sent: Saturday, August 07, 2004 5:43 PM

> To: David Hagen

> Cc: Curtis Garth; Billy Thompson

> Subject: FW: Dish Taking a DTV Sale

>

> Dave,

>

> fyi....I told Billy about Dish calling me and Billy wanted to test this again. Last week (I believe it was last Fri) I entered Billy's address and his cell phone number on the first page of the OE tool and then hit continue to go to the next page. This morning Dish called Billy to see if he wanted to get set up with Dish Network.

>

> Allen

>

> -----Original Message-----

> From: Allen Peoples

> Sent: Monday, July 26, 2004 5:57 PM

> To: David Hagen

> Subject: Dish Taking a DTV Sale

>

> Customer Mark Lawson

> Phone (916) 370-4396 (919) 424-3250

PX0117-008

JA011318
010103

> Rep Chris Zimmerman

>

>

> Dave,

>

> You asked for examples of Dish selling customers who fail credit. On July 17th this customer failed credit for Dish so Chris Zimmerman sold them DTV. Chris explained that the customer would receive a call to confirm his DTV install. On Thursday July 22nd, the customer received a call from Dish. The customer was a little confused and thought it was DTV calling and set up an install for Sat the 24th. The customer claims he did not realize he was getting Dish until he was installed. We will now lose the revenue for the DTV sale.

>

> About a week or so ago we had some issues getting past the first page of the Dish OE tool. To see if we were up, I entered my neighbor's Dave Snyder's address and my personal cell phone number. Today Dish called my cell phone to see if Dave Snyder was interested in Dish Network.

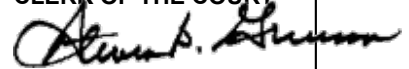
>

> Allen

>

PX0117-009

JA011319
010104



1 **APEN**

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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 31 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>
531	09/15/2004	Email from J. Spreitzer to A. Ahmed	10105
532	09/16/2004	Email from C. Kuelling to S. Dodge	10108
533	11/04/2004	Florida Department of Agriculture and Consumer Services Press Release	10111
534	12/31/2004	EchoStar Retailer Agreement with Dish TV Now Inc	10113
535	01/25/2005	Letter from D. Caplan to K. Myers et al.	10146
536	02/14/2007	Press Release: EchoStar Takes Action Upon Do-Not-Call Violators	10149
537	02/18/2005	Email from S. Kramer to FeedBack	10151
538	03/21/2005	Judgment by Consent and Stipulated permanent Injunction with State of North Carolina	10154
539	05/24/2005	Email from L. Miller to D. Robbins	10167
540	05/27/2005	Email from M. Williams to J. Medina	10189
541	07/21/2005	Civil Investigative Demand	10192
542	08/12/2005	Letter from D. Steele to D. Myers	10203

DATED this 28th day of November 2018.

By /s/ Robert J. Cassity

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*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 31 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 531

EXHIBIT 531

From: Oberbillig, Mike
Sent: Tuesday, January 30, 2007 5:28:57 PM
To: Werner, Bruce
Subject: FW: Satellite Systems Network

From: Spreitzer, Jim
Sent: Wednesday, September 15, 2004 1:45 PM
To: Ahmed, Amir
Cc: Oberbillig, Mike
Subject: RE: Satellite Systems Network

He is out hiring people for DISH this week and expanding the program.

he is contacting advertising agencies this week- commercials will be developed.

We will have our own pod there (Dish).

THANKS for the approval.

It will happen.

End of Oct 1000

End of Nov 2000

End of Dec 2500

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

From: Ahmed, Amir
Sent: Tuesday, September 14, 2004 9:24 PM
To: Spreitzer, Jim
Subject: FW: Satellite Systems Network

Go get him. Need activations and please tell Alex that I have worked my ass off to get him additional economics. I have also had to deal with all his issues related to sales etc... Need incremental activations starting tomorrow. The \$200.00 activation payment is good until 1/31/05. He will also receive \$25.00 for DVR/HD attachments. He will also receive \$15.00 for DHA24. he will also receive \$50.00 for activations in NRTC areas.



PX0656-001

JA011324
010106

Confidential U.S. v. DISH

DISH5-0000126144
TX 102-010586

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

From: DeFranco, Jim

Sent: Tuesday, September 14, 2004 7:23 PM

To: Ahmed, Amir

Subject: RE: Satellite Systems Network

Proceed. Send me a current spread sheet with all the current special economics.

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

From: Ahmed, Amir

Sent: Tuesday, September 14, 2004 6:54 PM

To: DeFranco, Jim

Subject: Satellite Systems Network

Jim,

Satellite Systems Network is averaging 350 activations per month on the OE Tool. However, they are averaging 9,000 activations per month for DTV. After speaking to Spreitzer, increasing their activation payment from \$175.00 to \$200.00 until January 31, 2005 will get us incremental 2500-3500 activations per month starting in October. I am requesting the same economics as we provide for E-Management, Today's, Marketing Guru and Dish Pronto.

Satellite Systems Network current economics:

\$175.00 activation fee

\$25.00 DVR/HD bonus

Request:

Increase activation payment to \$200.00 until January 31, 2005

\$25.00 DVR/HD bonus

PX0656-002

JA011325
010107

Confidential U.S. v. DISH

DISH5-0000126145
TX 102-010587

EXHIBIT 532

EXHIBIT 532

JA011326
010108

TX 102-010588

From: Kuelling, Chris
Sent: Thursday, September 16, 2004 3:15:07 PM
To: Dodge, Stanton
CC: Novak, Scott
Subject: FW: telemarketing calls

PRIVILEGE

fyi

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

From: Ahmed, Amir
Sent: Thursday, September 16, 2004 7:00 AM
To: Novak, Scott; Kuelling, Chris
Cc: DeFranco, Jim
Subject: FW: telemarketing calls

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

From: David Hagen [mailto:d.hagen@gatelinx.com]
Sent: Thursday, September 16, 2004 4:05 AM
To: Ahmed, Amir
Subject: RE: telemarketing calls

Amir,

Dish TV Now uses a predictive dialer to make outbound calls to consumers who have previously inquired with us about satellite TV service or are current Dish TV Now Dish Network customers. The intelligent dialer knows the difference between a No Answer, Busy, Answering Machine or Live Connect. The dialer only connects live customers to a live Dish TV Now agent. We do not leave messages. We have a list of over five million past and current customers that we scrub against the Do No Call List. In addition, we maintain a Dish TV Now Do Not Call List. Any customer who wishes to opt out on future solicitations is immediately added to the list. Dish TV fully complies with the TCPA.

David

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

From: Ahmed, Amir [mailto:Amir.Ahmed@echostar.com]
Sent: Thursday, September 16, 2004 1:16 AM
To: David Hagen
Cc: Ahmed, Amir
Subject: telemarketing calls

David,

This is simple. Is DISH TV Now telemarketing customers over the phone or are you guys using predictive dialers and leaving messages trying to sell the customers DISH Network. We are not interested in this type of marketing. We are

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PRODUCED OVER DEFENDANT'S PRIVILEGE DESIGNATION UNDER COURT ORDER

DISH8-0000998

DEFENDANT'S
EXHIBIT
DTX-223

DTX 223 Page 1 of 2

JA011327
010109

Confidential/Privileged

SLC_DNC_Investigation_0007184

TX 102-010589

receiving complaints on your company doing just this type of marketing.

Please respond,

Amir

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PRODUCED OVER DEFENDANT'S PRIVILEGE DESIGNATION UNDER COURT ORDER

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EXHIBIT 533

EXHIBIT 533

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TX 102-010591

Florida Department of Agriculture and Consumer Services



Charles H. Bronson, Commissioner

Department Press Release

11-04-2004

Liz Compton

850-488-3022

comptol@doacs.state.fl.us

Bronson Takes Action in Telemarketing Case

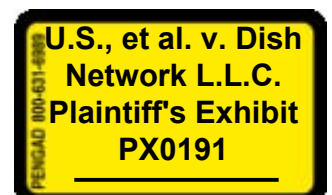
TALLAHASSEE - Florida Agriculture and Consumer Services Commissioner Charles H. Bronson has obtained a \$25,500 civil penalty against a company for violations of the state's Do Not Call list. The Orange County Circuit Court has ordered Vitana Financial Group, Inc. to pay the penalty plus court costs of \$190.50 and issued a permanent injunction against the firm to prohibit future calls to consumers on the Do Not Call list.

The Department took action following 19 complaints from citizens around the state against Vitana Financial Group, Inc. doing business under the name Direct Satellite. In addition to calling consumers who are on Florida's Do Not Call list, the company also used recorded messages, which is against state law. The calls began in January 2003 and continued until February 2004.

"I think the hefty penalties should act as a deterrent to businesses that choose to ignore our Do Not Call law," Bronson said. "It is clearly not in anyone's best interest to call citizens on the list who have taken the step to sign up to protect their privacy."

The Department administers the Do Not Call law, which requires businesses to purchase the list of names of consumers who have signed up for the program which began in 1991. Since then, about half of the nation's 50 states have adopted similar programs, and the federal government began its "Do Not Call" program last October. However despite the creation of the federal list, the state program continues to prove itself. Florida consumers value their privacy and look to the Department to shield them from unwanted phone calls and recorded messages. In turn, the Department remains committed to its responsibility to ensure these privacy rights are protected.

Consumers who are interested in getting more information about Florida's program can call the department's toll free hotline - **1 800 HELP FLA (435-7352)** - or visit its website at www.800helpfla.com. Application forms also can be obtained by calling the number or visiting the website.



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EXHIBIT 534

EXHIBIT 534

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U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX0152

Retailer Number 915995

ECHOSTAR RETAILER AGREEMENT

This EchoStar Retailer Agreement (the "Agreement") is made and effective as of December 31, 2004 (the "Effective Date"), by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("EchoStar"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112, and DISH TV NOW INC having a principal place of business at 1930 N POPLAR ST, SOUTHERN PINES, NC 28387 ("Retailer").

INTRODUCTION

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

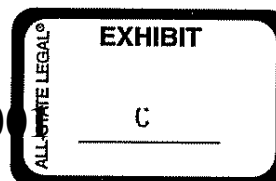
1.9 "Commercial Location" means a Public Commercial Location and/or a Private Commercial Location, as those terms

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are defined below in Sections 1.29 and 1.25, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **APPOINTMENT; TERRITORY.**

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

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

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

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

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

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

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

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

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

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

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

3.10 Prior Retailer Agreements.

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

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

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

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

4. **PROGRAMMING.**

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

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

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

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

6.1 **Monthly Incentives.**

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

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

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

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

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

6.2 Additional Incentives.

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

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

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

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

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6.2.5 RETAILER ACKNOWLEDGES AND AGREES THAT:

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

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

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

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

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

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

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

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

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6.3 Chargeback of Incentives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.6 Suspension and Termination of Incentives.

