

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

PLUMBERS LOCAL UNION NO. 519  
PENSION TRUST FUND; AND CITY OF  
STERLING HEIGHTS POLICE AND FIRE  
RETIREMENT SYSTEM, DERIVATIVELY  
ON BEHALF OF NOMINAL DEFENDANT  
DISH NETWORK CORPORATION,

Appellants,

vs.

CHARLES W. ERGEN; JAMES DEFRANCO;  
CANTEY M. ERGEN; STEVEN R.  
GOODBARN; DAVID K. MOSKOWITZ; TOM  
A. ORTOLF; CARL E. VOGEL; GEORGE R.  
BROKAW; JOSEPH P. CLAYTON; GARY S.  
HOWARD; DISH NETWORK  
CORPORATION, A NEVADA  
CORPORATION; AND SPECIAL  
LITIGATION COMMITTEE OF DISH  
NETWORK CORPORATION,

Respondents.

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Clerk of Supreme Court  
Supreme Court No. 81704

District Court No.  
A-17-763397-B

**JOINT APPENDIX**

**Vol. 60 of 85**

**[JA013798-JA014018]**

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<b>Evidentiary Hearing SLC Exhibit 102<sup>2</sup></b>			

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

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

EXHIBIT 677

EXHIBIT 677



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL

IN RE ECHOSTAR SATELLITE, L.L.C. )

CERTIFICATE OF COMPLIANCE

I, \_\_\_\_\_, hereby certify that I have reviewed the responses to the Civil Investigative Subpoena dated June 28, 2006, and that they are true and accurate to the best of my knowledge and belief. I further certify that all of the requested material within the possession, custody, or control of the person to whom said Subpoena is directed has been produced, except that for which a privilege has expressly been claimed.

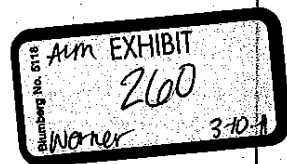
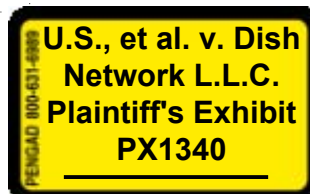
\_\_\_\_\_  
Signature

Subscribed to and sworn to before me at \_\_\_\_\_, \_\_\_\_\_,  
City State/Province  
this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609



Confidential-US v. DISH

PX1340-001

DISH 1000000055  
JA013799  
012539

TX 102-013061

STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL

ECHOSTAR SATELLITE, L.L.C. RESPONSE TO SUBPOENA DUCES TECUM PURSUANT TO  
STATUTES ANNOTATED § 2

FILE COPY

1. With respect to a retailer-company called Satellite Systems Now:

a. State the company's complete corporate name, address and telephone number;

**Response:** Satellite Systems Now  
15375 Barranca Parkway #D  
Irvine, CA 92618  
(949) 861-4949

b. State the names and positions of your "contact people" at the company;

**Response:** John Shahidi  
Sam Shahidi

c. State the date on which you began doing business with the company, and, if any, the date of and reason for terminating your relationship;

**Response:** EchoStar's commenced business with Satellite Systems Now on October 3, 2005. Satellite Systems Now is a current Dish Network independent contractor retailer.

d. Describe the business relationship between EchoStar and the company;

**Response:** Retailers acting as independent contractors are authorized on a non-exclusive basis to market, promote and solicit orders for Programming (an "Authorized Retailer"), in accordance with and subject to the terms and conditions of the EchoStar Satellite L.L.C. Retailer Agreement.

e. Identify and produce any contract or agreement with the company;

**Response:** EchoStar states that the EchoStar Satellite L.L.C. Retailer Agreement, dated October 3, 2005, and EchoStar Satellite L.L.C. Retailer Agreement, dated December 31, 2006, entered into between Satellite Systems Now and EchoStar, is provided herewith.

**STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL**

**ECHOSTAR SATELLITE, L.L.C. RESPONSE TO SUPPLEMENTAL CIVIL  
INVESTIGATIVE SUBPOENA DUCES TECUM PURSUANT TO TITLE 9 VERMONT  
STATUTES ANNOTATED § 2460**

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1. With respect to a retailer-company called Satellite Systems Now:

a. State the company's complete corporate name, address and telephone number;

**Response:** Satellite Systems Now  
15375 Barranca Parkway #D  
Irvine, CA 92618  
(949) 861-4949

b. State the names and positions of your "contact people" at the company;

**Response:** John Shahidi  
Sam Shahidi

c. State the date on which you began doing business with the company, and, if any, the date of and reason for terminating your relationship;

**Response:** EchoStar's commenced business with Satellite Systems Now on October 3, 2005. Satellite Systems Now is a current Dish Network independent contractor retailer.

d. Describe the business relationship between EchoStar and the company;

**Response:** Retailers acting as independent contractors are authorized on a non-exclusive basis to market, promote and solicit orders for Programming (an "Authorized Retailer"), in accordance with and subject to the terms and conditions of the EchoStar Satellite L.L.C. Retailer Agreement.

e. Identify and produce any contract or agreement with the company;

**Response:** EchoStar states that the EchoStar Satellite L.L.C. Retailer Agreement, dated October 3, 2005, and EchoStar Satellite L.L.C. Retailer Agreement, dated December 31, 2006, entered into between Satellite Systems Now and EchoStar, is provided herewith.

f. Identify and produce all marketing materials (including, but not limited to, telemarketing scripts, training materials, print and Internet advertising, and broadcast advertising) provided to, or received from, the company, and for each such document, state its date, describe its origin, and identify the person or persons who wrote or otherwise created it;

**Response:** EchoStar objects to this request as overly broad, unduly burdensome and seeks information that exceeds the scope and relevance of the investigation in that this Request does not specifically relate to telemarketing or deceptive trade practices issues. Notwithstanding the foregoing objections, EchoStar states that it does not provide marketing materials to retailers nor does EchoStar receive marketing materials from retailers. EchoStar makes certain pre-approved marketing templates available for retailer use via its Retailer Care website. EchoStar does not know if or when retailers utilize the marketing materials made available for their use. EchoStar further states that it does not make available any marketing materials relating to telemarketing.

g. Identify and produce all communications to or from the company;

**Response:** EchoStar objects to this request as overly broad, unduly burdensome and seeks information that exceeds the scope and relevance of the investigation in that this Request does not specifically relate to telemarketing or deceptive trade practices issues. Notwithstanding the objections set forth therein, EchoStar provides herewith communications regarding alleged "Do Not Call" violations related to Satellite Systems Now. EchoStar states that until recently, it did not specifically track consumer complaints in a manner which would allow it to search its files for a specific type of violation. EchoStar expressly reserves the right to supplement and amend its response to this Request.

h. Describe in detail any problems that you have had with the company, and identify and produce all documents relating to such problems;

**Response:** EchoStar objects to this request as overly broad, unduly burdensome and seeks information that exceeds the scope and relevance of the investigation in that this Request does not specifically relate to telemarketing or deceptive trade practices issues. Notwithstanding the objections set forth therein, EchoStar has received complaints alleging "Do Not Call" violations by Satellite Systems Now. A letter to Satellite Systems Now was sent from EchoStar addressing the issue. EchoStar expressly reserves the right to supplement and amend its response to this Request.

i. Describe all "due diligence" steps you have undertaken with respect to the company, including, but not limited to, investigation of the company prior to entering into a contract and oversight of its ongoing business methods. For each step taken, state the date of step and identify the person who took it;

**Response:** EchoStar objects to this request as overly broad, unduly burdensome and seeks information that exceeds the scope and relevance of the investigation in that this

Request does not specifically relate to telemarketing or deceptive trade practices issues. Notwithstanding the objections set forth therein, EchoStar requires its retailers to submit a retailer application which is reviewed individually by members of EchoStar's Retail Services Department. Provided herewith is a copy of Satellite Systems Now retailer application. EchoStar further states that it sent four letters dated August 29, 2006, September 5, 2006, and October 31, 2006, to Satellite Systems Now in regards to alleged "Do Not Call" violations. These letters reference the steps that EchoStar would take regarding the alleged "Do Not Call" violations. EchoStar expressly reserves the right to supplement and amend its response to this Request.

j. State whether the company has left recorded messages on prospective customer's answering machines, and if so, state what you know about such messages; and

**Response:** EchoStar states that to the best of its information, knowledge and belief, based on the correspondence provided herewith from Satellite Systems Now, dated December 14, 2006, per Mr. John Shahidi, Satellite Systems Now contacts prospective customers by telephone utilizing a live person on the call.

k. State whether the company has offered a right to cancel to prospective customers, and if so, (i) describe the terms and conditions of that right, (ii) describe how and when the right to cancel has customarily been disclosed to prospective customers, and (iii) identify and produce all documents relating to the right, including any consumer disclosures.

