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Elizabeth A. Brown  
Clerk of Supreme Court

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

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

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

24 Defendants,

25 DISH NETWORK CORP., a Nevada Corp.,

26 Nominal Defendant  
27

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

**VOLUME 32 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>
543	09/22/2005	Letter from D. Steele to R. Deitch	10206
544	09/30/2005	Letter from H. Sribnick to L. Parnes	10210
545	09/30/2005	Email from M. Oberbillig to A. Ahmed et al.	10215
546	10/26/2005	Letter from A. Ahmed to E. W. Meyers et al.	10223
547	10/27/2005	Email from M. Oberbillig to A. Ahmed et al.	10225
548	11/03/2005	Email from M. Mills to E. Meyers	10230
549	12/20/2005	Retailer Audit Notification & Summary	10233
550	12/22/2005	Email from M. Mills to A. Ahmed	10236
551	12/29/2005	Email from T. Plumley to R. Bangert	10239

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 32 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 543

EXHIBIT 543

JA011427  
010206

TX 102-010689



Mr. Russell Deitch, Esq.  
September 22, 2005  
Page 1 of 3



DANA E. STEELE  
Direct Dial No. (303) 723-1621  
Direct Fax: (303) 723-2571

September 22, 2005

**Via Federal Express Delivery**

Russell Deitch, Esq.  
Commission Counsel  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room 238  
Washington, D.C. 20580

***Re: Civil Investigative Demand to EchoStar Communications Corporation***

Dear Mr. Deitch,

Per our prior conversations, please find enclosed the following in response to the CID issued by your office to EchoStar Communications Corporation ("EchoStar"), as modified during such conversations. Such items are being produced in confidence as designated below in accordance with your letter of September 15, 2005, the Federal Trade Commission Act and the Commission's Rules of Practice.

1. 1 DVD with listings of all outbound telemarketing calls made on behalf of EchoStar from October 17, 2003 through December 31, 2004\*  
(CONFIDENTIAL);
2. Photocopy of list of retailers terminated during relevant time period to the extent such information is available (not all reasons for terminations are listed and all terminations might not be included on this spreadsheet as such documentation is not required) (CONFIDENTIAL);
3. Employee training materials and compliance documents related to telemarketing and Telemarketing Sales Rule (CONFIDENTIAL);

\* A second DVD with the listing of calls from January 1, 2005 to the date of the CID request was damaged during copying and will be forwarded to you upon its completion.



PX0317-001

FTC/ECHOSTAR000001  
JA011428  
010207

FTC003-061743  
TX 102-010690

4. Consumer complaints regarding telemarketing reported to our consumer escalations and telemarketing groups, including:
  - a. Hard copies of complaints (**CONFIDENTIAL**);
  - b. Copies of screen shots of customer complaints (**CONFIDENTIAL**);
  - c. Copies of printed e-mails re: complaints (**CONFIDENTIAL**); and
  - d. 1 CD-ROM with electronic copies of e-mail complaints (**CONFIDENTIAL**);
5. Copies of communications with retailers regarding telemarketing violations in our possession (per our discussion, not all correspondence of this nature was retained);
6. Copies of complaints and other legal filings regarding telemarketing in our possession (excluding small claims matters);
7. Copies of templates of standard distributor and retailer contracts (**CONFIDENTIAL**);
8. "Fax Blast" sent to authorized retailers regarding telemarketing (**CONFIDENTIAL**);
9. Co-op advertising policies (**CONFIDENTIAL**); and
10. Listing of current officers and their responsibilities as well as list reflecting officers in 2004 and 2003.

Please be advised that the following items are currently being copied and will be produced as soon as possible:

1. A second DVD with the listing of calls from January 1, 2005 to the date of the CID request (original was damaged during copying);
2. A list of authorized EchoStar retailers (list discovered to be incomplete at time of copying); and
3. Copies of one week's worth of customer complaints and correspondence per your conversation with David K. Moskowitz (complaints are currently being scanned by a third party copying service).

PX0317-002

FTC/ECHOSTAR 000001429  
010208

FTC003-061744  
TX 102-010691

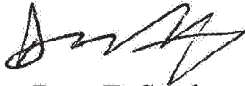
Mr. Russell Deitch, Esq.

September 22, 2005

Page 3 of 3

I look forward to answering any questions whatsoever you may have with regard to this production. Please contact me directly to discuss any questions or concerns. Thank you,

Sincerely,



Dana E. Steele  
Corporate Counsel

**PX0317-003**

FTC/ECHOSTAR00000130  
JA011430  
010209

FTC003-061745  
TX 102-010692

EXHIBIT 544

EXHIBIT 544

JA011431  
010210

TX 102-010693

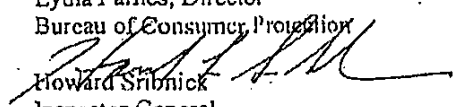


FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

September 30, 2005

MEMORANDUM

TO: Lydia Parnes, Director  
Bureau of Consumer Protection

FROM:   
Howard Sribnick  
Inspector General

SUBJECT: OIG Audit Survey of the Do Not Call Registry Scrubbing Process

DEFENDANT'S  
EXHIBIT  
**DTX-352**


The Office of Inspector General (OIG) recently completed an audit survey of procedures used by the Federal Trade Commission (FTC) to remove invalid numbers from the Do Not Call (DNC) Registry.<sup>1</sup> The objectives of this survey were to determine whether registered phone numbers were being improperly removed (scrubbed) from the registry, and to document the reason for their removal. To complete this objective, the OIG (i) reviewed criteria used by AT&T to scrub the registry, (ii) defined the role played by local phone companies in the scrubbing process, and (iii) determined whether the removals were made for reasons consistent with contractual agreements and program objectives.

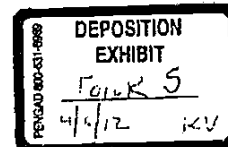
BACKGROUND

On September 18, 2002, the FTC issued final amendments to the Telemarketing Sales Rule, which established the National Do Not Call Registry (the Registry), permitting consumers to register their preference to block certain telemarketing calls. Consumers may register by phone or over the Internet. The number will stay on the Registry for five years unless it is disconnected or until the consumer requests that the number be removed. After five years, the consumer must renew his/her registration.

The law requires telemarketers to search the Registry at least every three months and avoid calling any phone numbers that are on the Registry. If a consumer continues to receive calls from

<sup>1</sup> A survey, as used in the auditing vernacular, refers to a process for gathering information about an organization, program, activity or function without detailed verification. Unlike audits, surveys are generally conducted within limited time frames. Survey outcomes often dictate whether, and to what extent, detailed audits will be performed.

EXH. NO. 6 FOR I.D.  
DATE: 9-13-12  
WITNESS:   
PATRICIA L. HUBBARD  
CFR NO 3400



AT&T DEP. EX. NO. 25  
FOR I.D., AS OF 9-6-12 p.v.

JA011432  
010211

telemarketers after s/he is on the Registry, then the consumer can file a complaint with the FTC. A telemarketer who disregards the Registry could be fined up to \$11,000 for each call.

In March 2003, the FTC awarded a contract to AT&T Government Solutions, Inc. (AT&T) to manage the Registry. Its responsibilities include providing a vehicle for consumers to place their name on the list, maintaining the Registry, and establishing a gateway for telemarketers to download telephone numbers. An important element of maintaining the Registry is to ensure that it contains only accurate and up-to-date telephone numbers. On a monthly basis, AT&T, through its subcontractor TARGUS, performs procedures to review the Registry and scrubs any numbers that, based upon pre-established criteria, are determined to no longer belong to the individual who placed the number onto the Registry.

As the Registry increased in size, the OIG began to receive a small number of complaints from consumers indicating that they had registered their phone number with the FTC but continued to receive prohibited calls and were unable to log their complaint when they attempted to do so. To their surprise, these consumers were informed that their phone number was not on the Registry. Based upon these complaints, the OIG performed an audit survey to determine if systemic weaknesses exist to warrant an audit of the Registry scrubbing process.

#### SCOPE AND METHODOLOGY

The OIG reviewed the control environment related to the Registry to document any weaknesses or potential weaknesses in the scrubbing process that would result in consumer phone numbers being scrubbed from the Registry without the consumer's knowledge or consent (e.g., an erroneous scrub).

Based on consumer complaints to the OIG, information collected from the FTC web page and discussions with program staff, the OIG developed a methodology to test whether the scrubbing process removed valid phone numbers along with valid scrubs. Consumers with whom we spoke explained that they did not request removal from the Registry, nor did they move or change phone numbers -- two conditions that would result in a legitimate scrub. Hence, we reasoned that an erroneous removal occurred.

During the course of our survey, we learned that AT&T was reporting to the FTC a relatively high incidence of "disconnects." This number represents consumers who never made it onto the Registry, but believed they had completed the process, e.g., the consumer entered the required information but failed to reply to the confirmation email sent shortly thereafter. A number cannot be added to the Registry without this confirmation reply. This could explain why consumers mistakenly thought they were on the Registry. Telemarketers, therefore, could continue to contact these individuals without violating any laws. The consumer, mistakenly believing that s/he was registered, would have the same potential for dissatisfaction with the Registry and the FTC as a consumer who had properly completed the registration process, but were later erroneously deleted from the Registry.

## PROCEDURES AND RESULTS

We performed a series of interviews with DNC managers, FTC IT personnel, AT&T and TARGUS representatives. Through these interviews we obtained an understanding of the control environment and how the overall process operates. In addition, we obtained monthly reports created by AT&T that reflected the activity of registrations, scrubs, and web incompletes both for the current period and cumulatively from the inception of the Registry. We also reviewed correspondence between FTC and AT&T regarding scrubbing issues since the inception of the Registry and how these issues were addressed. Based upon these procedures, we have determined the following:

- A formal and repetitive process exists to review the Registry each month to determine the phone numbers which should be scrubbed;
- This process appears to be functioning as described by all parties involved, although the formal process is not documented to a level that would be considered acceptable in the context of an audit;
- The total numbers "scrubbed" since the inception of the Registry is less than two percent of the total numbers registered. (Given that there are many reasons why a number would be scrubbed, we can conclude that a systematic problem with numbers being erroneously deleted does not exist.);
- Periodically, problems with unusually large numbers of web incompletes have occurred in the past. In each instance, both the FTC and contractor personnel have provided anecdotal evidence as to why the increase occurred; and
- The FTC and contractor staff actively monitored the performance and status of the Registry.

## CONCLUSION

The results of our survey do not indicate that large scale, systemic problems exist in the scrubbing process related to the Do Not Call Registry that would warrant a full scale audit at this time. As with any database, there are risks that errors may occur and go undetected. The lack of documentation surrounding the scrubbing process does increase the risk that the controls in place could deteriorate in the future and not be detected in a timely manner by FTC personnel and its contractors. However, the process as described to us during this survey does appear adequate based upon our understanding of the Registry. The lack of significant numbers of customer complaints supports this position on the performance of the Registry.