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

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

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

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

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

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

6.10 Collection of Programming and Other Fees

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

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

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

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

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

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

continuing service to DISH Network Subscribers after initial activation

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

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

7 **ORDERS.**

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

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

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

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

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

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9. **CONDUCT OF BUSINESS.**

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

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

9.3 **Hardware and Programming Export and Sale Restrictions.**

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

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

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

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

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

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

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

10. TERM AND TERMINATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **DISPUTE RESOLUTION.**

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

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

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

15.2 Mediation. The parties agree to submit any and all disputes, controversies or claims not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4, which may arise between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all disputes, controversies, and claims arising in connection with this Agreement including, without limitation, all disputes, controversies or claims related to: (i) the execution and delivery of this Agreement (whether via signature or electronic acceptance); (ii) the interpretation of this Agreement; (iii) a party's performance or failure to perform hereunder; (iv) the termination of this Agreement; and (v) any rights Retailer may have under dealer termination or non-renewal laws (collectively "Disputes"), to mandatory non-binding mediation (the "Mediation") in front of a single mediator. Either party may initiate mediation by giving written notice to the other party describing the Dispute (a "Notice of Mediation"). The Notice of Mediation shall include (a) a statement of the initiating party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other persons who will accompany the executive. The Mediation shall take place in the City and County of Denver, Colorado at a mutually agreeable time and location before a mediator chosen by mutual agreement of the parties. In the event that either party fails to negotiate the selection of a mediator in good faith or unreasonably withholds its approval of a mediator, such party shall be deemed to have waived its right to select the mediator by mutual agreement of the parties and shall be required to participate in the mediation with the mediator chosen by the other party. Each party shall participate through a representative with full settlement authority and shall bear its own costs and expenses and one-half of the costs and expenses of the mediator. Any such Mediation must be concluded within sixty (60) days of the Notice of Mediation. Nothing contained herein (excluding the provisions of Section 3.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or its Affiliates for violations of Sections 3.2, 3.6, 3.7, 3.8, 5, 6, 10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 11 and 14 or any provisions of any Other Agreement. In the event that a party (the "Non-Mediating Party") fails to: (1) pay one-half of the costs and expenses of the mediator to the mediator when due; or (2) otherwise refuses or fails to participate in or attend a mediation that has been properly initiated pursuant to this Section 15, then: (A) the Non-Mediating Party agrees that the other party (the "Mediating Party") shall have the right to obtain immediate relief in the form of specific performance from a court located in the State of Colorado, as delineated in Section 15.5 below; and (B) the Mediating Party shall have the option, exercisable upon written notice to the Non-Mediating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court located in Colorado, as delineated in Section 15.5 below. In the event that the Mediating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to clause (B) above, the Parties agree that the Non-Mediating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such court proceeding as fully participating in a mediation pursuant to this Section 15.2 is a condition precedent to recovery.

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

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

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

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

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

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16. INSURANCE.

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

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

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

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

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

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

17. MISCELLANEOUS.

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

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

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

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

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

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

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

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

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

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

17.10 Notices.

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

If by first class certified mail:

To EchoStar: EchoStar Satellite L.L.C.
Attn: Director of Retail Services
P.O. Box 6655
Englewood, CO 80155

With a copy to: David K. Moskowitz
Executive Vice President, General Counsel and Secretary
EchoStar Satellite L.L.C.
(same address)

If by overnight courier service:

To EchoStar: EchoStar Satellite L.L.C.
Attn: Director of Retail Services
9601 South Meridian Blvd
Englewood, CO 80112

With a copy to: David K. Moskowitz
Executive Vice President, General Counsel and Secretary
EchoStar Satellite L.L.C.
(same address)

The receipt of such notice shall constitute the giving thereof.

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

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

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

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

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

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

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

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

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

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

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

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

ECHOSTAR SATELLITE L.L.C.

By: _____

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

RETAILER

Retailer Number: 915995

Retailer Company Name: DISH TV NOW INC

Street Address: 1930 N POPLAR ST
City, State, Zip Code: SOUTHERN PINES, NC 28387
Facsimile Number: N/A
(for notice to Retailer pursuant to Section 17.10.2)

By: _____
Signature

Print Name: DAVID HAGEN
Title: CEO

[SIGNATURE PAGE OF ECHOSTAR RETAILER AGREEMENT]

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EXHIBIT A

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made and effective as of the 31st day of December 2004, by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("ESLLC"), having a place of business at 9601 S Meridian Blvd., Englewood, Colorado 80112, and DISH TV NOW INC having a principal place of business at 1930 N POPLAR ST, SOUTHERN PINES, NC 28387 ("Licensee").

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONFIDENTIAL

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

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

ECHOSTAR SATELLITE L.L.C.

By: _____

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

LICENSEE

Retailer Number: 915995

Retailer Company Name: DISH TV NOW INC

Street Address: 1930 N POPLAR ST
City, State, Zip Code: SOUTHERN PINES, NC 28387

By: _____
Signature

Print Name: DAVID HAGEN
Title: CEO

[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]

Page 31 of 32

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CONFIDENTIAL

Confidential and Proprietary

PX0152-031

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ESL0045

TX 102-010624

EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT



CONFIDENTIAL

Confidential and Proprietary

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PX0152-032

JA011363
ECS100746

TX 102-010625

EXHIBIT 535

EXHIBIT 535

VIA FACSIMILE 303-723-1699

2 pages

January 25, 2005

Ms. Katie S. Myers, Manager
Mr. Walter Eric Myers, Manager
Star Satellite LLC
1760 E. Downington Ave.
Salt Lake City, UT 84108

David K. Moskowitz
Echostar Satellite LLC
9601 S. Meridian Blvd
Englewood CO 80112

Re: Violation of Telephone Consumer Protection Act

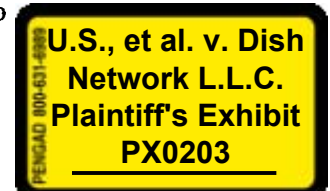
Dear Principals of Star Satellite LLC and Echostar Satellite LLC::

I am writing to you regarding your recent prerecorded telephone solicitation to my residential telephone line encouraging me to purchase satellite TV service. This call was initiated without my express invitation or permission. (Please see attached memorandum of this call).

A federal law enacted in 1991 called the Telephone Consumer Protection Act (the "TCPA") makes it unlawful for any person within the United States to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party. 47 U.S.C. § 227(b)(1). The federal law also provides that a person who makes such a call is liable for \$500 in damages for each such call. If the court finds that the defendant acted willfully or knowingly (that is, you knew you were delivering this message without my prior express consent, regardless of whether you knew about the TCPA), the court may **triple the damage award**. See 47 U.S.C. § 227(b)(3).

The laws of the State of Washington also make this activity unlawful under RCW 80.36.400. This means that in addition to the damages for violation of the federal TCPA you may also be liable for \$500 in damages under state law. The Washington State Consumer Protection Act also provides that the court may **triple the damage award**. RCW 19.86

By making this unsolicited call, you violated both state and federal laws and are now liable to pay a statutory remedy of not less than \$500 per violation under 47 U.S.C. § 227(b)(3) plus \$500 per violation under RCW 80.36.400(3). I have reason to believe that you willfully or knowingly violated these laws, which would make you liable for up to \$3,000 per call.



PX0203-001

FTC/DOJ 01-126500762
010147

As you can see, I am serious about enforcement of these laws. To save us both time and effort, I am willing to settle this case for a remedy of \$1,000 per violation. To do this, call me at (425) 444-8255 and I will send you a settlement agreement.

If you do not choose to settle, I can assure you that I will do my part to help enforce the laws as Congress and the Washington State Legislature intended and I will sue you for violations of the TCPA and the Washington State Consumer Practices Act and a demand for treble damages and attorneys' fees.

This offer of settlement will remain open for ten (10) days from your receipt of this letter. I look forward to your prompt response.

Very truly yours,



Dennis M. Caplan
5863 NW Lac Leman Dr
Issaquah, WA 98027
(425) 444-8255
dennis@caplanlink.com

MEMORANDUM OF CALL:

Date: Wednesday, January 25, 2005
Time: 4:00 p.m.
Originating Number: 111-111-1111
Terminating Number: 425-644-7277

Details of Call:

Message began with "Please don't hang up," and ended by telling me to press 1 if interested. When I pressed 1 the call was connected to a screener to determine my qualification as a homeowner, then to Allan Spencer, who fully identified Star Satellite of Provo, UT as the entity responsible for the call.

PX0203-002

FTC/ED 015126600763
010148

EXHIBIT 536

EXHIBIT 536

JA011367
010149

ECHOSTAR TAKES ACTION UPON DO-NOT-CALL VIOLATORS

Englewood, Colo. – February 14, 2007 – EchoStar Communications Corporation (NASDAQ: DISH) and its DISH Network™ satellite TV service today announced the termination of independent EchoStar retailer “Jerry Dean Grider d/b/a JSR Enterprises” of Santa Ana, CA.

EchoStar terminated its relationship with this retailer as a result of EchoStar’s internal investigation of consumer complaints alleging violations of telemarketing laws and City of St. Louis Circuit Court Judge Lisa Van Amburg’s recent issuance of a Temporary Restraining Order prohibiting JSR Satellite Enterprises, Inc. from making telephone solicitations to consumers in the state of Missouri. The TRO was issued on the application of Missouri Attorney General, Jay Nixon, against JSR and other entities that are not EchoStar retailers. According to the Missouri Attorney General’s press release, JSR Satellite Enterprises requested a copy of Missouri’s No Call database but was cited in multiple complaints after receiving the list.

This follows the recent terminations of EchoStar retailers Atlas Assets of Irvine, CA and United Satellite of Aliso Viejo, CA as a result of similar investigations of consumer telemarketing complaints. EchoStar has alerted state attorney generals of the results of its investigation.

EchoStar fully supports the FTC’s national Do-Not-Call Registry and all telemarketing laws and regulations. EchoStar policies prohibit unlawful telemarketing calls to existing and potential DISH Network customers, and require retailers to be fully knowledgeable of applicable law as a condition to any telemarketing activities. EchoStar will continue to investigate the practices of retailers and marketing lead generators who violate telemarketing laws and will take appropriate actions as necessary.