**Response:** EchoStar objects to this request on the ground that the request seeks information related to the business practice of a third party to which EchoStar has no direct knowledge. Notwithstanding the objection set forth therein, EchoStar states that requires its retailers to provide the disclosure of all terms and conditions regarding Dish Network service as these terms and conditions relate to the specific agreement plan chosen by the customer. A sample of the prospective customer disclosures available to Satellite Systems Now is provided herewith.

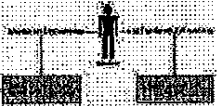
2. For each Vermont resident to whom EchoStar goods or services have been sold through, or because of a solicitation by, Satellite Systems Now:

- a. Describe the goods or services sold;
- b. State the date and amount of any payment by the consumer and describe the method of payment (credit card, electronic debit from bank account, demand draft, monthly billing, etc.);
- c. State which of the two companies were responsible for the sale or solicitation;
- d. Describe any complaint by the consumer and identify and produce all documents relating to same; and
- e. If any calls to or from the consumer were recorded, identify and produce a copy of the recording, or, if not such copy is available, describe how one may access the recording, if possible.

**Response:** EchoStar states that information sought in response to this Request is provided herewith.

3. State the name, address and position of all persons at EchoStar who participated in responding to this Subpoena.

**Response:** Dana E. Steele, Esq.  
Director and Senior Corporate Counsel  
EchoStar Satellite L.L.C.  
9601 S. Meridian Blvd.  
Englewood, CO 80112

AGENT NAME		DATE/TIME		CUSTOMER ACCT NUMBER WHEN AVAILABLE		Score	#REFI
<b>Call Flow</b>							
<b>Opening - Intro and Hello</b>							
	Professional open-introduced company by name and relationship to company, himself and thanked customer for calling in	Customer Service	NA	2	2		
<b>Pre Qualification</b>							
	Former customer	Improved Qualification	NA	6	6		
	Basic Information	Improved Completions	NA	8	8		
	a. Physical address where the system will be installed						
	b. Telephone number starting with the area code						
	c. Complete Name - First/Last Name, no middle initial, Jr/Sr, and special characters						
	d. optional basic information such as email						
<b>Probe and Acknowledge</b>							
	Ask current situation questions	Improved Qualification	NA	4	4		
	a. Who is your current provider?						
	b. What do you dislike about your provider / situation?						
	c. How much do you pay per month?						
	Locals	Improved Qualification	NA	4	4		
	a. If locals are available: Would you like to have your local channels (Fox, ABC, CBS, NBC, ABC) included in your package?						
	1. If Yes: Locals cost an additional \$5 per month						
	2. If No: You can add locals at anytime for an additional \$5 per month						
	Ask equipment need questions	Improved Qualification	NA	4	4		
	a. How many TVs do you watch in your home?						
	b. Are any of your TVs High Definition? If Yes - Sell value of HD programming						
	c. Are you familiar with Digital Video Records/Technology? Would you like to include this today?						
							
<b>Deliver the Service</b>							
	Effective acknowledgment statements	Customer Satisfaction	NA	1	1		
	Deliver right package based on needs	Customer Satisfaction	NA	6	6		
	Offered appropriate equipment solution	Customer Satisfaction	NA	5	5		
	Free premium was offered with features and benefits with every DVA pitch			2	2		
	Disclosed all components of offer	Customer Satisfaction	NA	2	2		
<b>Qualification</b>							
	Followed qualification guidelines (credit card/ debit card, first and last name, address, etc.)	Improved Qualification	NA	10	8		
<b>Disclosure</b>							
	Gave ALL applicable disclosures (refer to scriptlet)	Customer Satisfaction	NA	Autofill			
	1. DVR Fees						
	2. Programming non refundable						
	3. Charge for unreturned equipment						
	4. Rebate Instructions						
	5. Credit score						
	6. Minimum programming requirement						
	7. HD fee						
	8. Additional outlet fee						
	9. 18 or older at install/account holder						
	10. Cancellation fee						
	11. DHPP Warranty Inclusions						
	12. Network availability						
	13. SSH						
	14. 90 day install warranty						
	15. Rent/Own						
	16. HD DVR non refundable						
	Does retailer offer gift with purchase?						
	Customer requirements to receive Retailer gift						
	Followed all non-legal disclosures (refer to script)	Customer Satisfaction	NA	12	12		
	1. Monthly rate						
	2. Verify address						
	3. Verify phone number						
	4. Alternate phone number						
	5. Promotional programming credits						
	6. PROVIDED NAME/CONTACT INFO FOR OE PARTNER						
<b>Accuracy</b>							
	Was CSR able to complete transaction in OE tool or did they have to call DISH CSR?	Customer Satisfaction					
	Completed transaction completely and accurately; all information was accurate	Customer Satisfaction	NA	15	15		
<b>Service</b>							
	Appropriate level of customer service and responsiveness	Customer Service		20	20		
<b>Closing</b>							
	Professional close - Thanked customer for call/calling, asked if they had any questions, mentioned customer service line	Customer Service	NA	2	2		
<b>Total</b>				#REFI	#REFI		
<b>General Notes</b>							

## Agency T&Cs – HD OTA Release

### Digital Home Advantage – Please read to the customer

- Your first bill will include charges for one month in advance as well as pro-rated charges for the current month.
- You will see a \$49.99 activation fee on your first bill.
- Your monthly rate will be \$ \_\_\_\_\_. This does not include any applicable sales tax.
- All payments for programming are non-refundable.
- You must maintain the minimum of DishFAMILY, America's Top 60, DishLATINO, or Great Wall TV Package.
- Where available, your local channels can be included in your programming package as part of your Digital Home Advantage programming package at an additional \$5.00 per month.
- 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 for each Standard receiver or \$6.00 per month rental fee for each HD receiver beyond the first on your account.
- Each of your receivers must be continuously connected to your same land-based phone line. A monthly \$5.00 Additional Outlet Programming Access fee applies to the second tuner of each receiver with two tuners. 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.
- 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.
- We have placed a \$1.00 credit card hold on your credit card which will be removed within 3 to 7 business days.
- Social Security Numbers are used to obtain credit scores and will not be released to third parties except for verification and collection purposes or if required by governmental authorities.
- The Digital Home Advantage equipment and promotion comes with a standard warranty, which includes 24/7 tech support, Advance Exchange Repair (\$14.95 shipping), and In-Home service trip charge (available if a problem can not be solved over the phone) for \$99.
- Account holder must be present at the time of installation.
- If you do not own the property, you will need to present written permission from your landlord to the installer.
- DISH Network provides a 90-Day installation warranty.
- If you need to cancel or reschedule your installation DISH Network requests 24-hour advance notice.
- If applicable - HD receivers require a subscription to the DISH Network minimum programming service of DishHD Bronze which is \$49.99 per month. This programming may require a second dish antenna based on geographical location, provided at no charge at the time of initial installation. If you have an HD receiver and don't subscribe to minimum HD programming you will be charged a \$6.00 per month HD Enabling fee.