During the course of our work, the OIG discussed several suggestions as to additional tests or procedures to enhance controls over the scrubbing process. AT&T generally responded that the procedures could not be performed under the current process, or that significant additional cost would be incurred to perform the suggested procedures. Due to the lack of any evidence that large scale systemic problems exist, we would not recommend the incurrence of such a cost at this time.

We do recommend that the FTC continue to actively monitor the performance of the Registry. We specifically recommend that the web incompletes be monitored closely. Any future

occurrences of increased activity similar to what occurred in December 2004 should be investigated and the cause of the problem documented.

We also recommend that during the next renegotiation of the contract, the FTC include specific language giving it access to data, processes and controls with both the contractor and any subcontractors associated with Registry. Periodically, FTC staff should review these controls to ensure they are functioning properly.

I am available to discuss any aspects of this OIG audit survey.

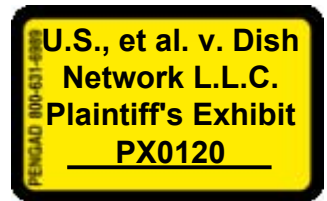


EXHIBIT 545

EXHIBIT 545

JA011436  
010215

TX 102-010698



**From:** Oberbillig, Mike </O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=MIKE OBERBILLIG>  
**Sent:** Monday, August 14, 2006 1:40 PM  
**To:** Oberbillig, Mike <Mike.Oberbillig@echostar.com>  
**Subject:** FW: Dish Network Auto Dialer calls [Indiana AG] - United Satellite -11450877  
**Attach:** voicemail.wav

---

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

From: Oberbillig, Mike  
Sent: Friday, September 30, 2005 5:26 PM  
To: Oberbillig, Mike; Ahmed, Amir; Steele, Dana; Novak, Scott; Mills, Mike  
Cc: Keller, Steven; Miller, Kerry; Gowland, Jim  
Subject: RE: Dish Network Auto Dialer calls [Indiana AG] - United Satellite -11450877 Team,

Instead of multiple e-mails let me itemize this out to confirm we are all on the same page & to provide an update of where we stand on this issue.

1/30/05: We called and placed an order at the 866-211-5897 number to confirm who the retailer was. The order was tracked via the account number in CSG and pointed us to United Satellite.

I talked with the entire United Satellite team (Bill King, Mike Gleason, Jacques Nenejian) this PM and covered each issue listed below, and played the attached wave file. I informed them about our concerns with telemarketing but also about call centers representing themselves as DISHNETWORK, and hiding where the calls were originating from. They stated they do use a second call center for overflow calls and web lead follow-up calls but that they do not represent themselves as Dishnetwork. I covered the details below with them and that the similarities of having a Quebec/Montreal number links the calls together and lead to United. They are calling the secondary call center and doing a full top/down procedure call with them. They want to be very open with us, and know the importance of following the law and in no way would they do anything to jeopardize the partnership we have. I informed them that any additional specific complaints we receive against them could lead to at a minimum a C&D or worse, a probation period that could lead to termination.

OUTLINE of Complaints:

1: 9/23/05 Marguerite M. Sweeney wrote a letter stating someone had called a co-worker using a dial 1 opt in service and stating they were DishNetwork but did not provide any detail info as to the number they were calling from etc. So we do not have any details if this is the same issue as below or even if it is the same company.

2: 9/26/05 Marguerite M. Sweeney wrote and provided detail of a similar complaint with the following issues:

number: 866-211-5897. I called it and they answer "Satellite Promotions". They claimed to be in Wyoming. This consumer's complaint did not specifically mention Dish Network. The consumer's caller-ID showed the same Montreal number 514-598-0000. Here is the script from the consumer's complaint. It's not the same press "1" transfer call described by my coworker. It does not specifically mention Dish Network. The commonality is that Montreal number.

The WAVE file was attached to this e-mail- At the end Billy states "thanks again for your on-line interest" This sounds like the consumer had provided info on a web site & they were calling them back. If this is a follow-up call from info the consumer provided on the web I do not believe it is a legitimate complaint.

**PX0120-001**

JA011437  
010216

3: 9/29/05 Scott Novak received a call at his home with the caller ID as Quebec. After further questions Scott determined they were in Nebraska. Stating they are DishNetwork.

Thanks

MJO

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

From: Oberbillig, Mike

Sent: Friday, September 30, 2005 11:15 AM

To: Oberbillig, Mike; Ahmed, Amir; Steele, Dana; Novak, Scott; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: RE: Dish Network Auto Dialer calls [Indiana AG] - United Satellite -11450877 Team,

I had one of my people call and sign up. The account number is 8255909485496498.

USAT085 Web DHA sale.

This is United Satellite- 11450877. Mike Mills I have called Jacques Nenejian the President and left a message. I will continue to follow-up with this account.

MJO

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

From: Oberbillig, Mike

Sent: Friday, September 30, 2005 8:43 AM

To: Ahmed, Amir; Steele, Dana; Novak, Scott; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Team,

He claims it is not him, and that any telemarketing that he does is done by the law and they have only called people who called into his center. He would like to have a call with Scott Novak so he can be very open about how they telemarket etc.

MJO

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

From: Ahmed, Amir

Sent: Friday, September 30, 2005 4:51 AM

To: Steele, Dana; Novak, Scott; Oberbillig, Mike; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

OK with me

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

From: Steele, Dana

Sent: Thursday, September 29, 2005 11:01 PM

To: Novak, Scott; Ahmed, Amir; Oberbillig, Mike; Mills, Mike

Cc: Keller, Steven; Miller, Kerry; Gowland, Jim

Subject: Re: Dish Network Auto Dialer calls [Indiana AG]

If we determine a probation period is appropriate rather than immediate termination, I recommend a probation period of one year terminable upon the first suspected offense in E\*'s sole discretion. Just my 2 cents.

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

Dana E. Steele

Corporate Counsel

EchoStar Satellite L.L.C.

P.O. Box 6655 (for regular mail)

**PX0120-002**

JA011438  
010217

Englewood, Colorado 80155  
9601 S. Meridian Blvd. (for FedEx/UPS)  
Englewood, Colorado 80112  
Phone (303) 723-1621  
Fax (303) 723-2571  
E-mail: dana.steele@echostar.com

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

From: Novak, Scott <Scott.Novak@echostar.com>  
To: Ahmed, Amir <Amir.Ahmed@echostar.com>; Oberbillig, Mike  
<Mike.Oberbillig@echostar.com>; Mills, Mike <Mike.Mills@echostar.com>  
CC: Keller, Steven <Steven.Keller@echostar.com>; Miller, Kerry  
<Kerry.Miller@echostar.com>; Steele, Dana <Dana.Steele@echostar.com>; Gowland, Jim  
<Jim.Gowland@echostar.com>  
Sent: Thu Sep 29 20:26:21 2005  
Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Humorously enough, guess who delivered an automated, recorded message to my home tonight -- delivering caller ID information from Quebec (false, Penny told me she was in Lincoln, Nebraska) -- stating first "this is the Digital Satellite Center, and then affirmatively "we are DISH Network" -- and refusing to give me a hard address, instead directing me to [www.dishnetwork.com](http://www.dishnetwork.com) where I could send an email .....

Attorney Client Privileged and Confidential

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

From: Ahmed, Amir  
To: Novak, Scott; Oberbillig, Mike; Mills, Mike  
Cc: Keller, Steven; Miller, Kerry; Steele, Dana; Gowland, Jim  
Sent: 9/26/2005 5:21 PM  
Subject: RE: Dish Network Auto Dialer calls [Indiana AG]  
Scott,

I prefer to put them on 30 or 60 day probation where if these tactics happen again it would be grounds for termination. So with that said, how does the letter get written up?

Amir

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

From: Novak, Scott  
Sent: Monday, September 26, 2005 1:24 PM  
To: Ahmed, Amir; Oberbillig, Mike; Mills, Mike  
Cc: Keller, Steven; Miller, Kerry; Steele, Dana; Gowland, Jim  
Subject: RE: Dish Network Auto Dialer calls [Indiana AG]  
We know that SSN is using autodialers and automessages. Terachi been warned time and again (by me, by you, by the region, by phone, in writing, in person) that these activities could violate the law. Last time, Teranchi blamed a "rogue employee," who he claimed was terminated,

**PX0120-003**

JA011439  
010218

but the activities continue. Charter knows he's doing it, and several state AG's know he's doing it as well.

In the past, we have successfully resisted the argument that we are responsible for the conduct of independent retailers, however, SSN is a problem because we know what he is doing and have cautioned him to stop. There is risk in continuing to give warnings without a follow-through action. Eventually, someone will try to use that against us.

On the range of options, you could give him another written warning, you could put him on probation for a period of time, you could put him on hold and withhold money (presumably to cover "potential fines" running from SSN to us under some agency theory), or you could terminate him now.

I favor probation, provided that there is unanimous understanding that if EchoStar becomes aware of ANY ONE addition violation, he's terminated.

Scott Novak

Corporate Counsel

(303) 723-1616

(303) 723-3606 (fax)

Attorney Client Privileged and Confidential

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

From: Ahmed, Amir

Sent: Monday, September 26, 2005 11:43 AM

To: Oberbillig, Mike; Mills, Mike

Cc: Keller, Steven; Novak, Scott; Miller, Kerry

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Scott, FYI

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

From: Oberbillig, Mike

Sent: Monday, September 26, 2005 11:08 AM

To: Ahmed, Amir; Mills, Mike

Cc: Keller, Steven

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

We have addressed this with him many times, as recent as last week in person/LA. We stressed that he must follow the line if he wants continued support etc.

MJO

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

From: Ahmed, Amir

Sent: Monday, September 26, 2005 10:00 AM

To: Mills, Mike; Oberbillig, Mike

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

Ok, apparently we could not convince Alex. Oberbillig, I'm so tired of this bullshit. I will deal with Novak and let legal handle it.

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

From: Mills, Mike

Sent: Monday, September 26, 2005 10:57 AM

To: Ahmed, Amir; Oberbillig, Mike

Subject: RE: Dish Network Auto Dialer calls [Indiana AG]

**PX0120-004**

**JA011440**  
010219

Yes - it is Satellite Systems.

Mike Mills

National Sales Manager

303.723.2865

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

From: Ahmed, Amir

Sent: Monday, September 26, 2005 10:53 AM

To: Oberbillig, Mike; Mills, Mike

Subject: FW: Dish Network Auto Dialer calls [Indiana AG]

Please call this number 866-211-5897 and find out if this is a OE retailer -----Original Message-----

From: Novak, Scott

Sent: Monday, September 26, 2005 10:51 AM

To: Ahmed, Amir

Cc: Miller, Kerry

Subject: FW: Dish Network Auto Dialer calls [Indiana AG]

Amir, this may be Alex Teranchi and Satellite Systems Networks again. They used "Satellite Promotions" and I recall them hosting a call center in Wyoming previously.

I'll let you know when we know for certain, but if it is SSN again, they are becoming a problem. You'll recall Charter got an injunction against SSN about six weeks ago.