“EchoStar takes violations of telemarketing laws very seriously,” said Erik Carlson, senior vice president of Retail Services and Sales for EchoStar. “EchoStar will continue to expend significant resources and work with law enforcement agencies in pursuit of improper solicitations by parties who hide behind EchoStar’s DISH Network tradename.”

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**DEFENDANT'S
EXHIBIT
DTX-674**

CONFIDENTIAL

ECHOSTAR-FTC-000064

JA011368
0104504-000193

EXHIBIT 537

EXHIBIT 537

JA011369
010151

TX 102-010631

Terrence Balbie cmts

From: Kramer, Stephanie [Stephanie.Kramer@echostar.com]
Sent: Friday, February 18, 2005 6:27 PM
To: FeedBack
Subject: FW: Authorized Dish retailers and illegal sales tactics

Importance: High

I don't know what to do with this email. Please read
Brenda

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

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

To anyone who might still care:

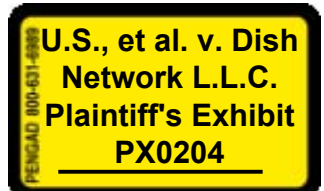
I have been having troubles with one of your authorized retailers. I have called Dish Network multiple times with no resolution. I am emailing to any address I can find to see if anyone at Dish still has any business ethics at all.

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

My concerns are:

1) The call is a recorded message that ends with instructions to press a key to hear more or order the product. It is my understanding that it is illegal to make unsolicited prerecorded calls.

2) The company identifies itself as Dish Network, but will disconnect your call if you ask anymore questions (such as business name, address, contact number). I believe you are required to identify yourself, at least to the extent of providing a business name and contact information.



FTC/ECHOSTAR001231

JA011370
010152

PX0204-001

3) The operators will hang-up if you ask for their name, or their supervisor. One operator even challenged me to "go ahead, try to report me. Good Luck!" before she hung up.

4) The caller ID is either blocked or spoofed (caller ID shows 1-111-111-1111).

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

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

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

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

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

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

David Hyde

PX0204-002

FTC/ECHOSTAR001232

JA011371
010153

EXHIBIT 538

EXHIBIT 538

JA011372
010154

TX 102-010634

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 04 CV0 08799

STATE OF NORTH CAROLINA, ex rel.)
ROY COOPER, ATTORNEY GENERAL,)

Plaintiff,)

vs.)

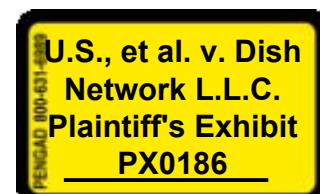
VITANA FINANCIAL GROUP, INC., a)
California Corporation d/b/a)
SATELLITE SYSTEMS NETWORK, LLC)
d/b/a DIRECT SATELLITE NETWORK)
SOLUTIONS, and ALEX TEHRANCHI,)
Individually and as Agent and Principal)
Officer of VITANA FINANCIAL GROUP,)
INC.,)

Defendants.)

JUDGMENT BY CONSENT
AND STIPULATED
PERMANENT INJUNCTION

THIS MATTER came on to be heard by the undersigned Judge presiding over the March 21, 2005, civil session of Wake County Superior Court upon joint application by the parties for entry of a Consent Judgment and Stipulated Permanent Injunction terminating the litigation of claims alleged in plaintiff's Complaint filed herein on June 25, 2004. In that Complaint, plaintiff alleged that defendants' telemarketing practices have violated North Carolina's Telephone Solicitations Act of 2003, N.C. Gen. Stat. §§ 75-100, et seq., as follows:

(1) by making or causing to be made telephone solicitations to North Carolina telephone subscribers who are signed up on the national "Do Not Call" Registry or who previously communicated a desire to receive no further telephone solicitations from defendants, (2) by making or causing to be made telephone solicitations via an automatic dialing, pre-recorded



voice system, and (3) by interfering with the individual North Carolina residential telephone subscriber's right to request not to be called again. Defendants neither admit nor deny these allegations. In order to avoid the costs associated with further litigation, the parties, as hereinafter defined, hereby stipulate to and request the entry of this Consent Judgment and Stipulated Permanent Injunction ("Consent Judgment") to resolve all matters of dispute between them in this action.

IT IS THEREFORE STIPULATED, AGREED, ORDERED AND ADJUDGED as follows:

DEFINITIONS

The following terms and definitions shall govern the interpretation and enforcement of this Consent Judgment:

- A. The "Act" means North Carolina's Telephone Solicitation Act of 2003, N.C. Gen. Stat. §§ 75-100, et seq., and related statutes and rules adopted pursuant thereto.
- B. "Automatic dialing and recorded message player" means any automatic equipment that incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called that, working alone or in conjunction with other equipment, disseminates a prerecorded message to the telephone number called.
- C. "Deceptive act" means any and all failures to comply with any provisions of the Act.
- D. "Defendants" means: Vitana Financial Group, Inc. (hereinafter "Vitana Financial Group"), its officers, agents, servants, employees, subsidiaries, affiliates, successors, and assigns and all persons or entities in active concert or participation with them who receive notice of this

Consent Judgment by personal service or otherwise.

E. “Doing business in this State” means to make or cause to be made any telephone solicitation to North Carolina telephone subscribers, regardless of whether the telephone solicitation is made from a location inside North Carolina or outside North Carolina.

F. “Do Not Call Registry” means the registry created and maintained by the Federal Trade Commission pursuant to the Telemarketing Sales Rule. It also means any other telemarketing registry created by the federal government, including the Federal Communications Commission. It also means any registry created by the Attorney General pursuant to N.C. Gen. Stat. § 75-102(n) or as it may be amended in the future.

G. “Plaintiff” means the State of North Carolina, ex rel. Roy Cooper, Attorney General.

H. “Telephone solicitation” shall mean a voice communication, whether prerecorded or live, or a facsimile transmission, over a telephone line or wireless telephone network or via commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of: 1) soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; 2) obtaining or providing information that will or may be used for that purpose; 3) soliciting or encouraging a telephone subscriber’s participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or 4) obtaining a charitable donation. “Telephone solicitation” also includes those transactions that are defined as “telemarketing” under the Federal Trade Commission’s Telemarketing Sales Rule, 16 C.F.R. Part 310.

I. “Telephone subscriber” means an individual who subscribes to a residential telephone service from a local exchange company, a competing local provider certified to do

business in North Carolina, or a wireless telephone company, and the individuals living or residing with that individual.

FINDINGS

Based upon the record in this cause and the stipulations of the parties set forth herein, the Court hereby finds as follows:

1. This Court has jurisdiction over the subject matter and the parties.
2. Venue is proper as to all parties in the Superior Court of Wake County.
3. The activities of defendants have been in or affecting commerce in this state.
4. Defendants have allegedly engaged in violations of the Act while doing business in this State, prior to the date of entry of this Consent Judgment, by making or causing to be made telephone solicitations to North Carolina telephone subscribers who are signed up on the national "Do Not Call" Registry or who previously communicated a desire to receive no further telephone solicitations from defendants, by making or causing to be made telephone solicitations via an automatic dialing, pre-recorded voice system, and by interfering with the individual North Carolina residential telephone subscriber's right to request not to be called again.
5. The Complaint states a claim upon which relief may be granted against defendants under N.C. Gen. Stat. §§ 75-100, et seq.
6. Defendants have entered into this Consent Judgment freely and without coercion. Defendants further acknowledge that they have read the provisions of this Consent Judgment and are prepared to abide by them.
7. The plaintiff and defendants, by and through their counsel, have agreed that the entry of this Consent Judgment resolves all matters of dispute between them arising from the

Complaint in this action, up to the date of entry of this Consent Judgment.

8. Defendants waive all rights to a trial by jury or to seek appellate review or otherwise challenge or contest the validity of this Order. Defendants further waive and release any claim they may have against the State of North Carolina, its employees, representatives or agents.

9. This Consent Judgment is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

10. Entry of this Consent Judgment is in the public interest.

11. This Consent Judgment does not constitute and shall not be interpreted to constitute an admission by defendants. Any violation of the terms of this Consent Judgment, however, does constitute evidence of violation of the Act and of a deceptive act.

I.

PERMANENT INJUNCTION

A. **IT IS ORDERED** that defendants are hereby permanently restrained and enjoined under N.C. Gen. Stat. §§ 75-14, 75-105(a) from engaging, or participating in, making or causing to be made, or assisting in any manner or in any capacity whatsoever, whether directly or indirectly, in concert with others, or through any intermediary, third party, business entity, or device, telephone solicitations to telephone subscribers in the State of North Carolina who are signed up on the national "Do Not Call" Registry or who previously communicated a desire to receive no further telephone solicitations from defendants. Moreover, defendants are hereby permanently restrained and enjoined from engaging, or participating in, making or causing to be made, or assisting in any manner or in any capacity whatsoever, whether directly or indirectly, in

concert with others, or through any intermediary, third party, business entity, or device, telephone solicitations via automatic dialing and recorded message player without the express consent of the residential telephone subscriber receiving such call.

B. **IT IS FURTHER ORDERED** and agreed that defendants shall comply with the Act and all state and federal laws, as they currently exist or may be amended in the future, pertaining to telemarketing or telephone solicitations or sales. Defendants agree and understand that nothing contained in this Consent Judgment shall be construed as relieving defendants of the obligation to comply with all state and federal laws, regulations or rules, or limiting the ability of the plaintiff or other governmental entity from enforcing such provisions.

C. **IT IS FURTHER ORDERED** and agreed that the defendants shall take the following actions, to the extent that they have not already done so:

1. Within thirty (30) days of the date of entry of this Consent Judgment, defendants shall provide the Attorney General with a detailed written description of the systems and procedures that they have implemented to ensure compliance with the statutes and regulations identified and described in Section B immediately above.

2. Defendants shall maintain the following records for a period of five (5) years from the date of entry of this Consent Judgment:

a. Records of every complaint or other communication received by defendants from a North Carolina residential telephone subscriber in which the subscriber states that defendants (1) made a telephone solicitation to the subscriber and the subscriber's name was in the Do Not Call Registry, or (2) made a telephone solicitation after the subscriber requested that defendants not call the subscriber again and/or requested that defendants remove the

subscriber from defendants' contact list, or (3) made a telephone solicitation that was in the form of a prerecorded message. These records must contain:

- i. The subscriber's name and address;
- ii. The subscriber's telephone number;
- iii. A copy of the written complaint or other communication;
- iv. The date of the complaint or other communication;
- v. The basis of the asserted complaint, dispute or allegation;
- vi. The name of the individual telemarketing representative who purportedly made the telephone solicitation in question;
- vii. The nature and result of any investigation conducted by defendants concerning the complaint or communication, including but not limited to a description of any action taken by defendants against any telemarketing vendor and any action taken by the vendor against the representative;
- viii. Each response by defendants to the subscriber and the date of the response; and
- ix. Any final resolution and the date of resolution.

b. Records that set forth the date, time, and phone number of all telephone calls made by or on behalf of defendants, by human or mechanical means, to all North Carolina residential telephone subscribers, to include records that reflect the date, time, and phone number of each telephone connection for which no person acting as an agent or telemarketer was available to engage the subscriber called (i.e., "abandoned" calls).

c. All records maintained in accordance with Section C.2. shall be made available to the plaintiff within ten (10) days of receipt of plaintiff's written request.