### Agency T&Cs – HD OTA Release

- **If applicable** - There is a monthly \$5.98 DISH Network DVR Service fee for each DVR receiver and HD DVR receiver. There is no charge for the DISH Network DVR Service if subscribing to America's "Everything" Pak, DishHD Platinum or Latino "Everything" Pak.
- **If applicable** - If you have added the \$5.99 DishHOME Protection Plan (DHPP) you will receive 24/7 tech support, Advance Exchange Repair (with FREE shipping) and In-Home service trip charge (available if a problem can not be solved over the phone) for \$29. Also included in your DHPP is one Free DISHMover per year.
- **If applicable** - If you have ordered the HD DVR receiver, you have paid a non-refundable \$199.99 lease upgrade fee. There is a limit of one HD DVR receiver per account.
- **If applicable** - If you have signed up for HBO, Showtime, Cinemax or Starz, you will receive an adjustment for the value of one movie service for three months (3 months free). After the 3-month promotional period, the then-current programming price will apply. Adjustments are non-refundable.
- **If applicable** - If you choose to connect a dual-tuner DVR receiver to one TV only, a monthly \$5.00 Additional Programming Access fee will be charged to your account for the second tuner in the receiver. This fee will be waived on a monthly basis provided DISH Network confirms such receiver has been continuously connected to your same land-based phone line.
- **If applicable** - If you subscribe to qualifying programming, submit a redemption form and a copy of your bill with DISH Network services within 60 days of activation, and you will receive a \$10.00 credit each month for up to 10 consecutive months. You will forfeit any remaining credits in the case of a downgrade from qualifying programming of America's Top 60, DishLATINO, Great Wall TV, DishHD Bronze or higher, or service disconnection prior to 10 months of credits. Redemption form can be found at [www.dishnetwork.com/100back](http://www.dishnetwork.com/100back)
- **If applicable** - If you subscribe to qualifying DishHD programming, submit a redemption form and a copy of your bill with DISH Network services within 60 days of activation, and you will receive a \$10.00 credit each month for up to 10 consecutive months. You will forfeit any remaining credits in the case of a downgrade from qualifying programming of DishHD Bronze, or service disconnection prior to 10 months of credits. Redemption form can be found at [www.dishnetwork.com/100back](http://www.dishnetwork.com/100back)
- **If applicable** - Because you are in a qualifying market based on your ZIP code you are eligible to receive \$100 off in addition to the \$100 Back and HD Bonus offers. Please provide a pay-TV bill (dated within 90 days of activation) along with the redemption form and first DISH Network bill. You will receive a \$10/month credit for 10 months, which will be applied after the 10 months of credits for the \$100 Back and HD Bonus offers. Redemption form can be found at [www.dishnetwork.com/100back](http://www.dishnetwork.com/100back)
- **If applicable (HD OTA)** - You will own the HD Over the Air Antenna. Availability of local digital/HD over the air channels is not guaranteed. We have collected the one-time payment for the selected over the air antenna. If a different antenna is determined as necessary at the time of installation, the difference will need to be paid by calling DISH Network. If you are not completely satisfied with the HD Over the Air Antenna at the time of installation, the installer will remove it and your credit card will be credited the purchase price. You will not have an opportunity to return the antenna for a credit after the installer leaves your home. You must subscribe to your standard definition locals to view the HD Over the Air channels on your programming guide.
- **If applicable (DHA18)** - You have signed up for the Digital Home Advantage agreement plan. You will receive DishHOME Protection Plan (over \$105 value) for length of agreement at no charge if and where available. If service is terminated there is a cancellation fee equal to \$13.33 multiplied by the number of months remaining in your agreement. At the end of agreement, you must call DISH Network to cancel DHPP or \$5.99 monthly charge will be applied for service.
- **If applicable (DHA18)** - You will receive a \$49.99 promotional credit on your first bill.

### Agency T&Cs – HD OTA Release

- If applicable (DHA18) - If you cancel within the first 30 days of activation, the following fees you've paid will be refunded/credited to your account: Monthly Programming Charges, Activation Fee, Additional Outlet Fee(s), Equipment Lease Fee(s), HD Enabling Fee(s), DVR Fee(s). The following fees will not be refunded: Equipment Upgrade Fee(s), PPV or VOD purchases, or Special Installation Fees. You will receive a refund in the same form as your payment.

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#### Digital Home Advantage (Plan Digital para el Hogar) - Por favor lea lo siguiente al cliente:

- Su primer estado de cuenta incluirá el cargo de un mes completo por adelantado más el cargo parcial del mes actual.
- Se hará un cargo por activar de \$49.99 en su primer estado de cuenta.
- Su pago mensual será de \$ \_\_\_\_\_. No incluye impuestos.
- Los pagos por programación no serán reembolsables.
- Debe mantenerse suscrito al paquete de DishFAMILY, de America's Top 60, de DishLATINO o de Great Wall TV como mínimo.
- Donde estén disponibles, los canales locales pueden estar incluidos en el paquete Digital Home Advantage (Plan Digital para el Hogar) por un cargo mensual de \$5.00.
- El cargo por la renta del primer receptor está incluido en el precio de su paquete básico de programación. Si se añade un receptor adicional al primero, se hará un cargo mensual de \$5.00 por la renta de cada receptor básico o un cargo mensual de \$6.00 por la renta de cada receptor HD.
- Todos los receptores deben estar conectados de forma continua a una línea de teléfono. Se hará un cargo mensual de \$5.00 por no conectar la línea de teléfono a un receptor que contiene un segundo sintonizador. Este cargo no se aplicará en los receptores que DISH Network confirme que han estado conectados de forma continua a la misma línea de teléfono.
- El equipo será propiedad de DISH Network y deberá ser devuelto a DISH Network dentro de los siguientes 15 días a partir de la cancelación y deberá pagar por el equipo que no sea devuelto, que al menos será de \$100 por receptor.
- Hemos aplicado un cargo pendiente de \$1.00 a su tarjeta de crédito que será retirado en los próximos 3 a 7 días hábiles.
- Los números de Seguro Social que solicitamos son usados para obtener su puntaje de crédito y no serán divulgados a terceros. Solo podrán ser usados con fines de verificación de datos y cobranza o si son requeridos por autoridades del Gobierno.
- El equipo y promoción Digital Home Advantage ofrece una garantía estándar la cual incluye servicio técnico las 24 horas del día, Advance Exchange Repair (\$14.95 de gastos de envío) y un cargo por viaje y servicio en casa (disponible si el problema no puede ser resuelto por teléfono) de \$99.
- El titular de la cuenta debe estar presente al momento de la instalación.
- Si usted no es dueño de la propiedad, necesitará presentar al instalador un permiso por escrito del propietario.
- DISH Network ofrece garantía de 90 días en la instalación.