Attorney Client Privileged and Confidential

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

From: Sweeney, Marguerite [mailto:MSWEENEY@atg.state.in.us]

Sent: Monday, September 26, 2005 8:40 AM

To: Novak, Scott; Conley, Amy

Cc: Hewitt, George

Subject: RE: Dish Network Auto Dialer calls  
Scott & Amy,

We received a similar complaint from a consumer who provided this number: 866-211-5897. I called it and they answer "Satellite Promotions". They claimed to be in Wyoming. This consumer's complaint did not specifically mention Dish Network. The consumer's caller-ID showed the same Montreal number 514-598-0000.

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

From: Novak, Scott [mailto:Scott.Novak@echostar.com]

Sent: Friday, September 23, 2005 4:14 PM

To: Sweeney, Marguerite; Conley, Amy

Cc: Hewitt, George

Subject: RE: Dish Network Auto Dialer calls

Marguerite, this sounds like some rogue outfit masquerading as us. We will verify again that we don't use "push 1 to speak to someone live" outbound marketing. To my knowledge we never have used that methodology.

We'd like to help figure out who this is. If your colleague can provide any additional information, we'd like to get it.

Thanks.

Scott Novak

**PX0120-005**

JA011441  
010220

Corporate Counsel  
(303) 723-1616  
(303) 723-3606 (fax)  
Attorney Client Privileged and Confidential

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

From: Sweeney, Marguerite [mailto:MSWEENEY@atg.state.in.us]

Sent: Friday, September 23, 2005 1:44 PM

To: Conley, Amy; Novak, Scott

Cc: Hewitt, George

Subject: Dish Network Auto Dialer calls

Scott and Amy:

One of my co-workers writes:

I just received [an autodialer call] at the house, and pressed "1" to speak with a representative, who confirmed that Dish Network to be the caller rather than an independent dealer. After a short discussion, I asked to speak to a manager, who also confirmed Dish Network as the caller, indicating that they worked in conjunction with several telephone companies and called only unlisted numbers and those who weren't on "no call" lists. I explained that the issue wasn't a DNC issue, but rather an autodialer issue, as autodialers are illegal in Indiana. The supervisor enlightened me by informing me that Dish Network had special permission to make the calls, that it was all approved by their legal department, and that it wasn't just Indiana that was being called, but 400,000 people all around the country, and Dish Network's legal department wouldn't let them do it if it weren't ok. Does this sound like an actual Dish Network telemarketing campaign? The number was not on the Indiana do-not-call list.

Marguerite M. Sweeney  
Chief Counsel - Telephone Privacy Enforcement  
Office of the Attorney General  
302 W. Washington St., 5th Floor  
Indiana Government Center South  
Indianapolis, IN 46204  
Telephone 317.232.1011  
Facsimile 317.232.7979 \_

**PX0120-006**

**JA011442**  
010221

voicemail.wav

UNSUPPORTED OR EXCLUDED FILE TYPE

**PX0120-007**

Confidential - U.S. v. DISH

JA011443  
010222

DISH5-0000111203  
**TX 102-010705**



EXHIBIT 546

EXHIBIT 546

JA011444  
010223

TX 102-010706



October 26, 2005

**VIA FACSIMILE ONLY (801-437-6536)**

Walter "Eric" Meyers  
Daniel R. Meyers  
Star Satellite L.L.C.  
5250 Edgewood Dr.  
Ste. 150  
Provo, UT 84606

Re: EchoStar Retailer Agreement, Non-Incentivized Retailer Agreement and  
Telemarketing/Do-Not-Call Laws

Dear Eric and Daniel:

Further to our conversation yesterday, among other issues, EchoStar Satellite L.L.C. ("EchoStar") has received an inquiry from the Offices of Congressman Fred Upton of the State of Michigan's 6<sup>th</sup> Congressional District concerning telemarketing activities apparently being conducted by your company. You have confirmed that you have halted all telemarketing activities involving persons named on the National Do-Not-Call Registry as necessary to comply with applicable telemarketing/do-not-call and other laws.

Please be advised that your EchoStar Retailer Agreement and Non-Incentivized Retailer Agreement ("collectively, the "Retailer Agreements") require, among other things, that you not engage in any activity or business transaction which could be considered unethical or damaging to EchoStar's image or goodwill in any way and that you comply with all applicable laws (Section 9.1). Failure to comply with applicable laws will result among other things in the termination of the Retailer Agreements (Section 10.4) and could result in the obligation for your company to indemnify and defend EchoStar and others if your activities result in Claims (as defined in Section 13).

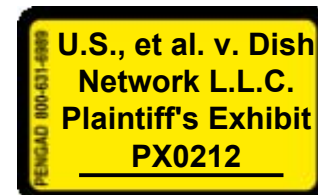
EchoStar reserves all rights and remedies available to it under contract (including without limitation the Retailer Agreements), at law, in equity or otherwise.

Sincerely,

A handwritten signature in black ink, appearing to read "Amir Ahmed", is written over a horizontal line.

Amir Ahmed  
Senior Vice President

c.c. Randy Anderson, Recreational Sports & Imports, Inc.



FTC/ECHOSTAR (TENAYA) 0000069

PX0212-001

JA011445  
010224 P.01

FTC306-029715  
TX 102-010707

EXHIBIT 547

EXHIBIT 547

JA011446  
010225

TX 102-010708

**From:** Oberbillig, Mike  
**Sent:** Tuesday, January 30, 2007 5:44:16 PM  
**To:** Werner, Bruce  
**Subject:** FW: TELEMARKETING

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

From: Oberbillig, Mike  
Sent: Thursday, October 27, 2005 2:36 PM  
To: Ahmed, Amir; Fiedler, Leslie; Willis, Chris; Keller, Steven  
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis  
Subject: RE: TELEMARKETING

Team,

Verified it was SSN. Spoke with Alex directly about this situation. This customer was a past customer of SSN and had purchased DirecTV. SSN had recently started outbound calling all of their 155K past DirecTV customer sales. These customers are scrubbed against the most recent do-not-call-lists.

I informed Alex that he must STOP using message broadcasting and leaving messages even if he has followed do not call lists, and even if he has a prior relationship with that customer, and is following Federal telemarketing guidelines. I informed him he must follow DISHNETWORK guidelines and stop using this form of mining immediately.

Alex agreed and understood that we do not allow this.

MJO

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

From: Ahmed, Amir  
Sent: Thursday, October 27, 2005 9:53 AM  
To: Oberbillig, Mike; Fiedler, Leslie; Willis, Chris; Keller, Steven  
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis  
Subject: RE: TELEMARKETING

Either way, both accounts are yours and I need it fixed. The sacramento office wanted United, well now I will end up terminating them and that is not good.

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

From: Oberbillig, Mike  
Sent: Thursday, October 27, 2005 10:51 AM  
To: Ahmed, Amir; Fiedler, Leslie; Willis, Chris; Keller, Steven  
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis  
Subject: Re: TELEMARKETING

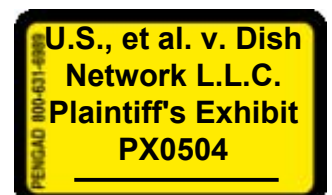
I will verify. But the last time this issue came up it was not ssn- but united. I will call both accounts and verify with all which account this is.

Thanks  
MJO

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

From: Ahmed, Amir <Amir.Ahmed@echostar.com>  
To: Fiedler, Leslie <Leslie.Fiedler@echostar.com>; Willis, Chris <Chris.Willis@echostar.com>; Oberbillig, Mike <Mike.Oberbillig@echostar.com>; Keller, Steven <Steven.Keller@echostar.com>  
CC: Mills, Mike <Mike.Mills@echostar.com>; Jessen, Nicholas <Nicholas.Jessen@echostar.com>; Patrick, Francis <Francis.Patrick@echostar.com>  
Sent: Thu Oct 27 10:38:19 2005  
Subject: RE: TELEMARKETING

Mike and Steve,



JA011447  
010226

**PX0504-001**

Confidential - U.S. v. DISH

DISH11-029661

**TX 102-010709**

This is Alex's last chance. Fix it or he gets a letter and will lead to termination. It's that simple.

---

From: Fiedler, Leslie  
Sent: Thursday, October 27, 2005 10:36 AM  
To: Ahmed, Amir; Willis, Chris  
Cc: Mills, Mike; Jessen, Nicholas; Patrick, Francis  
Subject: RE: TELEMARKETING

I called 800-375-8072. They answer the phone as "Satellite Promotions" or as "Promotions Department". They have "the best deals that you cannot get with a local retailer". Jeffery, the CSR that I spoke to, claimed that I could get a 2 DVR system for free after I paid the activation fee, but I'd have to pay over \$120 if I went with a local retailer.

I asked him if they represented any specific DISH Network retailers and he said no. When pressed, he stated that they were "the corporate offices of DISH Network". Jeffery's direct line number is 800-338-3409 x137. I am supposed to be getting approval from my boyfriend before setting up my system.

This is Satellite Systems Network. The initial message is "Thank you for calling the promotions department..." on both the number we have in the system, 800-615-0241 and the number the Jeffery gave me, 800-338-3409. Francis verified that SSN goes by Satellite Promotions with Patti, the customer service manager. This is Alex's call center.

Thanks,

Leslie Fiedler

Key Account Manager - Order Entry Retailers

Echostar Satellite LLC

(720) 514-5865

leslie.fiedler@echostar.com <mailto:leslie.fiedler@echostar.com>

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

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

From: Ahmed, Amir  
Sent: Thursday, October 27, 2005 10:19 AM  
To: Fiedler, Leslie; Willis, Chris  
Cc: Mills, Mike; Jessen, Nicholas  
Subject: FW: TELEMARKETING

Leslie,

Please look at the number below and let me know if it originated from an OE retailer.

**PX0504-002**

**JA011448**  
010227

Confidential - U.S. v. DISH

DISH11-029662

**TX 102-010710**

---

From: Carlson, Erik  
Sent: Thursday, October 27, 2005 8:43 AM  
To: Ahmed, Amir  
Subject: FW: TELEMARKETING

Looks like we have another retailer using telemarketing and not scrubbing their list. Can you look into this.

Also, do you have a process in place for approving telemarketing activity?

Erik

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

From: jeff lichtenstein [mailto:jlichtenstein@hotmail.com]  
Sent: Thursday, October 27, 2005 8:40 AM  
To: Carlson, Erik  
Subject: Re: TELEMARKETING

973-328-7600

PS. ANY THOUGHTS ON OUR CONVERSATION A FEW WEEKS AGO?

1-800-TECHNOSTORES  
JEFF LICHTENSTEIN  
85 Franklin Road Building 9B  
Hamilton Business Park  
Dover, New Jersey 07801  
(973)328-7600  
jeff@1800technostores.com

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

From: Carlson, Erik <mailto:Erik.Carlson@echostar.com>  
To: jeff lichtenstein <mailto:jlichtenstein@hotmail.com>  
Sent: Thursday, October 27, 2005 10:38 AM  
Subject: RE: TELEMARKETING

We will look into this. What number did this company contact you at?