3. Defendants shall conduct reasonable random monitoring of their employees, subcontractors, and third party call centers in order to ensure compliance with the Act, as it currently exists or may be amended in the future.

4. Defendants agree to implement these obligations in good faith. The parties agree that, as questions or concerns arise regarding these obligations, defendants will work cooperatively with the Attorney General to resolve these questions or concerns to the satisfaction of the Attorney General.

II.

MONETARY JUDGMENT - \$15,000

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that

D. Judgment in the amount of Fifteen Thousand Dollars (\$15,000) in U.S. currency is hereby entered against defendant Vitana Financial Group, Inc. and in favor of the plaintiff for attorneys' fees, costs, consumer education and enforcement, or other consumer protection purposes, at the discretion of the Attorney General. Defendant hereby agrees to pay this sum in six equal installments of Two Thousand, Five Hundred Dollars (\$2,500) each.

Contemporaneously with the entry hereof, said defendant shall make the first required payment of Two Thousand, Five Hundred Dollars (\$2,500). The five remaining payments will be tendered by said defendant to the plaintiff on the first business day of each month that follows, beginning on March 1, 2005 and concluding on July 1, 2005. Said defendant shall pay the amount set forth above in U.S. currency by certified or cashier's check payable to the North

Carolina Department of Justice. The check shall be forwarded to the North Carolina Attorney General, c/o David N. Kirkman, Assistant Attorney General, Consumer Protection Division, 114 West Edenton Street, Raleigh, North Carolina 27602.

E. Proceedings instituted to enforce this Section of this Consent Judgment are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings plaintiff may initiate to enforce this Order.

III.

COMPLIANCE REPORTING BY DEFENDANTS

IT IS FURTHER ORDERED that compliance with the provisions of this Order may be monitored by plaintiff through any and all means appropriate under the law, including but not limited to receiving and reviewing all compliance and monitoring information requested in Section C., above. Plaintiff is also authorized to monitor defendants' compliance with this Consent Judgment by means of the following:

F. The plaintiff is authorized, without further leave of Court, to obtain discovery from any person (including a defendant) in the manner provided by the discovery provisions of the North Carolina Rules of Civil Procedure, N.C. R. Civ. P. 26-37, including the use of compulsory process pursuant to N.C. R. Civ. P. 45, for the purpose of monitoring and investigating defendants' compliance with the provisions of this Consent Judgment.

G. The plaintiff is authorized to use representatives posing as consumers, defendants' employees, or any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice.

H. Nothing in this Consent Judgment shall limit the plaintiff's lawful use of

compulsory process, pursuant to N.C. Gen. Stat. § 75-10, to investigate whether defendants have violated any provision herein or the marketing regulations found in Chapters 66 and 75 of the North Carolina General Statutes, as well as the Telephone Consumer Protection Act of 1991 (TCPA) rules, 16 C.F.R. Part 65, and the Telemarketing Sales Rule, 16 C.F.R. § 310.

IV.

FEES AND COSTS

IT IS FURTHER ORDERED that each party to this Consent Judgment shall bear its own costs incurred in connection with this action, except as provided in Section II, above.

V.

STIPULATED PENALTIES AND COSTS

IT IS FURTHER ORDERED that, in the event that defendants violate the Act on or after the date of entry of this Consent Judgment, defendants shall pay the sum of Five Thousand Dollars (\$5,000) per violation as an agreed-upon stipulated penalty.

VI.

CLAIMS AGAINST DEFENDANT TEHRANCHI

IT IS FURTHER ORDERED, upon motion by plaintiff, that this action is hereby dismissed without prejudice as to the individual defendant, Alex Tehranchi. Nothing provided herein shall relieve Mr. Tehranchi of his duties, as an officer of the defendant corporation, to comply with the injunctive terms and prohibitions set forth above.

VII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for

VII.

RETENTION OF JURISDICTION

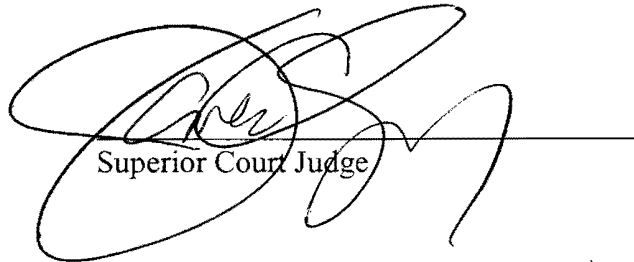
IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

VIII.

COMPLETE SETTLEMENT

The parties hereby consent to entry of the forgoing Consent Judgment which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of the foregoing Consent Judgment shall constitute a full, complete, and final settlement of this action.

This the 21st day of March, 2005.


Superior Court Judge

(Signatures of the Parties on the Following Page)

(Consent of the Parties on Following Page)
We Consent:

Vitana Financial Group, Inc., Defendant

By: 

Title: PRESIDENT

State of North Carolina ex rel.
Roy Cooper, Attorney General, Plaintiff

By: 

David N. Kirkman

Assistant Attorney General

North Carolina Department of Justice

EXHIBIT 539

EXHIBIT 539

JA011385
010167

TX 102-010647

From: Miller, Linda
To: 'Robbins David'
Sent: 5/24/2005 7:31:43 PM
Subject: RE: Question from the FCC
Attachments: FCC Download Gap-Affected TMs_052505.doc

David:

Here is my write up on the TMs still affected. These numbers are valid as of today.

Let me know if you have any questions.

Regards,

Linda Miller
Program Manager
FTC DNC Registry
AT&T Government Solutions
1900 Gallows Road
Vienna, Va 22192
703 506-5235

This e-mail is provided for discussion only. Any contract modification is contingent upon AT&T and the FTC entering a written agreement signed by authorized representatives of both parties setting forth the applicable prices, terms and conditions relating to specified AT&T products and services.

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

From: Robbins David [mailto:DR@BBINS@ftc.gov]
Sent: Monday, March 14, 2005 2:19 PM
To: Miller, Linda
Subject: RE: Question from the FCC

Linda,

I wanted to follow-up with you on this issue.

I agree that the first priority should be to identify those TMs that may still be affected. Please let me know when you think this will be completed.

Best regards,

David

David B Robbins
General Attorney & Program Manager
Federal Trade Commission
Bureau of Consumer Protection
Division of Planning & Information
600 Pennsylvania Avenue, NW, H-296
Washington, DC 20580
(202) 326-3747
drobbins@ftc.gov

**DEFENDANT'S
EXHIBIT
DTX-348**

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

From: Miller, Linda [mailto:lindabmiller@att.com]
Sent: Thursday, March 10, 2005 5:37 PM
To: Robbins David
Subject: RE: Question from the FCC

AT&T
DEP. EX. NO. 21
FOR I.D., AS OF 9-6-12 *pv*

AT&T CONFIDENTIAL

ATT008464

JA011386
010168

> David:

>

> AT&T was aware of the one day gap problem on 12/29/03 and Marjorie

> Windelberg notified Sharon Flynn

> the next day, 12/30/03. I am not aware of any subsequent request for

> information or action by the FTC on this matter.

>

> There were two fixes implemented one on January 8, 2004 and one on

> January

> 18, 2004.

>

> What AT&T did to address the defect:

>

> * Changed the full download so that it would no longer excluded

> the

> phone numbers registered the day before.

>

> * Changed the logic of the delta so that it would get everything

> back

> to and including phone numbers registered the day before the last

> download

> whether that was a full or a delta.

>

> * Help Desk told telemarketers that the safest course was to

> download

> the full file. Please note, I do not believe a general TM announcement

> was

> made but rather TMs were notified if they contacted the help desk.

>

> I have reviewed your requests for information. Due to the significant

> amount of information being requested it will take quite a while to

> compile.

> However, I have provided specific answers to your questions below, as

> well

> as a recommendation, in advance of providing the additional

> information,

> if required.

>

> 1. Did the fix that was implemented December 18, 2003 include

> something

> that would add the registrations the TMs did not receive, into their

> next

> change list download?

> RESPONSE: No, it fixed the code problem but did not

> retroactively

> address any TMs downloads.

>

> 2. Can you tell me the number of TMs that would have been affected by

> this problem?

> RESPONSE: This requires an extensive research effort. See

> recommendation below.

>

> 3. Can you tell me the number of TMs that are still affected by this

> problem?

> RESPONSE: This requires an extensive research effort. See

> recommendation below.

>

> 4. Quantify the number of Registrations that were missed due to the

> 1-day

> gap.

> RESPONSE: This requires an extensive research effort. See

> recommendation below.

>

> 5. Quantify the number of Registrations that are still missing due to

> the

> 1-day gap.

> RESPONSE: This requires an extensive research effort. See

AT&T CONFIDENTIAL

ATT008465

JA011387
010169

> recommendation below.

>

> 6. Identifying specific TMs who were affected and the specific dates that

> apply.

> RESPONSE: This requires an extensive research effort. See

> recommendation below.

>

> Recommendation:

>

> I propose that we concentrate on those TMs that still might be affected.

>

> First, AT&T would identify the TMs that had their only full download before 12/12/03. The listing would be sent to the FTC for review.

>

> Second, FTC can determine what TM notification would be appropriate for the affected TMs and prioritize the TMs that need to be researched.

>

> Third, AT&T would identify the registered telephone numbers that were not reported for the specific TMs, per FTC's priority ranking.

>

> Let me know how you would like to proceed.

>

> Below are emails to Sharon Flynn:

>

> -----Original Message-----

> From: Windelberg, Marjorie L. GVSOL

> Sent: Friday, January 09, 2004 12:57 PM

> To: 'Sharon Flynn (E-mail)'

> Cc: Gardner, Charles M (Mack), GVSOL

Subject: RE: RE: Case 16678 - MBNA Marketing Systems, Inc.

> Sharon,

>

> I wanted to close the loop on this.