## Agency T&Cs – HD OTA Release

- Si desea cancelar o cambiar la cita de su instalación, es necesario avisar a DISH Network con al menos 24 horas de anticipación.
- **Si aplica** – Los receptores HD requieren suscripción a la programación mínima de DISH Network, DishHD Bronze, la cual tiene un costo mensual de \$49.99. Esta programación puede requerir una antena secundaria, la cual depende del lugar geográfico y no supone un gasto adicional al momento de la instalación inicial. Si se tiene un receptor HD y no se suscribe a la programación HD mínima, el cargo de \$6.00 al mes se aplicará para autorizar el receptor HD.
- **Si aplica** – Hay un cargo mensual de \$5.98 por el servicio de DISH Network DVR por cada receptor de DVR o de DVR/HD. No supone un cargo por el servicio de DISH Network DVR si se suscribe a America's "Everything" Pak, DishHD Platinum o Latino "Everything" Pak.
- **Si aplica** – Si usted ha agregado el Plan de Protección para el Hogar (DHPP) por \$5.99 al mes, recibirá soporte técnico las 24 horas del día, Advanced Exchange Repair (sin cargo por envío) y servicio en casa por \$29 (disponible sólo si el problema no puede ser resuelto por teléfono). Además el plan DHPP le da un servicio gratis por año de DISHMover.
- **Si aplica** – Si usted ha ordenado el receptor HD/DVR, usted ha pagado un cargo no reembolsable de \$199.99 por mejorar el equipo. Existe un límite de un receptor HD/DVR por cuenta.
- **Si aplica** – Si usted se suscribió a la programación de HBO, Showtime, Cinemax o Starz, recibirá una reducción, la cual es igual que el valor de la programación del paquete de películas, en su estado de cuenta por los primeros 3 meses (3 meses gratis). Después de los tres meses del período promocional, la programación será facturada al precio actual del paquete de programación aplicable. Las reducciones no son reembolsables.
- **Si aplica** – Si usted elige conectar un receptor-videogradora con dos sintonizadores a un TV sólo, se hará un cargo mensual de \$5.00 por no conectar la línea de teléfono al receptor. Este cargo no se aplicará en los receptores que DISH Network confirme que han estado conectados de forma continua a la misma línea de teléfono.
- **Si aplica** – Si se suscribe a la programación calificativa, remite una forma de redención y una copia de la factura de DISH Network dentro de 60 días desde activación, y recibirá un crédito mensual de \$10.00 para 10 meses consecutivos, a lo sumo. Se pierden los créditos restantes si se disminuye la programación calificativa de America's Top 60, DishLATINO, Great Wall TV, DishHD Bronze o un paquete más caro a un paquete más barato, o si se desconecta el servicio antes de recibir diez meses de créditos. Se puede encontrar la forma de redención a [www.dishnetwork.com/100back](http://www.dishnetwork.com/100back).
- **Si aplica** – Si se suscribe a la programación calificativa de DishHD, remite una forma de redención y una copia de la factura de DISH Network dentro de 60 días desde activación, y recibirá un crédito mensual de \$10.00 para 10 meses consecutivos, a lo sumo. Se pierden los créditos restantes si se disminuye la programación calificativa de DishHD Bronze o si se desconecta el servicio antes de recibir diez meses de créditos. Se puede encontrar la forma de redención a [www.dishnetwork.com/100back](http://www.dishnetwork.com/100back).
- **Si aplica (HD OTA)** – Usted será dueño de la antena que captura la señal HD por el aire. DISH Network no garantiza la disponibilidad de los canales locales que están transmitidos por aire en formato digital o HD. DISH Network ha recaudo un pago para la antena que captura la señal HD por aire que usted eligió. Si se necesita otra antena al tiempo de instalación, usted pueda pagar el saldo deudor llamando a DISH Network. Si no está satisfecho con la antena que captura la señal HD por aire al momento de instalación, el instalador quitará la antena y el pago para la antena estará creditado a su cuenta. No recibirá reembolso después que se vaya el instalador de DISH Network. Es necesario suscribir a los canales locales que están transmitidos por satélite para ver los canales HD por aire en la guía de programación.
- **Si aplica (DHA18)** – Usted ha firmado el Acuerdo Digital Home Advantage, lo cual dura 18 meses. Usted recibirá el Plan de Protección para el Hogar (DHPP) (valorizado en más de \$105) por el tiempo del Acuerdo si está disponible. Si el servicio es cancelado se aplicará un cargo de \$13.33 por cada mes restante

### Agency T&Cs – HD OTA Release

según el Acuerdo. Al final del Acuerdo, usted debe llamar a DISH Network a cancelar DHPP o los gastos mensuales de \$5.99 por este servicio serán aplicados a su cuenta.

- **Si aplica (DHA18)** – Usted recibirá un crédito promocional de \$49.99 en su estado de cuenta.
- **Si aplica (DHA18)** – Si usted cancela el servicio dentro de los primeros 30 días después de activar, el cargo por activar y los pagos mensuales por programación estarán reembolsado o abonado en cuenta, y usted no estará responsable del cargo por cancelar. Las excepciones a la póliza de reembolso o de abono incluyen los cargos de PPV, los cargos de programación VOD, los cargos por mejorar el equipo y los pagos al instalador al momento de la instalación.
- **Si aplica** – Porque vive en un mercado calificado (basado en código postal), Usted es elegible recibir \$100 de reembolso adicionales a los \$100 de reembolso y bono por programación HD. Necesita presentar una factura por servicio de TV (con fecha de activación de antes de 90 días) junto con la forma de redención y la primera factura de DISH Network. Recibirá créditos de \$10 al mes por 10 meses consecutivos después de los 10 meses de créditos por la promoción de \$100 de reembolso y bonos HD.

**Musso, Reji**

---

**From:** John Shahidi [john@xsatellite.com]  
**Sent:** Tuesday, October 10, 2006 3:29 PM  
**To:** Musso, Reji  
**Subject:** RE: Use of Affiliates

Reji,

Here is the information for the call center we have an agreement with but do very little business with. The small amount of business is all inbound.

Business Name: Hispanic Global

Business Location: Miami, FL

Mailing Address (City, State, Zip): 1900 N.W. 97th Avenue, Suite #714-25322, Miami, FL 33172

Primary Contact: Arie Rapaport

Secondary Contact: none

Contact Phone Number: (786) 924-0551

Primary Fax Number: (786) 513-8468

Contact E-Mail: [arapaport@hispanicglobal.com](mailto:arapaport@hispanicglobal.com)

Thanks,

John

---

**From:** Musso, Reji [mailto:Reji.Musso@echostar.com]  
**Sent:** Friday, September 29, 2006 12:55 PM  
**To:** john@xsatellite.com  
**Cc:** Neylon, Brian; Werner, Bruce  
**Subject:** Use of Affiliates

John, I left a voice mail relative to this project that I am working on:

In the course of monitoring OE calls it has come to our attention that some of our partners are using affiliates (independent contractors or sub-agents) for lead generation.

As you know, it is necessary to gain approval prior to using anyone who is not your employee to engage in inbound/outbound call center activities.

As a result, it is important to know who you are using for these services.

Retail Services needs a list of all of these affiliates by COB, Monday, October 2, 2006 so that we can

11/3/2006

gather additional information in order to gain necessary approvals.

Information Required:

Business Name

Business Location

Mailing Address (City, State, Zip)

Primary Contact

Secondary Contact

Contact Phone Number

Primary Fax Number

Contact E-Mail

Please forward this information to [reji.musso@echostar.com](mailto:reji.musso@echostar.com).

Thanks for your cooperation.

Reji J. Musso

Manager - Retail Services

303.723.3262 (tel)

[reji.musso@echostar.com](mailto:reji.musso@echostar.com)

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11/3/2006

Confidential-US v. DISH

PX1340-014

DISH 0000039768  
JA013812  
012552

TX 102-013074

**Musso, Reji**

---

**From:** john shahidi [john@xsatellite.com]  
**Sent:** Wednesday, November 15, 2006 11:38 AM  
**To:** Musso, Reji  
**Subject:** Michael (Jerk) Todd  
**Attachments:** 3d1d1d0.pdf

Reji,

Here you go. Sorry it took me awhile to convert the efax to a pdf.

Please also note that we settled for his allegation that we represented ourselves as Dish Network. We did not telemarket this customer at all. I settled solely for the reason to get him out of our lives but if we fought it, I know we could have won.

Let me know if you need anything else.

John Shahidi

1/5/2007

Confidential-US v. DISH

**PX1340-015**

DISH-0060038769  
JA013813  
012553

**TX 102-013075**

**Heyman Law Office**

Seth D. Heyman, Attorney at Law

791 Palomar Airport Road, Suite 300  
Carlsbad, California, USA 92008  
Tel (760) 831-4722 Fax (760) 860-8840

October 23, 2006

Michael Todd  
3034 Ledgebrook Court  
Louisville, KY 40241Re: Settlement Agreement and Release  
Todd v. Satellite Systems Now, Inc.

Dear Mr. Todd:

This document governs the full and final settlement and satisfaction of any and all legal claims you may believe you have against Satellite Systems Now, Inc. (the "Company"), as a result of two (2) prerecorded voice transmission(s) you claim to have received on or around August 13, 2006 and October 19, 2006 (the "Contacts"), including (but not limited to) any claimed violation by the Company of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227(b)(1)), and any other federal, state, or local statute, rule, or ordinance that may apply to the Contacts.