Erik

**PX0504-003**

**JA011449**  
010228

Confidential - U.S. v. DISH

DISH11-029663

**TX 102-010711**

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

From: jeff lichtenstein [mailto:jlichtenstein@hotmail.com]

Sent: Thursday, October 27, 2005 7:32 AM

To: Carlson, Erik

Subject: TELEMARKETING

I WAS UNDER THE IMPRESSION THAT TELEMARKETING WAS PROHIBIT, ESPECIALLY RECORDED MESSAGES.

WE JUST RECEIVED A CALL TOUTING 1-800-375-8072

THEY CLAIM TO BE A SOUTHERN CALIFORNIA FIRM "SATELLITE PROMOTIONS"

MOST IMPORTANT WE ARE ON THE "DON NOT CALL" LIST AND THIS COULD EFFECT ECHOSTAR SHOULD THEY HIT SOME HOSTILE RECIPIENTS.

1-800-TECHNOSTORES  
JEFF LICHTENSTEIN  
85 Franklin Road Building 9B  
Hamilton Business Park  
Dover, New Jersey 07801  
(973)328-7600  
jeff@1800technostores.com

**PX0504-004**

**JA011450**  
010229

Confidential - U.S. v. DISH

DISH11-029664

**TX 102-010712**

EXHIBIT 548

EXHIBIT 548

JA011451  
010230

TX 102-010713



**Eric Myers**

**From:** Mills, Mike [Mike.Mills@echostar.com]  
**Sent:** Thursday, November 03, 2005 3:59 PM  
**To:** Eric  
**Cc:** Willis, Chris  
**Subject:** FW: Star Satellite Sales Script and Second Disclaimer after the OE Tool One.

Here are my comments/changes for the disclaimer. We are working on the sales script – we'll have something for you by COB tomorrow.

Mike Mills  
National Sales Manager  
303.723.2865

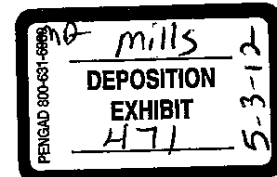
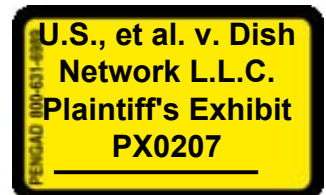
-----Original Message-----

**From:** Eric Myers [mailto:emyers@starsatllc.com]  
**Sent:** Wednesday, November 02, 2005 10:55 AM  
**To:** Mills, Mike; Willis, Chris  
**Subject:** Star Satellite Sales Script and Second Disclaimer after the OE Tool One.

Let me know if you need me to make any changes to these scripts. Also I haven't heard back can anyone give us better info on where to go or what to do when people in the tool are scheduled 14 to 21+ days out?

Let me know.

Eric Myers  
President  
Star Satellite LLC  
Phone 8014376524



FTC/ECHOSTAR (TENAYA) 00000210

3/14/2006

**PX0207-001**

**JA011452**  
010231

FTC003-074552

**TX 102-010714**

## Give 100% to get 80%!

### DISHclaim V1

This script must be read word for word and is expected to last a minimum of 5 minutes.

- My name is \_\_\_\_\_. I'll be confirming your order today; this call will be recorded for quality assurance.
- Is your name \_\_\_\_\_? Is your home address \_\_\_\_\_? Is your phone # \_\_\_\_\_?

#### Check List

- ✓ Are there any trees, buildings, or large obstacles to the south of your residence?
- ✓ The installation address is not a business, public place, or multiple family dwelling is it?
  - If you do not own the property, you will need to present written permission from your landlord to the installer.

Now I'll read the disclaimer...

- Did the salesman explain that you have been charged a non-refundable \$49.99 on your credit card today and a \$49.99 credit will be put on your first bill?
- Do you understand that we have placed a \$1.00 hold on your credit/debit card for the credit check which will be removed within 3 to 7 business days?
- Each of your receivers must be continuously connected to your same land-based phone line. A monthly \$4.99 additional Outlet Programming Access Fee applies to the second tuner of each DISH 322, DISH Player-DVR 625 or DISH Player-DVR 942 receiver. This fee will be waived on a monthly basis for each such receiver that DISH Network confirms has been continuously connected to Customer's same land-based phone line.
- The first receiver's rental fee is included in your basic programming package price. There is an additional \$5.00 per month rental fee per receiver beyond the first.
- Did you get a DVR or HD Receiver today?
  1. DVR Receiver - There is a monthly \$4.98 DISH Network DVR Service fee for each DVR receiver. There is no charge for the DISH Network DVR Service if subscribing to America's "Everything" Pak or Latino "Everything" Pak.
  2. HD Receiver - The DISH 811 HD and DISH Player-DVR 942 HD/DVR receivers require a subscription to the DISH Network "HD Pak" which is \$9.99 per month. If you have added the \$9.99 DISH Network "HD Pak", you will receive it "free" for 6 months. After this time, you will be billed for the current rate of \$9.99/mo.
- Are you aware that there is a 90-day installation warranty and a lifetime warranty on equipment?
- Dish Network needs 24-hour advance notice if you need to reschedule your installation
- Is it correct that you have signed up for an 18 month agreement to Digital Home Advantage which includes the Dish Home Protection Plan (over \$120 value) for the length of your agreement at no charge and if service is terminated there is a cancellation fee equal to \$13.33 multiplied by the number of months remaining in your agreement?
- All equipment remains the property of DISH Network and must be returned within fifteen days of account deactivation to DISH Network or you must pay an unreturned equipment fee which at a minimum is \$100 per receiver.
- Do you understand that you will receive 3 months of HBO, Showtime and Cinemax free for the first three months, and that you must call Dish Network in order to stop receiving these special channels?
- Please get a pen and paper to write down some information. (wait) Your monthly price will be broken down as follows:
  1. Do you have a pen? Please write this down: the name of your package is \_\_\_\_\_, which has about (Top 60, top 120, top 180, which includes local channels.) You must maintain the minimum of America's Top 60, DISH Latino, or Great Wall TV Package.
  2. Did you know that the price of your package is \_\_\_\_\_ for the first month? And that every month after that your package will be \_\_\_\_\_.
  3. First month basic programming package is free OR first three months will be discounted \$12/mo.
  4. Your first bill will be pro-rated for the current month as well as one month in advance
  5. It looks like we will be out between \_\_\_\_\_ and \_\_\_\_\_ on (Date). This means the technician will be out between those times. The whole installation process typically takes between 2-4 hours and you will be required to remain at home throughout the time of the installation. If you have any questions or concerns regarding your service you can call our customer service at 1-800-333-DISH(3474).

**Make sure they understand their pricing over the term of the contract.**

- We recommend that you do not disconnect your cable service until our service is activated and working properly.
- Do you have any specific questions for me about anything? Are there any of your favorite channels you want me to confirm are on your package?
- Are you aware that we offer a \$50 referral check for anyone who refers a friend and they sign up and get installed? Do you know anyone that might take advantage of this great offer? What is their name and phone #?

**SALESMAN & CONFIRMERS!!!** - If a salesman deletes the screen on the computer so the Confirmer cannot read the screen, or if the salesman, not the confirmer, pushes the "order now" button, the Confirmer must immediately contact management so the salesman can receive further training.

Confirmers, if you have any questions or concerns please ask a manager.

We no longer install any more than 5 TV's (1 back feed) or international channels (except Spanish or Chinese). Any sales rep found offering these items must be reported to the shift supervisor immediately. The goal of everything we now do with DISH Network is a minimum of 80% installation rate.

FTC/ECHOSTAR (TENAYA) 00000211

**PX0207-002**

**JA011453**  
010232

FTC003-074553

**TX 102-010715**

EXHIBIT 549

EXHIBIT 549

JA011454  
010233

TX 102-010716



## Retailer Audit Notification & Summary

Date: December 20, 2005 OE# 915995 ✓ AP# 153867 *334496*  
 Retailer Name: DISH TV NOW INC  
 Street Address: 1930 N POPLAR ST  
 City, State, Zip: SOUTHERN PINES, NC 28387  
 Phone/FAX: (800) 535-1929 FAX UNK  
 Primary Contact: DAVID HAGEN  
 E-mail Address: D.HAGEN@DISHTVNOW.COM;a.hagen@gatelinx.com  
 Region / Distributor: ATLANTA  
 Became a dealer in: June 18, 2001  
 Retailer Hold Status: On Hold 12/12/05 Hold Amount: \_\_\_\_\_  
 Hold Reason: Failure to Promote  
 Prior Violations / Audits: \_\_\_\_\_  
 Source of Information: NATIONAL ACCOUNTS

Primary Activations	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
	<u>485</u>	<u>2765</u>	<u>78,339</u>	<u>41,688</u>
	<u>9/05</u>	<u>10/05</u>	<u>11/05</u>	<u>12/05</u>
Primary Activations	<u>3473</u>	<u>2854</u>	<u>1806</u>	<u>683</u>
Churn DISH	<u>1.59%</u>	<u>1.66%</u>	<u>1.57%</u>	
Churn DISH TV Now	<u>3.03%</u>	<u>2.99%</u>	<u>2.83%</u>	
% Higher than DISH	<u>191%</u>	<u>180%</u>	<u>180%</u>	

CRP (Current Period Only) Yellow

### Profile Summary (CMO):

- Bill Suppression % N/A
- Returned Mail Count N/A
- Bill To (Y/N) N/A
- Duplicate House (Y/N) N/A
- First Pay Default (Count) N/A
- Minimum Programming % N/A

Infraction Summary: 1) Failure to Promote 2) Excessive Churn Rate

Chargeback: N/A

Recommendations: Termination – DeActivate 10303953 GFT Acct)

U.S., et al. v. Dish  
 Network L.L.C.  
 Plaintiff's Exhibit  
 PX1144

### Retail Services Review:

### GM Review:

Bruce Date \_\_\_\_\_

### Director Review:

Wager Date 11/19/06

### Legal Review & Approval:

### SVP Review & Approval:

KFO Date 11/19/06

PX1144-001

JA011455  
010234

**Auditor:**

**Audit started:**

**Audit finished:**

**Hours to complete:**

**Total accounts/claims audited:**

**Suspected fraud accounts/claims identified:**

**Promo Summary:**

- DHA
- CDDHA
- BDE
- FFA
- CDDFA
- FD
- CDFD
- AK/PR
- OTHER
- NO PROMO
- EXPIRED

**Sequence of Events (Date & Event):**

**Dec 20, 2005**      **No Audit was conducted. Based on a discussion with Mike Mills / National Accounts, termination was requested. Documentation includes guidance from Jim Gowland and Amir Ahmed.**

	<u>9/05</u>	<u>10/05</u>	<u>11/05</u>	<u>12/05</u>
<b>Primary Activations</b>	<b>3473</b>	<b>2854</b>	<b>1806</b>	<b>683</b>
<b>Churn DISH 1.59%</b>	<b>1.66%</b>		<b>1.57%</b>	
<b>Churn DISH TV Now</b>	<b>3.03%</b>		<b>2.99%</b>	<b>2.83%</b>

**PX1144-002**

**JA011456**  
010235

EXHIBIT 550

EXHIBIT 550

JA011457  
010236

TX 102-010719

**Mills, Mike**

**From:** Mills, Mike  
**Sent:** Thursday, December 22, 2005 4:54 PM  
**To:** Ahmed, Amir  
**Subject:** DISH TV Now Summary

Take a look – I included a very brief summary of the legal matter which I cut and paste from Dana Steele's explanation. That's about the best info I have to explain the legal part.