This

> was installed and working on

> January 6.

>

> *** Marjorie

>

> > -----Original Message-----

> > From: Windelberg, Marjorie

> > Sent: Tuesday, December 30, 2003 2:56 PM

> > To: Sharon Flynn (E-mail)

> > Cc: Gardner, Mack

> > Subject: RE: Case 16678 - MBNA Marketing Systems, Inc.

> >

> > Sharon,

> >

> > I got your voicemail about Call Compliance

> > a short time ago, while Mack

> > and I were writing up an explanation of

> > the download problem for you,

> > which we heard about from MBNA Marketing

> > through the Help Desk.

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ATT008466

JA011388
010170

> >
> > We've determined that there's a
> "missing-day problem" with a full list
> > download followed by a change list
> download. We are coding a fix and plan
> > to have it installed by January 7.
> >
> > The fault impacts companies using
> change-list downloads to supplement the
> > full-list downloads. As of December
29,
> change lists had been used 2,477
> > times.
> >
> > Here is a summary of the problem using
an
> example:
> > If a customer registers a phone number
on
> December 11, that registration
> > is time-stamped as active as of
00:00:00
> on December 12. Therefore, if a
> > telemarketer downloads a full file on
> December 12, the 12/11 registrations
> > won't be included because their
> "registration date" is 12/12.
> >
> > When the TM downloads change lists the
> software looks at the "transaction
> > date" starting with December 12
because
> that was the date of the full
> > download. Therefore, the transaction
that
> actually occurred on 12/11
> > would not be included.
> >
> > Marjorie
> > Marjorie Windelberg, Ph.D.
> > AT&T Government Solutions
> > Office: 703-506-5388
> > windelberg@att.com
> >
>
>
> Regards,
>
> Linda Miller
> Program Manager
> FTC DNC Registry
> AT&T Government Solutions
> 1900 Gallews Road
> Vienna, Va 22182
> 703 506-5235
>
> This e-mail is provided for discussion only. Any contract modification
is
> contingent upon AT&T and the FTC entering a written agreement signed
by
> authorized representatives of both parties setting forth the
applicable
> prices, terms and conditions relating to specified AT&T products and
> services.
>
>
> -----Original Message-----
> From: Robbins David [mailto:DROBBINS@ftc.gov]

AT&T CONFIDENTIAL

ATT008467

JA011389
010171

> Sent: Wednesday, March 09, 2005 5:45 PM
> To: Miller, Linda
> Subject: RE: Question from the FCC
> Importance: High
>
>
> Linda,
>
> Here is a summary of the additional information I would like:
>
> 1. The Missing Day - Did the fix that was implemented December 18, 2003
> include something that would add the registrations the TMs did not
> receive, into their next change list download? For example, if I was
a
> TM who did a full download on 9/4/2003, and then did a change list
> download on 11/18/2003 (which would have missed the consumer
> registrations from 9/4/2003), and then I did another change list
> download on 2/18/2004; did the fix add the 9/4/2003 registrations into
> my download on 2/18/2004?
>
> 2. Quantify TMs that were affected - Can you tell me the number of
TMs
> that would have been affected by this problem? I think this would
> require a count of the number of TMs who were doing change list
> downloads prior to 12/19/2003. However, I need to ask that you let me
> know what you think will be the best way to quantify this.
>
> 3. Quantify TMs that are still affected - Can you tell me the number
of
> TMs that are still affected by this problem? I think this would
require
> a count of the number of TMs who were doing change list downloads
prior
> to 12/19/2003, and who have a current subscription, and who have not
> done a full list download since 12/19/2003. However, I need to ask
that
> you let me know what you think will be the best way to quantify this.
>
> 4. Quantify the number of Registrations that were missed due to the
> 1-day gap - Can you quantify the number of consumer registrations that
> were not provided to TMs, but which should have been provided?
>
> 5. Quantify the number of Registrations that are still missing due to
> the 1-day gap - Can you quantify the number of consumer registrations
> that TMs are still missing?
>
> 6. Identifying specific TMs who were affected and the specific dates
> that apply - would it be possible to provide the FTC with a list of
> specific TMs that experienced the 1-day gap, along with the specific
> days they would have missed? I am assuming this type of info will be
> very important to our enforcement team, and am simply asking if it is
> possible to produce this type of info.
>
> 7. Was FTC informed - I know that we discussed this, but I need to
ask
> you to review your files and let me know if FTC was informed. FYI, I
> spoke with David Torok, and he does not recall this issue.
>
> With that said, the purpose of most of these questions is to try and
> gain a better sense of the impact of this issue, and whether there are
> any lingering effects. If you feel there is a better, more cost
> effective, or more expeditious way to quantify the effects, then I ask
> that you not hesitate to let me know, and/or offer alternative
> suggestions.
>
> I have not had an opportunity to discuss this with either the FCC or
our

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ATT008468

JA011390
010172

> enforcement team. I am sure that they will both have questions, which
> will require your help to answer.
>
> As always, your help is much appreciated, and I ask that you not
> hesitate to let me know if you have any questions or comments.
>

> Best regards,

> David

>
> David B Robbins
> General Attorney & Program Manager
> Federal Trade Commission
> Bureau of Consumer Protection
> Division of Planning & Information
> 600 Pennsylvania Avenue, NW, H-286
> Washington, DC 20580
> (202) 326-3747
> drobbins@ftc.gov
>
>
>

> -----Original Message-----

> From: Miller, Linda [mailto:lindabmiller@att.com]
> Sent: Tuesday, March 08, 2005 4:42 PM
> To: Robbins David
> Subject: RE: Question from the FCC
>
>

> David:

>
> My review and investigation of the FCC issue has been completed. See
> attached for my findings.
>

> Regards,

> Linda Miller
> Program Manager
> FTC DNC Registry
> AT&T Government Solutions
> 1900 Gallows Road
> Vienna, Va 22182
> 703 504-5235
>
>

> This e-mail is provided for discussion only. Any contract modification
> is
> contingent upon AT&T and the FTC entering a written agreement signed
> by
> authorized representatives of both parties setting forth the
> applicable
> prices, terms and conditions relating to specified AT&T products and
> services.
>
>

> -----Original Message-----

> From: Robbins, David [mailto:DROBBINS@ftc.gov]
> Sent: Tuesday, February 08, 2005 7:37 AM
> To: Miller, Linda
> Subject: RE: Question from the FCC
>
>

> Linda,

>
> FYI, we sent a new disk via fedex yesterday. You should receive it
> today.
>

> Best regards,

>

AT&T CONFIDENTIAL

ATT008469

JA011391
010173

> David
>
> David B Robbins
> General Attorney & Program Manager
> Federal Trade Commission
> Bureau of Consumer Protection
> Division of Planning & Information
> 600 Pennsylvania Avenue, NW, H-286
> Washington, DC 20580
> (202) 326-3747
> drobbins@ftc.gov
>
>
>
> -----Original Message-----
> From: Miller, Linda [mailto:lindabmiller@att.com]
> Sent: Thursday, January 27, 2005 5:24 PM
> To: Robbins, David
> Subject: FW: Question from the FCC
> Importance: High
>
>
> David:
>
> I started the investigation of the missing 4 telephone numbers. The
> CD-ROM
> with the full download file (9/0?) that you provided to me on Tuesday,
> 1/25
> is corrupt and can't be opened. If you can send another copy, I sure
> would
> appreciate it.
>
> Regards,
>
> Linda Miller
> Program Manager
> FTC/DMC Registry
> AT&T Government Solutions
> 1800 Gallows Road
> Vienna, Va 22182
> 703 506-5235
>
> This e-mail is provided for discussion only. Any contract modification
> is
> contingent upon AT&T and the FTC entering a written agreement signed
by
> authorized representatives of both parties setting forth the
applicable
> prices, terms and conditions relating to specified AT&T products and
> services.
>
>
>
>
> > -----Original Message-----
> > From: Miller, Linda
> > Sent: Wednesday, January 05, 2005 4:56 PM
> > To: David Robbins (E-mail)
> > Subject: FW: Question from the FCC
> >
> >
> > David:
> >
> > When a consumer registers, the phone number is captured in the
> Transaction
> > Table and the Registration Table.
> >
> > The Registration Table is really a denormalized table specifically

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ATT008470

JA011392
010174

> > designed and populated to support the building of the download files.

> In

> > other words the data there is not raw data, but massaged data.

> designed to

> > support the way the application works. Data in the Transaction table.

> on

> > the other hand, is the actual raw data. While the date in the Transaction

> > Table reflects the date/time of the actual transaction submitted by the

> > consumer, the date in the Registration Table is set to 12 a.m. midnight of

> > the day following the actual registration event.

> >

> > So if a consumer's telephone number was registered at 3 p.m. on Jan. 2,

> > 2005, the registration date-timestamp, which is recorded in the Transaction Table, will be 3 p.m., Jan. 2, 2005; however, the record in

> > the Registration Table will be 12 a.m. midnight, Jan. 3, 2005. The data

> > provided below in the email stream is from a query against the Registration Table, showing the registration date-timestamp to be 12 a.m.

> > midnight of the day following the actual registration event.

> >

> > The download files are generated based on the Registration Table data.

> and

> > the registration date for a phone number will always differ between the

> > two tables by one day.

> >

> > FYI, Sentinel looks at dates in the Transaction table.

> >

> > Hope this clarifies the situation.

> >

> > This e-mail is provided for discussion only. Any contract modification

> is

> > contingent upon AT&T and the FTC entering a written agreement signed

> by

> > authorized representatives of both parties setting forth the applicable

> > prices, terms and conditions relating to specified AT&T products and

> > services.