You have agreed to accept the sum of Two Thousand Five Hundred Dollars (\$2,500.00) in full settlement and satisfaction of all such claims. Upon your execution of this Agreement, and in consideration for the settlement check to be sent to you upon our receipt of a fully executed copy, you agree to release and forever discharge the Company and its service providers, EchoStar Satellite and Dish Network, Inc. together with their respective employees, officers, shareholders, agents, and any marketing partner(s) of the Company that may have contributed to or otherwise assisted with the Contact (including, but not limited to, and any marketing and/or telephonic service providers), from and against any and all liability for any and all past, present or future claims arising from or related to the Contacts, which were directed to the following telephone numbers: (502) 426-3008 and (502) 426-7633.

The settlement set forth herein shall be construed as a complete and final release of any and all claims associated with the Contacts, whether based on a tort, contract (express or implied), statute, administrative rule, or any other theory of recovery, and whether for compensatory, incidental or punitive damages.

It is understood and agreed that the Company does not use prerecorded voice transmissions in its marketing campaigns. However, the Company does contract with various marketing service providers that may employ such methods. This Agreement represents a compromise of doubtful and disputed claims, and is accepted as the sole consideration in full accord and satisfaction to compromise and forever settle such doubtful and disputed claims, and shall not be construed as an admission of liability by the Company, as it expressly denies any liability for any such claims.

Please return an executed copy of this Agreement via return facsimile as soon as possible. Upon my receipt of your fax confirming your acceptance of this settlement, I will forward the settlement check to you, together with two original copies of this Agreement and a self-addressed stamped envelope, and ask that you return one fully executed original copy to this office. Upon your negotiation of the check, the settlement referenced herein will be in force.

ACCEPTED AND AGREED:

ACCEPTED AND AGREED:

COMPANY

Name: Michael Todd  
Date: 10/23/06Name: Seth D. Heyman, Attorney in Fact  
Date: October 23, 2006



**Musso, Reji**

---

**From:** John shahidi [john@xsatellite.com]  
**Sent:** Tuesday, November 14, 2006 12:56 PM  
**To:** Musso, Reji  
**Subject:** RE: Michael Todd

(949) 370-2000 cell  
(949) 861-4949 desk

thx

john

---

**From:** Musso, Reji [mailto:Reji.Musso@echostar.com]  
**Sent:** Tuesday, November 14, 2006 11:55 AM  
**To:** John shahidi  
**Subject:** RE: Michael Todd

I am off to a meeting – back at 2:30...I'll try you too!

Give me your cell # again, please.

Reji J. Musso  
Manager - Compliance  
Retail Services  
303.723.3262 (tel)  
720.514.8288 (fax)  
reji.musso@echostar.com

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---

**From:** John shahidi [mailto:john@xsatellite.com]  
**Sent:** Tuesday, November 14, 2006 12:54 PM  
**To:** Musso, Reji  
**Subject:** RE: Michael Todd

Reji,

I just tried you. I will give you another shot around 2:30pm Mountain Time.

thx

john

1/3/2007

Confidential-US v. DISH

PX1340-017

DISH 0000038771  
JA013815  
012555

TX 102-013077

---

**From:** John Shahidi [mailto:johnshahidi@mac.com]  
**Sent:** Tuesday, November 14, 2006 7:33 AM  
**To:** Musso, Reji  
**Cc:** John Shahidi  
**Subject:** Re: Michael Todd

I will try you then, Ms. WORKAHOLIC!!!

:-)

John

On Nov 14, 2006, at 7:25 AM, Musso, Reji wrote:

Barring the unforeseen, I should be at my desk between 2:30 and 3:30 Mountain Time.

Thanks, John.

Manager - Compliance  
303.723.3262 (tel)  
[reji.musso@echostar.com](mailto:reji.musso@echostar.com)

**John,**

**Tuesday's are pretty busy, but I'll always call you back.**

Reji J. Musso

Manager - Compliance

Retail Services

303.723.3262 (tel)

720.514.8288 (fax)

[reji.musso@echostar.com](mailto:reji.musso@echostar.com)

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1/3/2007

Confidential-US v. DISH

PX1340-018

DISH-0000038772  
012556

TX 102-013078

**Musso, Reji**

---

**From:** John Shahidi [johnshahidi@mac.com]  
**Sent:** Monday, November 13, 2006 11:48 PM  
**To:** Musso, Reji  
**Cc:** John Shahidi  
**Subject:** Re: Michael Todd

Reji,

Let me know what time is good for me to call and I will.

Thanks,

John

On Nov 13, 2006, at 4:45 PM, Musso, Reji wrote:

John,

I need to speak to you regarding Mr. Todd. I've not gotten a formal response to my letter and I need some additional info and details. Please contact me within the next day or so.

Tuesdays are pretty busy, but I'll always call you back.

Reji J. Musso

Manager - Compliance

Retail Services

303.723.3262 (tel)

720.514.8288 (fax)

[reji.musso@echostar.com](mailto:reji.musso@echostar.com)

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1/3/2007

Confidential-US v. DISH

PX1340-019

DISH 5000003773  
JA019817  
012557

TX 102-013079

**Musso, Reji**

---

**From:** John Shahidi [johnshahidi@mac.com]  
**Sent:** Wednesday, October 25, 2006 9:54 PM  
**To:** Musso, Reji  
**Cc:** John Shahidi  
**Subject:** Re: Michael Todd  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Reji,

I am sorry, I just got your emails. I was out of town since Friday.

I did get your voicemail on Friday about the agreement. It's already been done and I am waiting to get a signed copy from my attorney. I will get it to you once I receive it. It does get Echostar off the hook.

Let me know if I can do anything else.

John

On Oct 25, 2006, at 5:26 PM, Musso, Reji wrote:

Don't forget to let us see the "agreement." Also, can you figure out a way to get me that recording of him "badgering" your agent? I really want to share it with legal.

Call me when you get a second.

**Reji J. Musso**

Manager - Retail Services

303.723.3262 (tel)

[reji.musso@echostar.com](mailto:reji.musso@echostar.com)

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1/3/2007

Confidential-US v. DISH

**PX1340-020**

DISH 0000038774  
JA013818  
012558

**TX 102-013080**

**Musso, Reji**

**From:** Musso, Reji  
**Sent:** Tuesday, October 24, 2006 9:17 AM  
**To:** 'johnshahidi@mac.com'  
**Subject:** Michael Todd

May I have a status?

Did you get my e-mail about having our legal department review settlement prior to signing to insure that Echostar Satellite L.L.C. is released from any and all responsibility?

Please feel free to call if you have questions.

Thanks.

**Reji J. Musso**  
Manager - Retail Services  
303.723.3262 (tel)  
[reji.musso@echostar.com](mailto:reji.musso@echostar.com)

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**Vallejos, Lisa**

---

**From:** Hargan, Denise  
**Sent:** Wednesday, October 18, 2006 2:02 PM  
**To:** Holcomb, Elizabeth; Vendor Inquiries; Musso, Reji  
**Subject:** Todd, Michael; TCPA "Sting" #3  
**Attachments:** Work Order re 8255909185769913.pdf; 8255909185769913 Todd Acct..pdf

Denise L. Hargan, Paralegal  
 EchoStar Satellite L.L.C.  
 9601 S. Meridian Blvd.  
 Englewood, CO 80112  
 Direct Line: 720-514-5449  
 Direct Fax: 303-723-3928

**REDACTED**

The contents of this email is confidential and subject to Attorney/Client Work Product and Privilege. Do not disclose without the prior consent of General Counsel. If you have received this email in error, please notify the sender of the error and delete the email and any attachment immediately.

---

**From:** MTodd75682@aol.com [mailto:MTodd75682@aol.com]  
**Sent:** Wednesday, October 18, 2006 1:08 PM  
**To:** Steele, Dana  
**Subject:** Attn: Dana Steele

Dear Ms. Steele,

To begin I would like to thank you for looking into my previous complaint on account number 8255909185626576. I have been contacted by the attorney for Satellite Systems Now and we are attempting to work out a resolution based on the August telemarketing call.