**Sales**

December Sales  
 5 – Through 12/18

**Account is on AR/AP hold for the following:**

- Chargebacks are outnumbering activations on a weekly basis
- DISH TV Now failed to retain legal representation (as promised) for a legal matter in which Echostar and DISH TV Now are named. Litigation overview - We were sued along with Dish TV Now ("DTVN") at the beginning of this year for allegations of multiple OH TCPA violations. DTVN agreed to indemnify 100% (to the tune of \$30k+), and was pursuing settlement, but apparently the settlement negotiations broke down, so litigation is continuing. The attorney retained by DTVN to defend both Dish and DTVN withdrew himself as counsel due to non payment by DTVN so Echostar is having to seek our own counsel.
- Due to the AP hold, their residual in the amount of 89,635.50 for December was withheld and has not paid.

**Communications with DISH TV Now (attached)**

- Email was sent to David Hagen from Mike Mills on 12/12 for a response to why their sales people are not pitching DISH Network and only pitching DirecTV. We had several secret shops to DISH TV Now that proved that they were only pitching DirecTV. NO RESPONSE
- Email was sent to David Hagen from Mike Mills on 12/16 for a response to why their sales people are not pitching DISH Network and only pitching DirecTV. NO RESPONSE

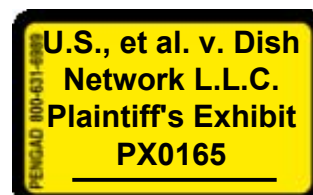
**Termination provisions**

Jim Gowland in legal identified four areas of the retailer agreement that can be utilized by Echostar to terminate the retailer relationship between Echostar and DISH TV Now. They are the following:

- if they cease to actively market our services for 20 consecutive days
- if they "indefinitely" cease to actively market our services
- Both parties have the right to terminate for convenience on 60 days notice
- If their churn rate is equal to or greater than 125% of our churn rate for subs generally

Though they are not "actively" marketing DISH Network with only 5 sales in December, the churn provision seems to be the best course of action. In the months of September, October and November, DISH TV Now's churn in comparison to DISH subs generally is:

	Sep-05	Oct-05	Nov-05
DISH	1.59%	1.66%	1.57%
DISH TV Now	3.03%	2.99%	2.83%
% higher DISH TV Now is Compared to DISH	191%	180%	180%



1/16/2006

**PX0165-001**
**JA011458**  
 010237

Confidential- U.S. v. DISH

 DISH-Paper-023288  
**TX 102-010720**

Let me know if you need any additional information.

Mike Mills  
National Sales Manager  
303.723.2865

1/16/2006

**PX0165-002**

JA011459  
010238

Confidential- U.S. v. DISH

DISH-Paper-023289  
**TX 102-010721**



EXHIBIT 551

EXHIBIT 551

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**From:** Plumley, Tobias  
**Sent:** Thursday, December 29, 2005 4:45 PM  
**To:** Bangert, Russell  
**Cc:** Binns, Todd  
**Subject:** RE: Casper and Cheyenne

This list was DNC scrubbed through the CRM. LTS leads do not go through the CRM and need to be DNC scrubbed through a different process which is not working.

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

**From:** Bangert, Russell  
**Sent:** Thursday, December 29, 2005 2:43 PM  
**To:** Plumley, Tobias  
**Subject:** RE: Casper and Cheyenne

To confirm... this was DNC scrubbed?

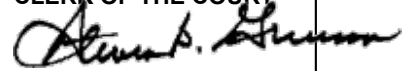
---

**From:** Plumley, Tobias  
**Sent:** Thursday, December 29, 2005 2:39 PM  
**To:** Bangert, Russell  
**Cc:** Jones, Lindsey  
**Subject:** Casper and Cheyenne

Russell,  
I have the Casper and Cheyenne files ready. I have placed them in the following folder:

Location: \\RIVERFRONT1\SHARED\Direct-Sales\SQL MKTG Batch\Export\Harlingen  
Filename:  
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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 33 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>
552	01/03/2006	Letter from Public Utility Commission of Texas to DISH Network	10241
553	02/09/2006	JSR Business Plan	10258
554	03/20/2006	Email from E. Carlson to J. DeFranco et al.	10260
555	04/12/2006	EchoStar Retailer Agreement with JSR	10265

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 33 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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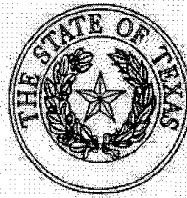
EXHIBIT 552

EXHIBIT 552

JA011465  
010241

TX 102-010727

Paul Hudson  
Chairman  
Julie Caruthers Parsley  
Commissioner  
Barry T. Smitherman  
Commissioner  
W. Lane Lanford  
Executive Director



*Public Utility Commission of Texas*

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PUBLIC UTILITY COMMISSION  
FILING CLERK

January 3, 2006

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Dish Network  
9601 South Meridian Blvd.  
Englewood, CO 80112

Re: P.U.C. Docket No. 32233; Notice of Violation by Dish Network of Texas  
Business & Commerce Code § 44.102 and P.U.C. SUBST. R. 26.37, relating to the  
Texas No-Call List and Report to Commission.

Dear Sir or Madam:

The purpose of this Notice of Violation ("NOV") is to notify you pursuant to P.U.C. PROCEDURAL RULE 22.246<sup>1</sup> that the Executive Director of the Public Utility Commission of Texas ("Executive Director") is recommending assessment of administrative penalties in the amount of \$16,250 against Dish Network of Texas ("Company") for violations of Texas state law and Public Utility Commission rules that prohibit telemarketing calls to persons who have registered on the state's "Texas No Call List" and that require telemarketers to purchase each published version of the Texas No-Call List, unless certain exemptions apply.

A copy of P.U.C. PROCEDURAL RULE 22.246, which outlines your rights related to this matter, is enclosed with this NOV as Attachment A. A copy of P.U.C. SUBSTANTIVE RULE 26.37, relating to Texas No-Call List is also enclosed.

**I. Introduction**

The Public Utility Commission of Texas (Commission) may impose an administrative penalty against a telemarketer who violates Texas Business and Commerce Code §44.102 and P.U.C. SUBSTANTIVE RULE 26.37, relating to Texas No-Call List. The penalty for a violation may be in an amount not to exceed \$1,000.00 for each violation.

**II. Summary of the Alleged Violations**

<sup>1</sup> A complete set of the Commission's procedural and substantive rules can be found at <http://www.puc.state.tx.us/rules/index.cfm>

The Company is alleged to have violated Texas Business & Commerce Code §44.102 and P.U.C. SUBSTANTIVE RULE 26.37(d)(1), which provides that a telemarketer shall not make or cause to be made a telemarketing call to a telephone number that has been published for more than 60 calendar days on the Texas No-Call list, unless certain exemptions apply. As discussed in further detail in the Report on Violations and Recommendation for Administrative Penalties included in this NOV as Attachment B, the Company is alleged to have made 14 prohibited calls to persons registered on the Texas No-Call List for the period March 2005 to November 2005.

Additionally, the Company is alleged to have violated P.U.C. SUBSTANTIVE RULE 26.37(d)(2) which requires telemarketers to purchase each published version of the Texas No-Call List unless certain exemptions apply. As discussed in the report included as Attachment B, the Company is alleged to have violated P.U.C. SUBSTANTIVE RULE 26.37(d)(2) by failing to purchase the March, June, and September 2005 published versions of the Texas No-Call List.

### **III. Statement of the Amount of the Penalty**

The Executive Director recommends assessing an administrative penalty against the Company in the amount of \$16,250. See Attachment B attached hereto and incorporated herein for an explanation of the penalty amount. This recommended penalty is based upon the information available to the Commission Staff at this time. To the extent the Company can provide sufficient records to indicate that the prohibited calls were not made (i.e. outbound call logs or phone records), demonstrate that the calls met the exemptions to the Texas No-Call List requirements, or demonstrate that the calls were isolated occurrences, this notice of violation will be amended accordingly.

### **IV. Statement Relating to Company's Rights**

Persons alleged to have committed a violation have a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. Pursuant to P.U.C. PROCEDURAL RULE 22.246, options available to resolve this matter include paying the penalty, requesting a settlement conference, and requesting a contested case hearing. If you wish to request a settlement conference or contested case hearing, you must do so within 20 days. If you choose to accept the determination and recommended penalty, you must notify the Commission's Executive Director in writing within 30 days and must take all corrective action required by the Commission.

**PX0538-002**

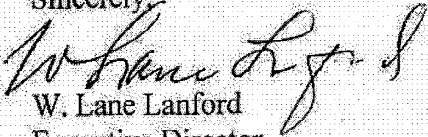
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Dish Network of Texas  
Notice of Violation  
Page 3 of 3

If you have any questions about the issues raised in this NOV, please contact Sean Farrell,  
Staff Attorney, Legal Division, at (512) 936-7290.

Sincerely,



W. Lane Lanford  
Executive Director  
Public Utility Commission of Texas

**PX0538-003**

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**ATTACHMENT A**

**PUC PROCEDURAL RULE 22.246  
AND  
PUC SUBSTANTIVE RULE 26.37**

**PX0538-004**

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## Subchapter M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS.