> >

> > Regards,

> >

> > Linda Miller

> > Program Manager

> > FTC ENC Registry

> > AT&T Government Solutions

> > 1900 Galloway Road

> > Vienna, Va 22182

> > 703 506-5235

> >

> >

> > -----Original Message-----

> > From: Robbins, David [mailto:DROBBINS@ftc.gov]

> > Sent: Thursday, December 20, 2004 9:11 AM

> > To: Miller, Linda

> > Subject: RE: Question from the FCC

> >

> >

AT&T CONFIDENTIAL

ATT008471

JA011393
010175

> > Linda,
> >
> > One last question on this:
> >
> > I noticed that in your previous email (see note below dated
> > 12/23/2004),
> > you show these numbers as having been registered on 9/5/2003.
> > However,
> > when I look these numbers up using our Sentinel system, they appear
to
> > have been registered on 9/4/2003. Do you know which date is
correct?
> > and why there is a difference?
> >
> > Best regards,
> >
> > David
> >
> > David B Robbins
> > General Attorney & Program Manager
> > Federal Trade Commission
> > Bureau of Consumer Protection
> > Division of Planning & Information
> > 600 Pennsylvania Avenue, NW, H-236
> > Washington, DC 20580
> > (202) 326-3747
> > drobbins@ftc.gov
> >
> >
> >
> > -----Original Message-----
> > From: Miller, Linda (mailto:lindabmiller@att.com)
> > Sent: Thursday, December 30, 2004 1:57 AM
> > To: Robbins, David
> > Subject: FW: Question from the FCC
> >
> >
> > David:
> >
> > Confirmed. A number that was registered on 9/4/2003, would have
been
> > in
> > the
> > 9/5/2003 download file.
> >
> > This e-mail is provided for discussion only. Any contract
modification
> > is
> > contingent upon AT&T and the FTC entering a written agreement signed
> > by
> > authorized representatives of both parties setting forth the
> > applicable
> > prices, terms and conditions relating to specified AT&T products and
> > services.
> >
> > Regards,
> >
> > Linda Miller
> > Program Manager
> > FTC ENC Registry
> > AT&T Government Solutions
> > 1900 Gallows Road
> > Vienna, Va 22182
> > 703 506-5235
> >
> >
> >
> > -----Original Message-----

AT&T CONFIDENTIAL

ATT008472

JA011394
010176

> > From: Robbins, David [mailto:DROBBINS@ftc.gov]
> > Sent: Wednesday, December 29, 2004 2:27 PM
> > To: Miller, Linda
> > Subject: RE: Question from the FCC
> >
> >
> > Linda.
> >
> > I wanted to know if a number that was registered on 9/4/2003, would
> > have
> > been in the 9/5/2003 download file.
> >
> > Given your answers to the questions I asked, it appears that this
> > would
> > be the case. Please confirm.
> >
> > Best regards,
> >
> > David
> >
> > David B Robbins
> > General Attorney & Program Manager
> > Federal Trade Commission
> > Bureau of Consumer Protection
> > Division of Planning & Information
> > 600 Pennsylvania Avenue, NW, H-206
> > Washington, DC 20580
> > (202) 326-3747
> > drobbins@ftc.gov

> > -----Original Message-----
> > From: Miller, Linda [mailto:lindabmiller@att.com]
> > Sent: Thursday, December 23, 2004 8:47 PM
> > To: Robbins, David
> > Subject: RE: Question from the FCC
> >
> >
> > Are you asking if the phone numbers that were registered on 9/5/03
> > would
> > be
> > in the 9/5/03 download?
> >
> > The download process is between 12:01AM and 3:00AM.

> > Linda
> >
> > -----Original Message-----
> > From: Robbins, David [mailto:DROBBINS@ftc.gov]
> > Sent: Thursday, December 23, 2004 3:06 PM
> > To: Miller, Linda
> > Subject: RE: Question from the FCC

> > Linda.
> >
> > Thanks for this. Can you clarify the following:
> >
> > - You mention that the numbers should have been in the download file
> > done on 9/23/2003. Would the numbers have been in the download for
> > 9/5/2002 as well? I assume that they would have been, given that
> > the
> > files are created every morning, but I just wanted to double check.
> >
> > - Do you know what time new download files are made available?
> >
> > As always, thank you for your help, and please do not hesitate to

AT&T CONFIDENTIAL

ATT008473

JA011395
010177

```

let
> me
> > know if you have any questions or comments.
> >
> > Best regards,
> >
> > David
> >
> > David B Robbins
> > General Attorney & Program Manager
> > Federal Trade Commission
> > Bureau of Consumer Protection
> > Division of Planning & Information
> > 600 Pennsylvania Avenue, NW, H-286
> > Washington, DC 20580
> > (202) 326-3747
> > drobbins@ftc.gov
> >
> >
> > -----Original Message-----
> > From: Miller, Linda [mailto:lindabmiller@att.com]
> > Sent: Thursday, December 23, 2003 2:43 PM
> > To: Robbins, David
> > Subject: FW: Question from the FCC
> >
> >
> > David:
> >
> > The phone numbers should have been on the download file done on
> > 9/23/2003
> > and on 11/21/2003.
> >
> > Every morning a new download file is created and all variations of
the
> > list
> > are generated (Global, State, Individual Area Codes).
> >
> > The files are replaced daily and are not archived. If a consumer
> > registers
> > their phone number before midnight, the phone number is on the next
> > day's
> > list.
> >
> > The change list (delta download) is slightly different because it is
> > initiated by the TM and customized based on the date ranges entered
> > and
> > subscribed Area Codes. This file contains information since the
last
> > full
> > or delta download the TM executed. This file is made available to
the
> > TM
> > after clicking on the link sent to them. This file is not archived.
> >
> >
> > Below are the registration records for the numbers provided.
> >
> > ----- 1st number
> > Phone number.....=>3309350385
> > reg date.....=>2003/09/05 00:00:00
> > grace date.....=>2003/12/05 00:00:00
> > exp date.....=>2008/09/05 00:00:00
> > ----- 2nd number
> > Phone number.....=>3342799379
> > reg date.....=>2003/09/05 00:00:00
> > grace date.....=>2003/12/05 00:00:00
> > exp date.....=>2008/09/05 00:00:00

```

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> > ----- 3rd number
> > Phone number.....=>7088959465
> > reg date.....=>2002/09/05 00:00:00
> > grace date.....=>2003/12/05 00:00:00
> > exp date.....=>2003/09/05 00:00:00
> > ----- 4th number
> > Phone number.....=>7732782657
> > reg date.....=>2002/09/05 00:00:00
> > grace date.....=>2003/12/05 00:00:00
> > exp date.....=>2004/09/05 00:00:00
> >
> > Phone number.....=>7732782657
> > reg date.....=>2004/12/12 00:00:00
> > grace date.....=>2005/01/12 00:00:00
> > exp date.....=>2009/12/12 00:00:00
> >
> > Thanks.
> >
> > Linda
> >
> > -----Original Message-----
> > From: Robbins, David [mailto:DROBBINS@fda.gov]
> > Sent: Wednesday, December 22, 2004 3:37 PM
> > To: Miller, Linda
> > Subject: Question from the FCC
> >
> >
> > Linda.
> >
> > I have been forwarded a question from the FCC pertaining to a
handful
> > of
> > registered numbers that they are being told did not appear in a
> > particular TM's download. But which should have been in the download
> > in
> > question. The telephone numbers are as follows:
> >
> > 1. 334 278-9379
> > 2. 330 925-0385
> > 3. 708 895-9465
> > 4. 773 278-2657
> >
> > Each of these numbers appears to have been registered on September
4.
> > 2002. However, the FCC has been told that they did not appear on a
> > particular TM's download taken September 5, 2002 and November 21,
2002.
> > Can you look into this and let me know the following:
> >
> > 1. Is there a way for you to determine the specific telephone
numbers
> > that appeared in a particular TM's download?
> >
> > 2. Can you check to see if these numbers are currently included in
> > the
> > downloads for the particular ACs?
> >
> > 3. Can you tell me whether these numbers were included in the
> > downloads
> > for the particular days in question with 100% certainty?
> >
> > I hope that this makes some sense.
> >
> > As always, thank you for your help, and please do not hesitate to
let
> > me
> > know if you have any questions or comments.
> >

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> > Best regards,
> >
> > David
> >
> > David B Robbins
> > General Attorney & Program Manager
> > Federal Trade Commission
> > Bureau of Consumer Protection
> > Division of Planning & Information
> > 600 Pennsylvania Avenue, NW, H-286
> > Washington, DC 20580
> > (202) 326-3747
> > drobbins@ftc.gov
>

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Linda Miller
Program Manager

Government Solutions, Inc.
1900 Gallows Road, 6th Fl.
Vienna, Virginia 22182
703 506-5235
703-356-5727 (fax)

May 25, 2005

Mr. David B Robbins
General Attorney & Program Manager
Federal Trade Commission
Bureau of Consumer Protection
Division of Planning & Information
600 Pennsylvania Avenue, NW, H-286
Washington, DC 20580

RE: FCC Investigation/Telemarketer Download Processing – Affected TMs

David:

In my March 10, 2005 email to you, I recommended we concentrate on TMs that still might be affected by the 2003 Download defect.

- First, AT&T would identify the TMs that had their only full download before 12/18/03. The listing would be sent to the FTC for review.
- Second, FTC can determine what TM notification would be appropriate for the affected TMs and prioritize the TMs that need to be researched.
- Third, AT&T would identify the registered telephone numbers that were not reported for the specific TMs, per FTC's priority ranking.

In your email dated, March 14, 2005, you agreed that the first priority should be to identify those TMs that may still be affected.

The following are the results of the continued research defining and identifying the TMs still affected. If you have any questions about the findings in this report, please let me know.

Regards,

Linda Miller
Program Manager - FTC DNC Registry
AT&T Government Solutions
1900 Gallows Road
Vienna, Va 22182

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Situation:

On December 18, 2003, AT&T implemented a fix to a defect in the download process. The defect is documented in ECP 2003-127TM and describes the potential hole in delta downloads.

"If a TM does a full download followed by a delta download, there will be a one-day gap in coverage. (There is no gap between full-to-full or between delta-to-delta.)"

Prior to the December 18 fix, the delta download logic selected phone numbers to include in the delta download dataset beginning on the *day of the previous download date*.

Part of the December 18 fix revised the delta download logic so that it would reach one day further back. This filled in the gap for profiles whose last download was a full download, but left a gap in place for profiles whose previous download was a delta. The other, and main part of the December 18 fix, was to revise the full download logic so that it would no longer omit phone numbers registered the day prior to that full download.

Impact:

The challenge is to identify the TMs that had their only full download before 12/18/03 and would still be affected by this gap.

Findings:

- Every profile that executed a full download prior to December 19, 2003, had a gap at some point -- the day prior to the download for the area code downloaded.
- All those profiles that executed a full download December 19, 2003, or later closed that gap.
- All profiles whose most recent download prior to December 19, 2003, was a full download also closed that gap, but opened another.
- The gap remains for active profiles that have done only delta downloads since December 18, 2003, if their last download prior to Dec. 19, was a delta.

A total of 20,656 profiles executed a full download prior to December 19, 2003. All but 114 of these have executed a full download on December 19, 2003 or later, and eliminated the gap.