Unfortunately, your sales partner continues to violate TCPA and the contract they have with EchoStar as I received yet another call from them with another pre recorded message today. This time I spoke with a representative who identified herself as Cecil. I asked Cecil a total of 4 times what company she was actually with and each time she said Dish. I explained to her that I know Dish doesn't engage in outbound telemarketing calls with pre recorded messages and she still assured me that "I'm with Dish's sales department". After going through the process of setting up yet another account, I asked Cecil to connect me to her manager. I spoke with a gentleman who identified himself as Patrick. I asked Patrick the same questions as to the true identity of the company. He assured me that it was actually Dish calling.

Using the new account number of 8255909185769913, I called Dish and was told that this account again stemmed from Satellite Systems Now. Clearly this sales partner is willfully violating the terms of the contract with Dish by continuing to use pre recorded telephone solicitations and by providing a false name for their company during the marketing. My previous complaint in August to Dish seems to have yielded no results in the way that your sales partner continues to do business.

10/19/2006

Confidential-US v. DISH

**PX1340-022**

DISH 0900038776  
 JAO 090820  
 012560

**TX 102-013082**

While I am certainly not in the position to tell Dish how to run its business with its sales partners, it seems clear that Dish is not taking a strong enough approach to preventing these unlawful acts. The failure to terminate the contract with Satellite Systems Now after my last complaint has shown that Dish had actual knowledge of the unlawful acts but continued to condone the acts of their agent which has caused me further damages based on today's call.

Please be advised that I wish to cancel the new account listed above. Additionally, I am willing to settle my claims against Dish provided that I am compensated in the amount of \$3000. I will allow until October 25 for you to do your due diligence in this matter. Thereafter I will no longer put off filing suit.

In the event that you have any questions, you can call me at 502-426-3008.

Sincerely,  
Michael Todd

10/19/2006

Confidential-US v. DISH

**PX1340-023**

DISH 000003777  
JA013821  
012561

**TX 102-013083**

Work Order: 4024165280022002  
Open NC- NEW CONNECT 10/20/2006 PM  
TECH: 010435910



KRISTEN TODD 502/426-7633 502/426-7633 3034 LEDGEBROOK CT LOUISVILLE, KY 40241-6528 Activated: Warranty: DISH Home Protection Plan	High Power Technical DA MANAGEMENT AREA: CO CSG ACCOUNT: 8255909185769913 RESCHED COUNT: 0 LAST EVENT: N/A
--	--

WORK ORDER REASON: Digital Home Advantage DIGITAL HOME  
STANDARD NOTES:  
WORK ORDER NOTES: Sales Partner- SATELLITE SYSTEMS NOW. -- SAT013 - PARTNER WEB  
DHA SALE  
DISPATCHER NOTES: N/A  
ORBITAL LOCATIONS: 110°W Orbital Install, 119°W Orbital Install

Service Activities	Hardware Required
Standard Video Installation	20 inch DISH (video) DH 522/625 Primary Recvr Non-Legacy Twin LNBF

Additional Tuner Hookup

AA ACTIVATION T( STANDARD INSTALLATION D- NON-LEGACY TWIN LNBF TS DH 522/625 P RCVR XD 20 INCH DISH 4W 2nd Tuner Install .D DHA COMMIT	?? SALES PARTNER Retail DHA DHPP WARRNTY 90 30 Day MBG Promotion K: DHA 18 ZH 110° & 119° Services AB TOP 60	D0 HBO P: DMA LOUIS KY 2U 119°W Orbital Install Z8 110°W Orbital Install
--	--	---

CUSTOMER EQUIPMENT: No Equipment In System

Account holder is participating in the Money Back Guarantee Promotion and must sign the DHA 18 month commitment agreement  
Account holder must sign and initial the DHA 18 month commitment agreement  
Account holder must sign the DHA Agreement. The Additional Services section must be complete prior to the customer signing the agreement.  
+++ Account can be activated via the IVR: 888-233-3474; call using the customer phone whenever possible; IVR will auto route; follow the activation prompts. +++  
\*\*\*\*\* Z E R O in on SAFETY \*\*\*\*\*

Pre-call date \_\_\_\_\_ Completion date \_\_\_\_\_  
Installer name \_\_\_\_\_

Printed: 10/18/2006

Confidential-US v. DISH

PX1340-024

DISH 5000003778  
012562

TX 102-013084





\*Connect - Account Memos

Account Number: 8255909185769913

Work Order Number: 40241652800022002

Account Notes

R2R 10/18/06 12:38 PM (MST) \*\*ERT\*\* CCI FOR SP INFO NAME IS SATELLITE  
SYSTEMS NOW BUT WE HAVE NO PHONE NUMBER FOR THEM. TIM /  
ERT  
WD7 10/18/06 PAYMENT OF \$49.99 POSTED TO ACCOUNT ON (CREDIT) CARD:1256.AUTHORI  
ZATION NUMBER IS 082960.BATCH NUMBER IS:E5636  
A0I 10/18/06 SAT013 - PARTNER WEB DHA SALE

Printed: 10/18/2006

Confidential-US v. DISH

PX1340-025

DISH 5-0000083779  
JA013823  
012563

TX 102-013085

**Musso, Reji**

**From:** Musso, Reji  
**Sent:** Wednesday, October 18, 2006 2:36 PM  
**To:** 'johnshahidi@mac.com'  
**Cc:** Werner, Bruce; Origer, Robb; Neylon, Brian; Hargan, Denise; Steele, Dana  
**Subject:** FW: Todd, Michael; TCPA "Sting" #3  
**Importance:** High  
**Attachments:** Work Order re 8255909185769913.pdf; 8255909185769913 Todd Acct...pdf

Tracking:	Recipient	Read
	'johnshahidi@mac.com'	
	Werner, Bruce	Read: 10/19/2006 9:57 AM
	Origer, Robb	Read: 10/18/2006 2:47 PM
	Neylon, Brian	Read: 10/18/2006 2:37 PM
	Hargan, Denise	Read: 10/18/2006 2:36 PM
	Steele, Dana	Read: 10/18/2006 2:43 PM

John, I will be sending out a formal 2<sup>nd</sup> letter tomorrow relative to this repeat customer. The attachments confirm that Satellite Systems Now was, once again, involved in business practices that are clearly in violation of TCPA laws by using pre-recorded messages. It would be to your advantage to determine who is making these calls and sales on your behalf.

Furthermore, after confirming that Dish Network did not make these calls, the consumer also alleges the following:

"Unfortunately, your sales partner continues to violate TCPA and the contract they have with Echostar as I received yet another call from them with another pre recorded message today. This time I spoke with a representative who identified herself as Cecil. I asked Cecil a total of 4 times what company she was actually with and each time she said Dish. I explained to her that I know Dish doesn't engage in outbound telemarketing calls with pre recorded messages and she still assured me that "Im with Dish's sales department". After going through the process of setting up yet another account, I asked Cecil to connect me to her manager. I spoke with a gentlemen who identified himself as Patrick. I asked Patrick the same questions as to the true identity of the company. He assured me that it was actually Dish calling."

This is a clear violation of your Retailer Agreement.

Mr. Michael Todd is currently in negotiations with your attorney for a settlement on the first violation and is threatening to sue us.

A letter will be faxed to (949) 861 9090.