### §22.246. Administrative Penalties.

- (a) **Scope.** This section is intended to address enforcement actions related to administrative penalties only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:
- (1) **Executive director** — The executive director of the commission or the executive director's designee.
  - (2) **Person** — Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.
  - (3) **Violation** — Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), commission rule or commission order.
  - (4) **Continuing violation** — Except for a violation of PURA Chapter 17, 55, or 64, and commission rules or commission orders pursuant to those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.
- (c) **Amount of penalty.**
- (1) Each day a violation continues or occurs is a separate violation for which a penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.
  - (2) The penalty for each separate violation may be in an amount not to exceed \$5,000.00 per day.
  - (3) The amount of the penalty shall be based on:
    - (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
    - (B) the economic harm to property or the environment caused by the violation;
    - (C) the history of previous violations;
    - (D) the amount necessary to deter future violations;
    - (E) efforts to correct the violation; and
    - (F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.
- (d) **Initiation of investigation.** Upon receiving an allegation of a violation or of a continuing violation, the executive director shall determine whether an investigation should be initiated.
- (e) **Report of violation or continuing violation.** If, based on the investigation undertaken pursuant to subsection (d) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.
- (1) **Contents of the report.** The report shall state the facts on which the determination is based and a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

§22.246--1 PX0538-005

effective date 5/15/06  
reviewed date 4/21/99  
JA011470  
010246

**Subchapter M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR  
COMMISSION PROCEEDINGS.**

**§22.246(e) continued**

- (2) **Notice of report.** Within 14 days after the report is issued, the executive director shall, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice must include:
- (A) a brief summary of the alleged violation or continuing violation;
  - (B) a statement of the amount of the recommended penalty;
  - (C) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty;
  - (D) a copy of the report issued to the commission pursuant to this subsection; and,
  - (E) a copy of this section, §22.246 of this title (relating to Administrative Penalties).
- (f) **Options for response to notice of violation or continuing violation.**
- (1) **Opportunity to remedy.**
- (A) This paragraph does not apply to a violation of PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters.
  - (B) Within 40 days of the date of receipt of a notice of violation set out in subsection (e)(2) of this section, the person against whom the penalty may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent shall be evidenced in writing, under oath, and supported by necessary documentation.
  - (C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no penalty will be assessed against the person who is alleged to have committed the violation.
  - (D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director shall make a determination as to what further proceedings are necessary.
  - (E) If the executive director determines that the alleged violation is a continuing violation, the executive director shall institute further proceedings, including referral of the matter for hearing pursuant to subsection (h) of this section.
- (2) **Payment of penalty.** Within 30 days after the date the person receives the notice set out in subsection (e)(2) of this section, the person may accept the determination and recommended penalty through a written statement sent to the executive director. If this option is selected, the person shall take all corrective action required by the commission. The commission by written order shall approve the determination and impose the recommended penalty.
- (3) **Request for hearing.** Not later than the 20th day after the date the person receives the notice set out in subsection (e)(2) of this section, the person may submit to the executive director a written request for a hearing on the occurrence of the violation or continuing violation, the

§22.246--2

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effective date 3/15/06  
reviewed date 4/21/99 010247

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**Subchapter M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR  
COMMISSION PROCEEDINGS.**

§22.246(f)(3) continued

amount of the penalty, or both the occurrence of the violation or continuing violation and the amount of the penalty.

- (g) **Settlement conference.** A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the penalty, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.
- (1) If a settlement is reached:
- (A) the parties shall file a report with the executive director setting forth the factual basis for the settlement;
  - (B) the executive director shall issue the report of settlement to the commission; and
  - (C) the commission by written order will approve the settlement.
- (2) If a settlement is reached after the matter has been referred to SOAH, the matter shall be returned to the commission. If the settlement is approved, the commission shall issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.
- (h) **Hearing.** If a person requests a hearing under subsection (f)(3) of this section, or fails to respond timely to the notice of the report of violation or continuing violation provided pursuant to subsection (e)(2) of this section, or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and refer the case to SOAH pursuant to §22.207 of this title (relating to Referral to State Office of Administrative Hearings). The case shall then proceed as set forth in paragraphs (1)-(5) of this subsection.
- (1) The commission shall provide the SOAH administrative law judge a list of issues or areas that must be addressed.
- (2) The hearing shall be conducted in accordance with the provisions of this chapter.
- (3) The SOAH administrative law judge shall promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:
- (A) the occurrence of the alleged violation or continuing violation;
  - (B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA Chapters 17, 55, or 64, or of a commission rule or commission order pursuant to those chapters; and
  - (C) the amount of the proposed penalty.
- (4) Based on the SOAH administrative law judge's proposal for decision, the commission may:
- (A) determine that a violation or continuing violation has occurred and impose a penalty;
  - (B) determine that a violation occurred but that, pursuant to subsection (f)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no penalty will be imposed; or
  - (C) determine that no violation or continuing violation has occurred.
- (5) Notice of the commission's order issued pursuant to paragraph (4) of this subsection shall be provided under the Government Code, Chapter 2001 and §22.263 of this title (relating to Final Orders) and shall include a statement that the person has a right to judicial review of the order.

§22.246-3 PX0538-007

effective date 8/15/00  
reviewed date 4/21/99



## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

### Subchapter B. CUSTOMER SERVICE AND PROTECTION.

#### §26.37. Texas No-Call List.

- (a) **Purpose.** This section implements the Texas Business & Commerce Code Annotated §44.103 (Bus. & Com. Code) relating to rules, customer information, and isolated violations of the Texas no-call list.
- (b) **Application.** This section is applicable to:
  - (1) Certificated telecommunications utilities (CTUs), as defined by §26.5 of this title (relating to Definitions), that provide local exchange telephone service to residential customers in Texas; and
  - (2) Telemarketers, as defined in subsection (c)(9) of this section including, but not limited to, retail electric providers as defined in §25.5 of this title (relating to Definitions).
- (c) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) **Consumer good or service** — For purposes of this section, consumer good or service has the same meaning as Bus. & Com. Code §44.002(3), relating to Definitions.
  - (2) **Established business relationship** — A prior or existing relationship that has not been terminated by either party, and that was formed by voluntary two-way communication between a person and a consumer regardless of whether consideration was exchanged, regarding consumer goods or services offered by the person.
  - (3) **No-call database** — Database administered by the commission or its designee that contains the names, addresses, non-business telephone numbers and dates of registration for all Texas no-call registrants. Lists or other information generated from the no-call database shall be deemed to be a part of the database for purposes of enforcing this section.
  - (4) **No-call list** — List that is published and distributed as required by subsection (f)(2) of this section.
  - (5) **No-call registrant** — A telephone customer who has registered, by application and payment of accompanying fee, for the Texas no-call list.
  - (6) **State licensee** — A person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or business.
  - (7) **Telemarketing call** — An unsolicited telephone call made to:
    - (A) solicit a sale of a consumer good or service;
    - (B) solicit an extension of credit for a consumer good or service; or
    - (C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for sale.
  - (8) **Telephone call** — A call or other transmission that is made to or received at a telephone number within an exchange in the state of Texas, including but not limited to:
    - (A) a call made by an automatic dial announcing device (ADAD); or
    - (B) a transmission to a facsimile recording device.
  - (9) **Telemarketer** — A person who makes or causes to be made a telemarketing call that is made to a telephone number in an exchange in the state of Texas.
- (d) **Requirement of telemarketers.**
  - (1) A telemarketer shall not make or cause to be made a telemarketing call to a telephone number that has been published for more than 60 calendar days on the Texas no-call list.
  - (2) A telemarketer shall purchase each published version of the no-call list unless:
    - (A) the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt pursuant to subsection (e) of this section; or

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS  
SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.37(f) continued

- (3) -- ~~Intended use of the no-call database and no-call list.~~
- (A) The no-call database shall be used only for the intended purposes of creating a no-call list and promoting and furthering statutory mandates in accordance with the Bus. & Com. Code, Chapter 44, relating to Telemarketing. Neither the no-call database nor a published no-call list shall be transferred, exchanged or resold to a non-subscribing entity, group, or individual regardless of whether compensation is exchanged.
  - (B) The no-call database is not open to public inspection or disclosure.
  - (C) The administrator shall take all necessary steps to protect the confidentiality of the no-call database and prevent access to the no-call database by unauthorized parties.
- (4) **Penalties for misuse of information.** Improper use of the no-call database or a published no-call list by the administrator, telemarketers, or any other person regardless of the method of attainment, shall be subject to administrative penalties and enforcement provisions contained in §22.246 of this title (relating to Administrative Penalties).
- (g) **Notice.** A CTU shall provide notice of the no-call list to each of its residential customers as specified by this subsection. In addition to the required notice, the CTU may engage in other forms of customer notification.
- (1) **Content of notice.** A CTU shall provide notice in compliance with §26.26 of this title (relating to Foreign Language Requirements) that, at a minimum, clearly explains the following:
- (A) Beginning January 1, 2002, residential customers may add their name, address and non-business telephone number to a state-sponsored no-call list that is intended to limit the number of telemarketing calls received;
  - (B) When a customer who registers for inclusion on the no-call list can expect to stop receiving telemarketing calls;
  - (C) A customer must pay a fee to register for the no-call list;
  - (D) Registration of a non-business telephone number on the no-call list expires on the third anniversary of the date the number is first published on the list;
  - (E) Registration of a telephone number on the no-call list can be accomplished via the United States Postal Service, Internet, or telephonically;
  - (F) The customer registration fee, which cannot exceed three dollars per term, must be paid by credit card when registering online or by telephone. When registering by mail, the fee must be paid by credit card, check or money order;
  - (G) The toll-free telephone number, website address, and mailing address for registration; and
  - (H) A customer that registers for inclusion on the no-call list may continue to receive calls from groups, organizations, and persons who are exempt from compliance with this section, including a listing of the entities exempted as specified in subsection (e) of this section.
- (2) **Publication of notice.**
- (A) **Telephone directory.** A CTU that publishes, or has an affiliate that publishes, a residential telephone directory may include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may request a form for, or request to be placed on, the Texas no-call list in order to avoid unwanted telemarketing calls.
  - (B) **Notice to individual customers.** A CTU shall provide notice of the Texas no-call list to each of its residential customers in Texas by one or more of the methods listed in clauses (i)-(v) of this subparagraph.
    - (i) an insert in the customer's billing statement. Electronic notification is permissible for a customer who, during the notification period, is receiving billing statements from the CTU in an electronic format;
    - (ii) a bill message;

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## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

### Subchapter B. CUSTOMER SERVICE AND PROTECTION.

#### §26.37(g)(2)(B) continued

- (iii) separate direct mailing;
    - (iv) customer newsletter; or
    - (v) Customer Rights disclosure as provided in §26.31(a)(4) of this title (relating to Disclosures to Applicants and Customers).
  - (3) **Timing of notice.** Beginning in 2002, a CTU shall provide notice of the Texas no-call list to its residential customers using one of the methods listed in paragraph (2)(B)(i)-(v) of this subsection.
    - (A) A CTU that uses a notification method listed in paragraph (2)(B)(i)-(iv) of this subsection, shall provide the notice annually beginning in 2002. The annual notice shall be easily legible, prominently displayed, and comply with the requirements listed in paragraph (1) of this subsection.
    - (B) A CTU that elects the Customer Rights disclosure as its notification method as allowed in paragraph (2)(B)(v) of this subsection shall comply with the timing of distribution requirement in §26.31(a)(4) of this title. The no-call list information provided in the Customer Rights disclosure shall comply with paragraph (1) of this subsection.
  - (4) **Records of customer notification.** Upon commission request, a CTU shall provide a copy of records maintained under the requirements of this subsection to the commission. A CTU shall retain records maintained under the requirements of this subsection for a period of two years.
- (h) **Violations.**
- (1) **Separate occurrence.** Each telemarketing call to a telephone number on the no-call list shall be deemed a separate occurrence. Upon request from the commission or commission staff, a telemarketer shall provide, within 21 days of receipt of such a request, all information relating to the commission's investigation of complaints regarding alleged violations of the no-call list such as call logs or phone records.
  - (2) **Isolated occurrence.** A telemarketing call made to a number on the no-call list is not a violation of this section if the telemarketer complies with subsection (d)(2) and the telemarketing call is determined to be an isolated occurrence.
    - (A) An isolated occurrence is an event, action, or occurrence that arises unexpectedly and unintentionally, and is caused by something other than a failure to implement or follow reasonable procedures. An isolated occurrence may involve more than one separate occurrence, but it does not involve a pattern or practice.
    - (B) The burden to prove that the telemarketing call was made in error and was an isolated occurrence rests upon the telemarketer who made (or caused to be made) the call. In order for a telemarketer to assert as an affirmative defense that an alleged violation of this section was an isolated occurrence, the telemarketer must provide evidence of the following:
      - (i) The telemarketer has purchased the most recently published version of the Texas no-call list, unless the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt pursuant to subsection (e) of this section and the telemarketer can provide sufficient proof of such;
      - (ii) The telemarketer has adopted and implemented written procedures to ensure compliance with this section and effectively prevent telemarketing calls that are in violation of this section, including taking corrective actions when appropriate;
      - (iii) The telemarketer has trained its personnel in the established procedures; and
      - (iv) The telemarketing call that violated this section was made contrary to the policies and procedures established by the telemarketer.