The breakdown of the 114 profiles are still affected by this gap is:

- 79 Sellers (1 of these Sellers is serviced as a client by a TM)
- 34 TM/Independent
- 1 Exempt

Of the 114 profiles affected:

- 17 download globally
- 82 download less than ten area codes
- 15 downloaded between 10 and 143 area codes

See attachment 1 for details of the 114 Telemarketers. In addition, Attachment 2 is an example of how a gap affects a download.

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Recommendation:

AT&T has the following recommendations to address any issues that may arise as well as a preventative measure:

- In the event of a law enforcement issue regarding a TM, it would be advisable to request confirmation from AT&T if the TM had any download gaps.
- Enhance the download business rules to require telemarketers to do a full download at least once every 6 months.

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ATTACHMENT 1
Listing of 114 TMs Still Affected by Download Gap Defect

79 Sellers:

Alexandria Newspapers Inc., The Town Talk
Alta Mortgage Corporation
American Express Financial Advisors Inc.
American First Financial
American Income Life Insurance Company
American TV and Appliance
AMS Direct, Inc.
Apollo Group Inc
Asia Pacific Groups
Atlantic Coast Life Insurance Company
B&C Distributors
BankCard USA
Batdorff Real Estate, Inc.
Booth Newspapers, Inc.
BUILDERS and REMODELERS INC.
Carpenters Inc.d/b/a Carpenter's Water Treatm
CASCADE AUTOCENTER
Century 21 Agawam Albertson
College Loan Corporation
College Planning Solutions, Inc.
Courtesy Mortgage Company
Donald Jarrett Capital Management
Eagle Mortgage, Inc.
El Dia Inc.
ERA-Morrison Real Estate
Eric Sexton, REALTOR
Erickson Construction
Ernest McCarty Ford, Inc.
financial services of wisconsin inc
FIRSTCO MORTGAGE CORP
Five Star Ford
Gem Realty, llc
Golf Green Lawn Care
Grand Pacific Resorts
Greetings... Welcoming Service
Gulfstream International Realty Corporationa
Heritage Exterior Design
Hosoi Life Plan, Inc.
Inpro Insurance Agency
John Miles Chevrolet, Inc

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JONES & ASSOCIATES
 K & G DISTRIBUTING
 Kathy & Mike McElman
 Keller Williams Realty Puyallup
 KM Group LLC
 Mason-McDuffie of Texas, Inc. a Texas Corpora
 Mason-McDuffie Real Estate, Inc. A Nevada Cor
 Millers First Insurance Companies
 Monex Deposit Company
 NORTHEAST MORTGAGE CORPORATION
 Otsego Automotive & Otsego Mitsubishi
 Panhandle Financial Group
 Pensacola News Journal
 People's Community Mortgage Banc
 Peoples Health Network
 Peterson's Stampede Dodge
 Premier Properties of Mississippi, Inc
 Principal Life Insurance Company
 Realty World South Bay Associates
 Record Information Services, Inc.
 South Louisiana Publishing
 Springfield News-Leader
 Starwood Vacation Services, Inc.
 Telmedia
 The Allstate Corporation
 The Ann Arbor News
 The Grand Rapids Press As Seller
 The Hattiesburg American
 The Herald Company (DBA) Kalamazoo Gazette
 THE HUNTSVILLE TIMES
 The Muskegon Chronicle
 THE NEWS-PRESS
 The News-Star
 The Patriot-News
 TLS Distributors
 Today Real Estate, Inc.
 Trail Blazers Inc
 Windward Auto Sales, Inc.
 Your Vitamins, Inc.

34 TM/Independent:

Alliance Real Estate, Inc.
 Century 21 Exclusive
 Century 21 Mil-Matt
 Dan Temino @Remax Eastern
 Dougherty & Company LLC

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5.

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FAMILY BIZ, INC. D/B/A/ DIRECTBUY OF BERGEN C
Guardian Protection Services, Inc.
Happy Home Improvements Inc
Hart Funeral Home
hogan transfer and storage
Humana Inc.
J. C. Penney Corporation Inc.
Judson Enterprises, Inc., Dba K-Designers
Kelly M LeBlanc, DDS, PC
Kocak Insurance, P.C.
L D O'MIRE INSURANCE
MoniSolutions Mortgage
Panamerican Mortgage
Paul Thomas Funeral Home
Realty Executives of San Antonio : Donna Harr
Russell Woolman of RE/MAX of Bartlesville
Ryan Stuart
Sara Lee Corporation
SEARS PROTECTION COMPANY
senack real estate ltd
Success Marketing Inc.
Tardus Financial Services
TELECONTACTO INC
The Advertiser Company
The Brokerage House, Inc.
The RozierTeam
treasury mortgage
Windermere Real Estate/Cle Elum
Xante Corporation

1 Exempt:

Tropic-Air Conditioning, Inc.

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ATTACHMENT 2
Example of How Gap Affects a Download

Company A

11-01-2003 Full download, opens gap: 10-31-2003 registrations
12-01-2003 Full download, closes 10-31-2003 gap, opens 11-30-2003 gap
01-01-2004 Full download, closes 11-30-2003 gap

Company B

11-01-2003 Full download, opens gap: 10-31-2003 registrations
12-01-2003 Delta download, continues 10-31-2003 gap
01-01-2004 Delta download, continues 10-31-2003 gap, which will stay open until next full download.

Company C

11-01-2003 Full download, opens gap: 10-31-2003 registrations
12-01-2003 Full download, closes 10-31-2003 gap, opens 11-30-2003 gap
01-01-2004 Delta download, closes 11-30-2003 gap

Company D: (multi dimensional: multiple area codes, multiple gaps, opened/closed)

11-01-2003 Orders area codes: 703
11-01-2003 Full Download of 703, opens 10-31-2003 gap for AC 703
11-02-2003 Delta download of area code 703
11-03-2003 orders area code: 202
11-04-2003 Full download of 202, opens 11-03-2003 gap for AC 202
11-05-2003 Delta download, leaves 10-31 gap for 703 and 11-03 gap for 202
11-06-2003 Orders 724
11-07-2003 full download of 724, opens gap of 11-06
11-10-2003 full download of 724, closes 11-06 gap and opens 11-09 gap
01-05-2005 Delta download fills 724 gap but leaves the other two gaps
02-01-2005 full download of 202, fills 11-03 gap, leaves 10-31 gap
02-03-2005 full download of all ac fills remaining gap

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Limited Rights Legend

Solicitation: Contract No. 29-3-L-0010, AT&T Response to FCC TM Inquiry

Contractor: AT&T Government Solutions, Inc.

AT&T - PROPRIETARY

This document contains confidential, trade secret, commercial or financial information owned by AT&T Government Solutions, Inc. and is voluntarily submitted for evaluation purposes only. It is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) under Exemption (b) (4), and its disclosure is prohibited under the Trade Secrets Act (18 U.S.C. 1905).

CONTRACTOR INFORMATION

This information contained herein is not to be disclosed to any party outside the Government, except pursuant to a Non Disclosure Agreement between any third party and AT&T.

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EXHIBIT 540

EXHIBIT 540

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TX 102-010669

From: Williams, Margot
Sent: Friday, May 27, 2005 05:23 PM
To: Medina, Jeff
CC: Duffy, Mark; Bangert, Russell
Subject: RE: Retail Complaint

Jeff,

I forwarded this information to Regina Thomas for further investigation. We have received a few complaints for other issues on this retailer that have also been sent to her for review and assistance.

Margot W.
Retail Analyst III
Retailer Escalations

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

From: Medina, Jeff
Sent: Wednesday, May 25, 2005 4:21 PM
To: Williams, Margot
Subject: FW: Retail Complaint

Are these your boys again...?

Jeff

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

From: Duffy, Mark
Sent: Wednesday, May 25, 2005 4:13 PM
To: Medina, Jeff
Cc: Bangert, Russell
Subject: FW: Retail Complaint

Jeff:

Will you or someone on your Team assist Russell Bangert with this issue?

Thanks for your help.

Mark Duffy

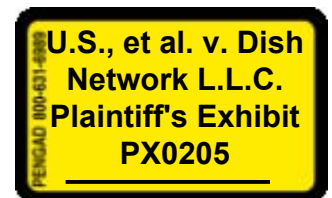
-----Original Message-----

From: Bangert, Russell
Sent: Wednesday, May 25, 2005 3:57 PM
To: Duffy, Mark
Subject: Retail Complaint

Mark,

Do you have any contacts in retail services that work on escalations?

We have a retailer... Star Satellite of Provo, Utah that is telemarketing using automated messages



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and our name instead of theirs. I have been getting some complaints about this from consumers thinking that this is us.

Any information you could provide me with would be a great help.

Thanks,

Russell

PX0205-002

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EXHIBIT 541

EXHIBIT 541



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

EchoStar Communications Corporation
9601 S. Meridian Blvd.
Englewood, Colorado 80112
Attn: Charles W. Ergen, Chairman EchoStar Communications Corporation

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☐ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

August 10, 2005 by 5:00 p.m.

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Allen Hile
600 Pennsylvania Ave., N.W.
Room 238
Washington DC 20580

5. COMMISSION COUNSEL

Russell Deitch
600 Pennsylvania Ave., N.W.
Room 238
Washington DC 20580

**U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX1131**

DATE ISSUED

7/21/05

COMMISSIONER'S SIGNATURE

[Signature]

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance*

I/We do certify that all of the documents required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this has not been submitted, the objection to its submission and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF TELEMARKETERS, SELLERS, SUPPLIERS, OR OTHERS

File No. 0123145

Nature and Scope of Investigation:

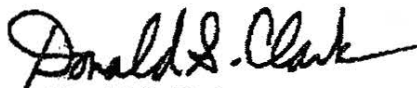
To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act 15, U.S.C. § 45, as amended; and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310, including but not limited to the provision of substantial assistance or support -- such as mailing lists, scripts, merchant accounts and other information, products or services -- to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq. and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: May 4, 2001

PX1131-003

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TX 102-010675

**CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR PRODUCTION OF DOCUMENTARY MATERIALS**

I. DEFINITIONS

As used in this Civil Investigative Demand, the following definitions shall apply:

A. "And," as well as "or," shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.

B. "Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any."

C. "CID" means this Civil Investigative Demand, including the following Schedule and the attached Resolution No. 0123145 "Resolution Directing Use of Compulsory Process in a Non-Public Investigation of Telemarketers, Sellers, Suppliers, or Others."

D. The "EchoStar" shall mean EchoStar Communications Corporation its wholly or partially owned subsidiaries, including but not limited to Dish Network, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, predecessors, affiliates, and all directors, retailers, officers, partners, employees, agents, consultants, franchisees, independent distributors, telemarketers, and any other person or entity, working for or on behalf of the foregoing.