**Reji J. Musso**  
 Manager - Retail Services  
 303.723.3262 (tel)  
 reji.musso@echostar.com

10/19/2006

Confidential-US v. DISH

**PX1340-026**

DISH-0060032780  
 JAO-13824  
 012564

**TX 102-013086**

Work Order: 4024165280022002  
Open NC- NEW CONNECT 10/20/2006 PM  
TECH: 010435910



KRISTEN TODD 502/426-7633 502/426-7633 3034 LEDGEBROOK CT LOUISVILLE, KY 40241-6528 Activated: Warranty: DISH Home Protection Plan	High Power Technical DA MANAGEMENT AREA: CO CSG ACCOUNT: 8255909185769913 RESCHED COUNT: 0 LAST EVENT: N/A
--	--

WORK ORDER REASON: Digital Home Advantage DIGITAL HOME  
STANDARD NOTES:  
WORK ORDER NOTES: Sales Partner- SATELLITE SYSTEMS NOW. -- SAT013 - PARTNER WEB  
DHA SALE  
DISPATCHER NOTES: N/A  
ORBITAL LOCATIONS: 110°W Orbital Install, 119°W Orbital Install

Service Activities	Hardware Required
Standard Video Installation	20 inch DISH (video) DH 522/625 Primary Recvr Non-Legacy Twin LNBF
Additional Tuner Hookup	

AA ACTIVATION T{ STANDARD INSTALLATION D- NON-LEGACY TWIN LNBF T\$ DH 522/625 P RCVR XD 20 INCH DISH 4W 2nd Tuner Install .D DHA COMMIT	?? SALES PARTNER {} Retail DHA {} DHPP WARRANTY 90 30 Day MBG Promotion K: DHA 18 ZH 110° & 119° Services AB TOP 60	D0 HEO P: DMA LOUIS KY ZU 119°W Orbital Install Z8 110°W Orbital Install
---	---	---

CUSTOMER EQUIPMENT: No Equipment In System

Account holder is participating in the Money Back Guarantee Promotion and must sign the DHA 18 month commitment agreement  
Account holder must sign and initial the DHA 18 month commitment agreement  
Account holder must sign the DHA Agreement. The Additional Services section must be complete prior to the customer signing the agreement.  
+++ Account can be activated via the IVR: 888-233-3474; call using the customer phone whenever possible; IVR will auto route; follow the activation prompts. +++  
\*\*\*\*\*  
\*\*\*\*\* Z E R O in on SAFETY \*\*\*\*\*  
\*\*\*\*\*

Pre-call date \_\_\_\_\_ Completion date \_\_\_\_\_  
Installer name \_\_\_\_\_

Printed: 10/18/2006



\*Connect - Account Memos

Account Number: 8255909185769913

Work Order Number: 40241652800022002

Account Notes

-----  
R2R 10/18/06 12:38 PM (MST) \*\*ERT\*\* CCI FOR SP INFO NAME IS SATELLITE  
SYSTEMS NOW BUT WE HAVE NO PHONE NUMBER FOR THEM. TIM /  
ERT  
WD7 10/18/06 PAYMENT OF \$49.99 POSTED TO ACCOUNT ON (CREDIT) CARD:1256.AUTHORI  
ZATION NUMBER IS 082960.BATCH NUMBER IS:E5636  
A0I 10/18/06 SAT013 - PARTNER WEB DHA SALE

Printed: 10/18/2006

Confidential-US v. DISH

PX1340-028

DISH 5-0000032782  
JA013826  
012566

TX 102-013088

**Musso, Reji**

---

**From:** Hargan, Denise  
**Sent:** Monday, October 09, 2006 4:27 PM  
**To:** Musso, Reji  
**Cc:** Steele, Dana  
**Subject:** RE: Satellite Systems Now - Todd

Denise L. Hargan, Paralegal  
EchoStar Satellite L.L.C.  
Direct Line: 720-514-5449  
Direct Fax: 303-723-3928

**REDACTED**

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---

**From:** Musso, Reji  
**Sent:** Monday, October 09, 2006 4:26 PM  
**To:** Hargan, Denise  
**Cc:** Steele, Dana  
**Subject:** RE: Satellite Systems Now - Todd

She called me -- letter was sent -- I left a message for John Shahidi.

**Reji J. Musso**  
Manager - Retail Services  
303.723.3262 (tel)  
reji.musso@echostar.com

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---

**From:** Hargan, Denise  
**Sent:** Monday, October 09, 2006 4:25 PM  
**To:** Musso, Reji  
**Cc:** Steele, Dana  
**Subject:** RE: Satellite Systems Now - Todd

**REDACTED**

Denise L. Hargan, Paralegal  
EchoStar Satellite L.L.C.  
Direct Line: 720-514-5449  
Direct Fax: 303-723-3928

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**From:** Musso, Reji  
**Sent:** Monday, October 09, 2006 4:13 PM  
**To:** Hargan, Denise  
**Cc:** Steele, Dana  
**Subject:** Satellite Systems Now - Todd

This consumer wanted \$2500 and the letter was sent on 9/5/06. Did anyone hear from them down in legal land -- before I pick up the phone and call him.

**Reji J. Musso**  
Manager - Retail Services  
303.723.3262 (tel)  
reji.musso@echostar.com

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Musso, Reji

**From:** Steele, Dana  
**Sent:** Monday, October 09, 2006 4:21 PM  
**To:** Musso, Reji  
**Subject:** TCPA - Todd, Michael - Satellite Systems Now

**From:** MTodd75682@aol.com [mailto:MTodd75682@aol.com]  
**Sent:** Wednesday, August 16, 2006 12:29 PM  
**To:** Steele, Dana  
**Cc:** MTodd75682@aol.com  
**Subject:** Re: Attn: Dana Steele

Mrs. Steele,

Thank you for your speedy reply to my email. On 7/20 I received a phone call to 502-426-7633 with a prerecorded message which instructed me to "press 1" to speak with a sales rep. That call showed up on my caller id as 702-835-0091. However, I simply hung up instead of pressing 1. On 8/14 I received a phone call to 502-426-7633 with a prerecorded message about the satellite deal and to press 1 to speak with the sales rep. This call came from 702-835-0195. This time I decided to continue and was connected with a live telemarketer who identified later in the conversation as Martha L. Wayne. She was the individual who sold me the system/service relating to your account number 8255909185626576, and I also have the entire conversation beginning with the prerecorded message recorded for future use. If you call the two numbers that the calls came from, the message identical and obviously from the same company.

I spoke with a CSR who identified himself as Frank at Dish and he provided me his contact number of 720-514-7924. Frank was the individual who stated to me that all the information that DISH had was the name of the company, Satellite Systems Now. Frank also stated that they were not a "retailer" but a "sales partner" who "works for Dish to do inbound and outbound sales". So, in the event that DISH wishes to stick with the independent retailer defense, Frank's statements certainly goes toward proving apparent authority. I also see that Dish accessed a copy of my Equifax credit report. This is quite interesting on many levels. The first being that your sales partner originally stated that they needed my ss number to "lock in this deal under my name and for verification purposes". I am also willing to bet that your Equifax subscription agreement doesn't allow outside third parties access but only Dish. With that being said, Dish has two separate options. The first is Dish is vicariously liable for the prerecorded calls under TCPA and Kentucky's telemarketing statutes for the actions of Satellite Systems Now, or Dish is liable for accessing my credit report without authorization under FCRA, in violation of Kentucky's Consumer Protection Act, and under an invasion of privacy tort claim. Either way, punitive damages and attorney fees are applicable. I have already consulted my colleague, David Szwak, who said he would be interested in taking a case such as this on contingency although I have not retained his services yet. In the event that you are not familiar with Mr. Szwak, Equifax certainly is and I have also included at the bottom some of his previous cases. However, as I am trying to be reasonable in this situation, I am willing to settle any claims I have against Dish and Satellite Systems Now provided that I am compensated in the amount of \$2500 for damages and the inquiry is deleted from my credit report. As I know you are still conducting your due diligence in this matter, I will allow through August 23rd for a response to my offer.