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS  
SERVICE PROVIDERS

Subchapter B. CUSTOMER SERVICE AND PROTECTION.

§26.37 continued

- (i) **Record retention; Provision of records; Presumptions.**
- (1) A telemarketer shall maintain a record of all telephone numbers it has attempted to contact for telemarketing purposes, a record of all telephone numbers it has contacted for telemarketing purposes, and the date of each, for a period of not less than 24 months from the date the telemarketing call was attempted or completed.
  - (2) Upon request from the commission or commission staff, a telemarketer shall provide, within 21 calendar days of receipt of such request, all information in its possession and upon which it relies to demonstrate compliance with this section, relating to the commission's investigation of alleged violations of the no-call list including, but not limited to, the call logs or phone records described in subsection (i)(1) of this section.
  - (3) Failure by the telemarketer to respond, or to provide all information in its possession and upon which it relies to demonstrate compliance with subsections (d) and (i) of this section within the time specified in paragraph (2) of this subsection establishes a violation of this section.
  - (4) Failure of a telemarketer to provide all telemarketing information in its possession and upon which it relies to demonstrate compliance with this section and, if applicable, to establish an affirmative defense pursuant to subsection (h)(2)(B) of this section within the time specified in paragraph (2) of this subsection establishes a violation of this section.
- (j) **Evidence.** Evidence provided by the customer that meets the standards set out in Texas Government Code §2001.081, including, but not limited to, one or more affidavits from a customer, is admissible in a proceeding to establish a violation of this section.
- (k) **Enforcement and penalties.**
- (1) **State licensees.** A state agency that issues a license to a state licensee may receive and investigate complaints concerning violations of this section by the state licensee.
  - (2) **Telecommunications providers.** The commission has jurisdiction to investigate violations of this section made by telecommunications providers, as defined in the Public Utility Regulatory Act (PURA) §51.002.
  - (3) **Retail electric providers.** The commission has jurisdiction to investigate violations of this section made by retail electric providers (REPs) as specified in §25.492 of this title (relating to Non-Compliance with Rules or Orders; Enforcement by the Commission).
  - (4) **Other Telemarketers.** A telemarketer, other than a state licensee or telecommunications provider, that violates this section shall be subject to administrative penalties pursuant to §22.246 of this title.

PX0538-011

JA011476  
010252

**ATTACHMENT B**

**REPORT OF VIOLATIONS AND RECOMMENDATION FOR  
ADMINISTRATIVE PENALTIES**

**PX0538-012**

**JA011477**  
010253

# *Public Utility Commission of Texas*

## **Memorandum**

To: W. Lane Lanford  
Executive Director

From: Sean Farrell      Janis Ervin  
Attorney              Senior Policy Specialist  
Legal Division      Infrastructure Reliability Division

Date: December 30, 2005

Re: Report of Violation and Recommendation for Administrative Penalties for  
Violation by Dish Network of Texas of P.U.C. SUBST. R. §26.37, Related  
to Texas No-Call List

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### **SUMMARY**

Subchapter C of Chapter 44 of the Texas Business and Commerce Code requires the Public Utility Commission of Texas (Commission) to establish and operate a database of consumers in this state who object to receiving unsolicited telemarketing or telephone calls ("Texas No-Call List"). The statute further requires that the Commission is to receive and investigate complaints relating to violations of the Texas No-Call List and provides that the Commission may assess an administrative penalty for such violations.

The Commission adopted P.U.C. SUBST. R. §26.37 to implement these requirements, which, among other things, requires telemarketers to purchase each published version of the Texas No-Call List (published quarterly), and prohibits telemarketers from making or causing to be made telemarketing calls to a telephone number that has been included on the Texas No-Call List for at least 60 days.

Because of the number of complaints filed against Dish Network of Texas ("Dish Network" or "company") alleging violations of the Texas No-Call List, Commission Staff ("Staff") issued a letter to Dish Network in February 2005 reminding the company of its obligations related to the Texas No-Call List and warning the company that additional non-compliance could lead to an enforcement action by the Commission. Since the issuance of that letter, Staff has determined that Dish Network has continued to engage in telemarketing activities and, based upon information received from customer complaints, made fourteen (14) prohibited calls during the period March 2005 to November 2005. Additionally, Dish Network failed to purchase the Texas No-Call Lists published in March, June, and September 2005.

**PX0538-013**

**JA011478**  
010254

The purpose of this memo is to recommend that administrative penalties of \$16,250 be assessed upon Dish Network for these violations.

### **MAKING A PROHIBITED CALL**

Business and Commerce Code § 44.102(a) and P.U.C. SUBST. R. §26.37(d)(1) prohibit a telemarketer from making or causing to be made a telemarketing call to a telephone number that has been published for more than 60 days on the Texas No-Call List, unless the call meets certain exemptions listed in P.U.C. SUBST. R. §26.37(e)<sup>1</sup> ("a prohibited call").

Between March 1, 2005 and November 30, 2005, the Commission received a total of fifteen (15) complaints against Dish Network alleging violations of the Texas No-Call list requirements. Staff contacted Gryphon, and determined that fourteen (14) of those complaints related to numbers that were actively registered on the Texas No-Call List at the time of the call, and that the numbers had been published on the Texas No-Call List for more than 60 days at the time of the call from Dish Network. Staff then reviewed these 14 complaints and determined that these fourteen calls do not meet any of the exemptions provided for by the rule.

Exhibit 1 to this memo provides the detail on each alleged prohibited call, including the number called, the date on which the number was first published on the Texas No-Call List, the date the telemarketing call was made by Dish Network, and the number of times the number was called. An unredacted copy of Exhibit 1 is being provided to Dish with this NOV. For privacy purposes, a redacted version of Exhibit 1 is being filed in Central Records at the Commission.

### **FAILURE TO PURCHASE ALL PUBLISHED VERSIONS OF THE TEXAS NO-CALL LIST**

P.U.C. SUBST. R. §26.37(d) (2) requires a telemarketer to purchase each published version of the Texas No-Call list, unless the entirety of the telemarketer's business is comprised of telemarketing calls that are exempt from the Texas No-Call list requirements (such as an existing business relationship or debt collection), or if the telemarketer has contractually arranged for a second telemarketer to make calls and comply with the Texas No-Call List requirements. Based upon a review of the customer complaints received, Staff has concluded that these two exemptions do not apply to Dish Network.

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<sup>1</sup> PUC SUBST. R. 26.37(e) exempts calls made in connection with an existing business relationship, in connection with a business relationship that has terminated, if the call was made before the later of when the number first appeared on the no-call list, or one year, calls related to debt collection, calls made to a business, unless the business has notified the telemarketer that the business does not wish to receive calls, or certain calls made to a state licensee from the Texas No-Call List requirements.

**PX0538-014**

**JA011479**  
010255

Staff has contacted Gryphon Networks, Inc. (Gryphon), the administrator of the Texas No-Call List, to determine if Dish Network has purchased all published versions of the Texas No-Call List since February 2005. Based upon information received from Gryphon, Dish Network failed to purchase the Texas No-Call lists published in March, June and September of 2005.

### **REQUEST FOR PENALTIES**

Staff recommends that an administrative penalty be imposed for each instance of Dish Network's failure to comply with the requirements of P.U.C. SUBST. R. §26.37.

Staff recommends an administrative penalty be assessed on Dish Network for each instance where Dish Network made or caused to be made a prohibited call and for each quarter during which Dish Network failed to purchase the No-Call list. Texas Business and Commerce Code §44.102(b) provides that the maximum penalty that can be assessed for each violation is \$1,000. Staff recommends that an administrative penalty of the maximum of \$1,000 be assessed on Dish Network for each instance where it made or caused to be made a prohibited call and an administrative penalty of \$750 be assessed on Dish Network for each instance where it failed to purchase a published Texas No-Call List. Therefore, Staff recommends the total administrative penalty for these violations of the Business and Commerce Code §44.102(a) and P.U.C. Subst. R. 26.37 of \$16,250. Staff believes these penalties are appropriate and necessary to deter future violations as Dish Network was warned in February 2005 about its obligations related to the Texas No-Call List, but has continued to make or cause to be made prohibited telemarketing calls.

To the extent Dish Network can provide sufficient records to indicate that the prohibited calls were not made (i.e. outbound call logs or phone records), demonstrate that the calls met the exemptions to the Texas No-Call List requirements, or demonstrates that the calls were isolated occurrences, Staff will amend this recommendation accordingly.

**PX0538-015**

**JA011480**  
010256



**CONFIDENTIAL**

**Exhibit 1**  
**Violation of Texas No-Call List – Subst. R. §26. 37(d)(1)**  
**Dish Network of Texas – December 30, 2005**

<b>Number Called</b>	<b>Customer's No-Call Publication Date</b>	<b>Date Call Received</b>	<b>Number of Times Called</b>
(281) 807-1393	06/06/2001	04/04/2005	1
(281) 351-5544	04/01/2002	05/20/2005	1
(281) 255-8564	02/13/2002	06/07/2005	1
(972) 221-4261	02/08/2002	06/30/2005	1
(281) 238-9441	01/26/2002	07/08/2005	2
(281) 866-0760	01/21/2002	07/14/2005	1
(903) 592-0896	12/27/2002	07/16/2005	1
(214) 340-9570	03/25/2002	07/21/2005	1
(325) 651-1005	03/03/2002	08/24/2005	1
(972) 712-5111	10/22/2004	08/12/2005	1
(972) 231-2587	01/08/2002	09/20/2005	2
972 208-0448	06/20/2002	10/18/2005	1

EXHIBIT 553

EXHIBIT 553

JA011482  
010258

TX 102-010744



## Business Plan

Please complete this form with your expected business strategy within the first 30, 60 and 90 days as an authorized Echostar Retailer. By signing this form you are not bound to any legal agreement, but it will be used to aid in the evaluation of your business success and effectiveness. This form must be completed in its entirety and mailed back with the retailer application.