E. "Document" shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, opened electronic mail, and computer material (including print-outs, cards, magnetic or electronic tapes, disks and such codes or instructions as will transform such computer materials into easily understandable form).

F. "Each" shall be construed to include "every," and "every" shall be construed to include "each."

G. "You" and "Your" is the person or entity to whom this CID is issued and includes the "EchoStar".

H. **"Person"** means any individual, group, unincorporated association, limited or general partnership, corporation or other business entity.

I. **"Relating to" or "Referring to"** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

J. **"Telemarketing Sales Rule"** means 16 C.F.R. § 310.

K. **"Telemarketing"** means a plan, program or campaign which is conducted to induce the purchase of goods or services or a charitable contribution by use of one or more telephones.

L. **"Dish Network"** is the satellite service provided by EchoStar.

II. DIRECTIONS

A. **Confidentiality:** This CID relates to an official, nonpublic, law enforcement investigation currently being conducted by the Federal Trade Commission ("FTC"). You are requested not to disclose the existence of this CID until you have been notified that the investigation has been completed. Premature disclosure could impede the FTC's investigation and interfere with enforcement of the law. Questions regarding the disclosure of the existence of this CID should be addressed to Russell Deitch at 202-326-2585.

B. **Applicable time period:** October 17, 2003 until the date of full and complete compliance with this CID.

C. **Claims of Privilege:** If any information called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld stating individually as to each item:

1. The type, specific subject matter, and date of the item;
2. The names, addresses, positions, and organizations of all authors and recipients of the item; and
3. The specific grounds for claiming that the item is privileged.

If only some portion of any item is privileged, all non-privileged portions must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim or privilege. 16 C.F.R. § 2.8A(b).

D. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The FTC may require the submission of additional information or documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document

destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; See also, 18 U.S.C. § 1505. If, for any specification, there are documents that would be responsive to this CID, but they were destroyed, mislaid, or transferred, describe the circumstances and date on which they were destroyed, mislaid, or transferred.

E. Petitions to Limit or Quash: Any petition to limit or quash this CID must be filed with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is fewer than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation.

F. Scope of Specifications: If you believe that the scope of any specification can be narrowed consistent with the FTC's need for information, you are encouraged to discuss such possible modifications of this request, including any modification of definitions and instructions, with Russell Deitch at 202-326-2585. All such modifications must be agreed to in writing by the FTC's staff.

G. Certification: The Company shall certify that all information required by the CID and in his or her possession, custody or control, has been produced and shall certify that the documents or information produced or identified in response to this CID are complete and accurate. This certification shall be made in the form set out on the back of the CID, or by a declaration under penalty of perjury as provided by 28 U.S.C. § 1746.

H. Scope of Search: Each specification in this CID seeks production of all responsive information in your possession or under your actual or constructive custody or control including, but not limited to information in the possession, custody, or control of other persons acting or purporting to act on your behalf (including, without limitation, attorneys, accountants, advisors, directors, officers and employees). **The scope of the search excludes any personally identifiable information concerning any subscriber within the meaning of the Cable Act, 47 USC § 551.**

I. Production: Production shall be made by making all responsive information available for inspection and copying by the FTC's staff at your principal place of business. Alternatively, you may elect to send via Federal Express or other overnight courier, all responsive information to: Nicholas Mastrocinque, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room 238, Washington, DC, 20580. Notification of your intention to use this alternative method of compliance shall be given by mail or telephone to Russell Deitch at 202-326-2585 at least five days prior to production.

J. **Identification of Information:** Information that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each item submitted, each specification to which the item is responsive. If any information responsive to this CID has been previously supplied to the FTC, you may comply with this CID by identifying the information previously provided and the date of submission.

K. **Production of Copies:** Unless otherwise stated, legible photocopies may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of original documents may be submitted in lieu of originals only if they are true and correct copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any FTC proceeding or court of law; and provided further that you shall retain the original documents and produce them to FTC staff upon request.

L. **Submission of Electronic Data**

The following guidelines refer to any documents that you choose to provide in electronic form. You must confirm with the FTC that the proposed electronic data formats and media types will be acceptable to the government.

(A) Magnetic and other electronic media types accepted

- (1) 3.5 inch microcomputer diskettes formatted for IBM compatible computers.
- (2) CD-R CD-ROMs formatted to ISO 9660 specifications.
- (3) DVD-ROM for Windows-compatible personal computers.
- (4) IDE and EIDE hard disk drives up to 300GB per drive, formatted in Microsoft Windows-compatible, uncompressed data.

Note: Other types of tape media used for archival, backup or other purposes such as 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes, DLT or other types of media **accepted only with prior approval.**

(B) File and record formats

- (1) E-mail: The FTC accepts MS Outlook PST files, MS Outlook MSG files, Lotus Notes NSF files. **Any other electronic submission of email accepted only with prior approval.**

(2) Scanned Documents: Image submissions accepted with the understanding that unreadable images will be resubmitted in original, hard copy format in a timely manner. Scanned documents must adhere to the following specifications:

(a) All images must be multi-page, 300 DPI - Group IV TIFF files named for the beginning bates number.

(b) If the full text of the document is available, that should be provided as well. The text should be provided in one file for the entire document or email, named the same as the first TIFF file of the document with a *.TXT extension.

Note: Single-page, 300 DPI – Group IV TIFF files may be submitted **with prior approval** if accompanied by an acceptable load file such as a Summation or Concordance image load file which denotes the appropriate information to allow the loading of the images into a document management system with all document breaks (document delimitation) preserved. OCR accompanying single-page TIFF submissions should be located in the same folder and named the same as the corresponding TIFF page it was extracted from, with a *.TXT extension.

(3) Other PC files: The FTC accepts word processing documents in ASCII text, WordPerfect version 10 or earlier, or Microsoft Word 2002 version or earlier. Spreadsheets should be in MS Excel 2002 (*.xls) version or earlier. Database files should be in MS Access 2002 or earlier. PowerPoint presentations may be submitted in MS PowerPoint 2002 or earlier. **Other proprietary formats for PC files should not be submitted without prior approval.** Files may be submitted using the compressed ZIP format to reduce size and ease portability. Adobe Acrobat PDF (*.pdf) may be submitted where the normal business practice storage method is PDF.

Note: Database files may also be submitted **with prior approval** as delimited ASCII text files, with field names as the first record, or as fixed-length flat files with appropriate record layout. For ASCII text files, field-level documentation should also be provided and care taken so that delimiters and quote characters do not appear in the data. The FTC may require a sample of the data to be sent for testing.

(C) Security

(1) All submissions of electronic data to the FTC must be free of computer viruses. In addition, any passwords protecting documents or files must be removed or provided to the FTC.

(2) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container: "MAGNETIC MEDIA – DO NOT X-RAY, MAY BE OPENED FOR POSTAL INSPECTION."

III. SPECIFICATIONS

Subject to the limitations set forth in Paragraph II H of the directions above, produce the following documents:

1. Magnetically recorded documents sufficient to show all telemarketing calls to consumers made by EchoStar relating to the marketing of Dish Network. These documents should include the telephone numbers, and the dates of the calls;
2. The names, addresses, and telephone numbers of all corporations, partnerships, sole proprietorships or other entities who market or have marketed Dish Network, and the dates during which the entities marketed Dish Network;
3. The names, addresses, and telephone numbers of all persons EchoStar has terminated or otherwise disciplined for violating the Telemarketing Sales Rule or company policies and procedures relating to telemarketing, and the dates and the reasons for the termination or discipline;
4. Notes, minutes, and other documents of meetings relating to EchoStar's monitoring and enforcement of any person's compliance with the Telemarketing Sales Rule;
5. All consumer complaints relating to calls to consumers on a state do not call registry, calls to consumers on the National Do Not Call Registry, calls to consumers who had requested not to be called, or pre-recorded calls;
6. All emails, memorandum, notes, letters, or other documents relating to Echostar's monitoring and enforcement of any person's compliance with the Telemarketing Sales Rule, including but not limited to, warnings issued to any person marketing Dish Network, and termination notices sent to any person marketing Dish Network;

7. All EchoStar Board minutes referring to the Telemarketing Sales Rule;
8. Copies of complaints and other legal filings from all cases brought against EchoStar or another person marketing Dish Network relating to calls to consumers on a state registry or the National Do Not Call Registry, requests by consumers not to be called, or pre-recorded calls;
9. A copy of the standard contract that EchoStar enters into with a person who will be marketing Dish Network;
10. Documents sufficient to show all marketing materials, directions, and support EchoStar provides to a person who will be marketing or is marketing Dish Network;
11. Documents sufficient to show all of EchoStar's policies and procedures relating to the Telemarketing Sale Rule;
12. An organizational chart for EchoStar listing all officers and their responsibilities; and
13. If EchoStar claims that it has not violated the Telemarketing Sales Rule, provide documents sufficient to support the claim.

EXHIBIT 542

EXHIBIT 542

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ECHOSTAR

SATELLITE L.L.C.

DANA E. STEELE, ESQ.
Direct Dial No. (303) 723-1621
Direct Fax: (303) 723-2571

August 12, 2005

VIA FACSIMILE (801) 437-6536

Daniel Myers
Star Satellite LLC
3550 N. University
Provo, UT 84606

Re: Notice of Claim; Demand for Defense and Indemnity
Jay Connor v. Star Satellite, LLC and DNSLLC
State of South Carolina, County of Charleston
Small Claims Case No.: 1005-SC-86-1746

Dear Mr. Myers:


As you may be aware, Jay Connor has filed the attached complaint against Star Satellite LLC and Dish Network Service L.L.C. ("DISH") for violation of the Telephone Consumer Protection Act for a prerecorded voice call made to Mr. Connor's residential telephone number on or about July 5, 2005.

It is our position that, pursuant to Section 7.1 of your Retailer Agreement, you are required, among other things, to use your best commercial efforts to further EchoStar's business, reputation and goodwill. Furthermore, pursuant to Section 13 of your Agreement, we are hereby requesting that Satellites and More defend and indemnify EchoStar from and against any and all costs Dish Network incurs therein.

Please contact me directly, upon receipt of this correspondence, at (303) 723-1621 so that we may discuss this matter further, as an Answer is due August 31, 2005.

Thank you for your attention to this matter. I look forward to working with you.

Sincerely,


Dana E. Steele
Corporate Counsel

cc: Robb Origer, Retail Services (w/o encl)
Michael Spencer, Regional Director (w/o encl)

9601 S. Meridian Boulevard • Englewood, CO 80112
Tel: (303) 723-1600 • Fax: (303) 723-1699

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