Target Market: Home owners

### Projected Activations:

- 30 days: 600
- 60 days: 800
- 90 days: 1,000

### Marketing Budget:

- 30 days: \$ 20,000
- 60 days: \$ 30,000
- 90 days: \$ 50,000

### Forms of Advertising:

	Print	Radio	TV	Telemarketing	Direct Mail
▪ 30 days:	% <u>30%</u>	_____	_____	<u>30%</u>	<u>40%</u>
▪ 60 days:	% <u>45%</u>	_____	_____	<u>40%</u>	<u>15%</u>
▪ 90 days:	% <u>50%</u>	_____	_____	<u>40%</u>	<u>10%</u>

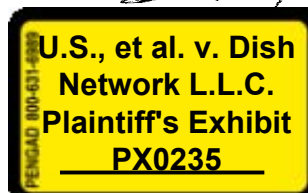
	Shows/Events	Door-to-Door	Other
▪ 30 days:	% <u>100</u>	_____	_____
▪ 60 days:	% <u>NA</u>	_____	_____
▪ 90 days:	% <u>NA</u>	_____	_____

Additional Comments: we have an office now with phone lines and desk also I've hired 2 gentlemen that have already run order entry offices for Dish that have 2-3 years experience with Dish order entry already we have the right people on the team and will start w/ 8 employees and are looking to expand to the office across the street that can hold 80 to 100 employees and expand to that office by October 2006. we are ready to start as of Feb. 10th 2006 To start with the cert. program.

Signature: [Signature]  
 Print Name: Jerry Grider II  
 Title: CEO  
 Date: 2-9-2006

Thanks,

[Signature]



JA011483  
010259

PX0235-001



EXHIBIT 554

EXHIBIT 554

**From:** Carlson, Erik <Erik.Carlson@echostar.com>  
**Sent:** Monday, March 20, 2006 5:21 PM  
**To:** DeFranco, Jim <Jim.DeFranco@echostar.com>; Palmer, Chris <Chris.Palmer@echostar.com>; Dugan, Mike <Mike.Dugan@echostar.com>; Stingley, Tom <Tom.Stingley@echostar.com>  
**Cc:** Galvin, Joe <Joe.Galvin@echostar.com>; Kilaru, Kranti <Kranti.Kilaru@echostar.com>; Origer, Robb <Robb.Origer@echostar.com>; Neylon, Brian <Brian.Neylon@echostar.com>  
**Subject:** RE: Dish Network Call Center Harrasment  
**Attach:** Fw\_ Dish Network Call Center Harrasment.msg

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All -

My fault on the delayed follow up. I lost track of this e-mail while on the incentive trip. There are different topics to address via the course of these e-mails.

1. The original issue involving Vijoy Pandey is unrelated to the Sterling issue (Palmer's e-mail attached). Mr. Pandey is not an existing or former subscriber and he did not (in the e-mail below) provide any information on the person calling (such as a phone number or name of the company) so there is no way for us to track the source of the call. I have discussed with Galvin and he is now looking into this so we can make sure that Mr. Pandey is removed.

2. Sterling Satellite issue – Setting up an existing subscriber (Palmer's e-mail attached)

The retailer acknowledged that they found the employee that did this and they have since terminated that employee. Sterling Satellite has a zero tolerance policy in place for this type of behavior. Our system did not "flag" this customer as existing customer when the order was placed by Sterling – Retail Services is 1) looking into how/why the order was not flagged (Origer on point) and 2) Retail Services will be auditing Sterling's account for duplicates beyond the normal duplicate audit that CMO/Retail Services routinely performs. (Origer on point) Sterling was adamant that no one in their call center would call in to DISH to disconnect an existing account. The customer referenced was not on any of Sterling's outbound lead sheets though they could not confirm whether this was an inbound or outbound lead – they are upgrading their phone system and will have this capability in the future. As it relates to International they do target some customers but have not received a list of leads from DISH.

3. Currently we do not share leads with OE Retailers. However, we did share one list of leads through Maulik/Amir in Q4 of last year. These were sent only to Marketing Guru and Guru is no longer using the list. It may make sense to utilize some inbound/outbound retailer resources. We have discussed this concept with Jody/Tom briefly and will be continuing to evaluate the feasibility.

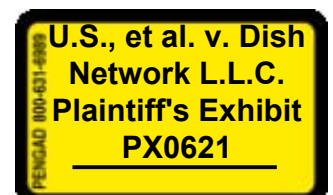
The key to following up on these types of complaints is to have the necessary information to research. When we receive complaints from prospects it is important that we get the Retailer's name (if possible) and the phone number of the customer. Ongoing, complaints like this should be worked through Robb Origer's group for resolution.

Let me know if you need additional information.

Thanks,  
Erik

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

From: DeFranco, Jim  
Sent: Friday, March 03, 2006 3:35 PM  
To: Palmer, Chris; Dugan, Mike; Carlson, Erik; Stingley, Tom  
Cc: Galvin, Joe; Kilaru, Kranti  
Subject: Re: Dish Network Call Center Harrasment



Erik and Tom will coordinate and respond. It is possible that Amir made arrangements for some cold lists to be worked by a couple of retailers. If so we should review to determine if it makes sense to continue.

**PX0621-001**

**JA011485**  
010261

Confidential - U.S. v. DISH

DISH5-0000110594  
**TX 102-010747**

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

From: Palmer, Chris  
To: Dugan, Mike; DeFranco, Jim; Carlson, Erik  
CC: Galvin, Joe; Kilaru, Kranti  
Sent: Fri Mar 03 12:22:50 2006  
Subject: Fw: Dish Network Call Center Harrasment

Mike, Jim and Erik:

Please review the concern below brought forward by our Pinebrook CSC. I asked for some detail in response to a complaint forwarded by Charlie. As you can see below and from what I know about our vendors, it is not our CSC (in or out source) calling these leads. The Outbound Manager in Pinebrook, Jorge Santos, believes it may be one of two Retailers (Guru and/or Sterling). Is there a process established for investigating the allegations below?

Chris

-----  
Chris Palmer  
720-514-5425

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

From: Santos, Jorge  
To: Palmer, Chris  
CC: Callaghan, Kieran  
Sent: Fri Mar 03 10:22:58 2006  
Subject: RE: Dish Network Call Center Harrasment

Chris,

We are currently not dialing any South Asian Cold lists. I brought this to Russell Bangert's attention. We've had issues like this in the past and after extensive investigation by Russell's team the customer's information was not found in any of the lists we were dialing in any of our Outbound centers, and several cases have been found to be violations committed by 3rd parties. We've been having issues with two such partners (Sterling Satellite Group, and Marketing Guru) where they are very likely committing account fraud by calling us with the pretext of being the customers, canceling the accounts and calling back as the customer to reconnect them under a new promotion for their company. There is an extremely high possibility that this is a similar case being committed by a 3rd party. I can without a shadow of a doubt say that they are not being harassed by any of our internal outbound centers. I unfortunately do not know who controls the retailer regulatory committee, if any exists to forward the information to.

Jorge Santos

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

From: Palmer, Chris  
Sent: Friday, March 03, 2006 11:45 AM  
To: Santos, Jorge  
Cc: Callaghan, Kieran  
Subject: FW: Dish Network Call Center Harrasment

Jorge:

Kieran is going to call you about this. Please keep me posted throughout the day.

Chris

Chris Palmer  
chris.palmer@echostar.com  
720-514-5425

**PX0621-002**

**JA011486**  
010262

**Confidential - U.S. v. DISH**

**DISH5-0000110595**  
**TX 102-010748**

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

From: Palmer, Chris  
Sent: Friday, March 03, 2006 9:37 AM  
To: Callaghan, Kieran  
Cc: Galvin, Joe  
Subject: FW: Dish Network Call Center Harrasment

Kieran:

I need your help.

I need to know right away what Telemarketing is done by the International group in Pinebrook. We do not do any outbound in India and therefore, needing to start somewhere, I am asking you. Who controls the lists, who is monitoring progress, etc. Is there a 3rd party that may do International Acquisition dialing? If we aren't doing this, can you email the person with the complaint below, ask for a phone number, contact him and see if you can get any additional detail?

We have to understand this ASAP.

Thanks,

Chris

Chris Palmer  
chris.palmer@echostar.com  
720-514-5425

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

From: Kilaru, Kranti  
Sent: Friday, March 03, 2006 9:28 AM  
To: Palmer, Chris  
Subject: FW: Dish Network Call Center Harrasment

Please get on top of this immediately...please acknowledge you received this...thanks

Kranti Kilaru  
303.706.5730

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

From: Dugan, Mike  
Sent: Friday, March 03, 2006 9:25 AM  
To: Kilaru, Kranti  
Subject: Fw: Dish Network Call Center Harrasment

Please forward to chris palmer to investigate

Thanks  
Sent From My Handheld

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

From: Ergen, Charlie  
To: Dugan, Mike  
Sent: Fri Mar 03 09:16:53 2006

**PX0621-003**

**JA011487**  
010263

Confidential - U.S. v. DISH

DISH5-0000110596  
**TX 102-010749**

Subject: FW: Dish Network Call Center Harrasment

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

From: Vijoy Pandey [mailto:[vijoy@varp.net](mailto:vijoy@varp.net)]

Sent: Thursday, March 02, 2006 10:45 PM

To: Ergen, Charlie; CEO; ExecutiveCustomerService

Cc: Vijoy Pandey

Subject: Dish Network Call Center Harrasment

Dear Mr. Ergen and Mr. Kelly,

That's exactly what your (Dish Network's) call center in India is doing to us. How do we know that the call center is in India - because we (being Indians ourselves) recognize their accent, and the multitude of abuses that they have been throwing at us.

This particular call center has been calling us incessantly EVERY DAY, THRICE A DAY for the past 2 months!

Initially (a) we were polite and refused interest in the offer, (b) then we requested that we be taken off the call list, (b) and then we ignored the calls, but the calls kept coming in.

Now, the callers are being abusive!! All for not signing up or being interested in Dish Network?

Today (03/02/2006, 8:50pm Pacific) we are harassed to the verge of madness.

I am planning to start recording your calls and your abuses starting today, recording the time and date of each call, and plan to release it to the San Jose police department within a week (03/10/2006), unless something is done to correct this situation.

We are not the only ones with this experience. We know of at least 3 additional families who are taking the brunt of this base joke. If we start searching, I am sure we will find countless households who are being harassed by Dish Networks.

We hope that this email goes to you and not to some crazy outsourced call center.

Also, please consider this email as a written proof of letting you know that we have been facing this problem for the past 2 months. I am CC'ing a copy to the California consumer affairs too.

- Vijoy Pandey  
[vijoy@varp.net](mailto:vijoy@varp.net)

**PX0621-004**

**JA011488**  
010264

Confidential - U.S. v. DISH

DISH5-0000110597  
**TX 102-010750**