Sincerely,  
Michael Todd

#### CASE APPEAL OR REPORTED

- Carter v. ENSCO, Inc., et al, — F.Supp.2d ---- [U.S.D.C. W.D. La. 7/13/06];

10/9/2006

Confidential-US v. DISH

PX1340-031

DISH 50000000785  
J/A013829  
012569

TX 102-013091

- Shockey v. Polar Corp., Slip Copy, 2006 WestLaw 1476039 [U.S.D.C. W.D. La. 5/25/06];
- Landry-Bell v. Various, Inc., Slip Copy, 2006 WestLaw 1207920 [U.S.D.C. W.D. La. 4/24/06];
- Shockey v. Polar Corp., Slip Copy, 2006 WestLaw 1151362 [U.S.D.C. W.D. La. 4/20/06];
- Pace Royalty Trust Fund, Inc. v. O'Neal, --- So.2d ---, 2006 WestLaw 1007519 [La. App. 2 Cir. 4/19/06];
- Deaville v. Capital One Bank, --- F.Supp.2d ---, 2006 WestLaw 845750 [U.S.D.C. W.D. La. Mar 30, 2006];
- Shockey v. Polar Corp., Slip Copy, 2006 WestLaw 1151347 [U.S.D.C. W.D. La. 3/28/06];
- Fleet Fuel, Inc. v. Mynex, Inc., --- So.2d ---, 2006 WestLaw 547939 [La. App. 2 Cir. March 8, 2006];
- Dewease v. Davis-Guthrie & Associates, LLP, Slip Copy, 2006 WestLaw 695825 [U.S.D.C. E.D. La. March 7, 2006];
- Landry-Bell v. Various, Inc., Slip Copy, 2006 WestLaw 273599 [U.S.D.C. W.D. La. February 2, 2006];
- Landry-Bell v. Various, Inc., Slip Copy, 2005 WestLaw 3640448, [U.S.D.C. W.D. La. December 27, 2005];
- Poulson v. Trans Union LLC, 406 F.Supp.2d 744, [U.S.D.C. E.D. Tex. December 22, 2005];
- Maranto v. Citifinancial Retail Services, Inc., Slip Copy, 2005 WestLaw 3369948 [U.S.D.C. W.D. La. November 18, 2005];
- Maranto v. Dillard Nat. Bank, 230 F.R.D. 478 [U.S.D.C. W.D. La. July 27, 2005];
- In re Landry-Bell, 232 F.R.D. 266 [U.S.D.C. W.D. La. July 14, 2005];
- Poulson v. Trans Union, LLC, 370 F.Supp.2d 592, 2005 WestLaw 1350035 [E.D. Tex. May 31, 2005];
- Abels v. General Motors Corp., 899 So.2d 810 [La. App. 2 Cir. April 6, 2005]
- Brigham v. Pennywise RV Sales & Service, Inc., Slip Copy, 2005 WestLaw 435260 [W.D. La. Feb 16, 2005];
- Carriere v. Proponent Federal Credit Union, 2004 WestLaw 1638250 [W.D. La. July 12, 2004];
- Fleet Fuel, Inc. d/b/a Fuelman v. Mynex, Inc., et al, 877 So.2d 234, 38,696 [La. App. 2 Cir. 8/23/04];
- Comeaux v. Experian Information Solutions, 2004 WestLaw 1354412 [E.D. Tex., Jun 08, 2004];
- Campbell v. Select Car Co., Inc., 874 So.2d 391, 38,443 [La. App. 2 Cir. 5/12/04];
- Pace v. Experian Information Solutions Inc., 2004 WestLaw 1057795 [E.D. Tex., Apr 28, 2004];
- McClave v. Bank One Corp., 2004 WestLaw 439991 [E.D. Tex., Feb 10, 2004];
- Mendoza v. Experian Info. Solutions, Inc., 2003 U.S. Dist. LEXIS 7121, Civil Action No. H-02-2465 [U.S.D.C. S.D. Tex.2003];
- Ayers v. Equifax Information Services, 2003 WestLaw 23142201 [E.D. Va., Dec 16, 2003];
- Gahagan v. Thornton, 861 So.2d 813, 52 UCC Rep.Serv.2d 791, 2003-851 [La. App. 3 Cir. 12/10/03];
- Cisneros v. Trans Union, LLC, 293 F.Supp.2d 1167 [D. Hawai'i, Nov 17, 2003];
- Acton v. Bank One Corp., 293 F.Supp.2d 1092 [D. Ariz., Nov 07, 2003];
- Cisneros v. Trans Union, L.L.C., 293 F.Supp.2d 1156 [D. Hawai'i, Nov 07, 2003];
- Carlson v. Trans Union, LLC., 2003 WestLaw 21750706 [N.D. Tex., Jul 22, 2003];
- Smith v. Sears, Roebuck and Co., 276 F.Supp.2d 603 [S.D. Miss., May 30, 2003];
- Ryan v. Trans Union LLC, 2003 WestLaw 23272604 [D. Hawai'i, May 30, 2003];
- Carlson v. Trans Union, LLC, 261 F.Supp.2d 663 [N.D. Tex., Apr 17, 2003];
- Carlson v. Trans Union, LLC, 259 F.Supp.2d 517 [N.D. Tex., Apr 16, 2003];
- Whisenant v. First National Bank & Trust Co., 258 F.Supp.2d 1312 [N.D. Okla., Apr 14, 2003];
- Thompson v. Equifax Credit Information Services, Inc., 2003 WestLaw 1579270 [M.D. Ala., Mar 03, 2003];
- Thompson v. Equifax Credit Information Services, Inc., 2003 WestLaw 1579757 [M.D. Ala., Mar 03, 2003];
- Riley v. General Motors Acceptance Corp., 226 F.Supp.2d 1316 [S.D. Ala., Oct 17, 2002];
- Braxton v. Farmer's Ins. Group, 209 F.R.D. 654 [N.D. Ala., Sep 16, 2002];
- Braxton v. Farmer's Ins. Group, 209 F.R.D. 651, 54 Fed.R.Serv.3d 28 [N.D. Ala., Sep 13, 2002];
- Williams v. Experian Information Solutions, Inc., 2002 WestLaw 31133235 [E.D. Tex., Aug 06, 2002];
- Young v. Equifax Credit Information Services, Inc., 294 F.3d 631 [5th Cir.(La.), Jun 11, 2002];
- Wright v. Equifax Information Services, Inc., 2002 WestLaw 32182181 [W.D. La., Mar 14, 2002];

10/9/2006



- Riley v. Equifax Credit Information Services, 194 F.Supp.2d 1239 [S.D. Ala., Jan 29, 2002];
- Thompson v. Equifax Credit Information Services, Inc., 2001 WestLaw 34142847 [M.D. Ala., Dec 14, 2001];
- Howell v. Taylor, 799 So.2d 1175, 35,279 [La. App. 2 Cir. 10/31/01];
- Jensen v. Experian Info. Solutions, Inc., 2001 U.S.Dist.Lexis 15134, 2001 WestLaw 1045510 [U.S.D.C. E.D. Tex. 2001];
- Stadlander v. Ryan's Family Steakhouses, Inc., 794 So.2d 881, 17 IER Cases 831, 34,384 [La. App. 2 Cir. 4/4/01];
- Whitesides v. Equifax Credit Information Services, Inc., 125 F.Supp.2d 807 [W.D. La., Dec 04, 2000];
- Whitesides v. Equifax Credit Information Services, Inc., 125 F.Supp.2d 813 [W.D. La., Dec 04, 2000];
- Economy Fire & Cas. Co. v. Swaney, 768 So.2d 822, 33,950 [La. App. 2 Cir. 10/4/00];
- Beasley v. Yokem Toyota, 767 So.2d 149, 33,805 [La. App. 2 Cir. 8/23/00];
- Lazar v. Trans Union LLC, 195 F.R.D. 665 [C.D. Cal., Jul 10, 2000];
- Hollis v. Info Pro Technology, 764 So.2d 184, 33,606 [La. App. 2 Cir. 6/21/00];
- Washington v. CSC Credit Services, et al, 1999 U.S.Dist.Lexis 11452 [U.S.D.C. E.D. La. 1999];
- Washington v. CSC Credit Services, et al, 1999 U.S.Dist.Lexis 7044 [U.S.D.C. E.D. La. 1999];
- Lawrence v. Security Professionals, 743 So.2d 247, 32,325 [La. App. 2 Cir. 8/18/99];
- Matthews v. City of Shreveport, et al, 731 So.2d 272, 1998 La.App.Lexis 3872 [La. 1998];
- On remand, 726 So.2d 1059, 1999 La.App.Lexis 31 [La. App. 2 Cir. 1999];
- White v. White, 32 F.Supp.2d 890 [W.D. La., Dec 14, 1998];
- Simpson v. Anthony Auto Sales, Inc., et al, 1998 U.S.Dist.Lexis 21636 [U.S.D.C. W.D. La. 1998];
- Hickey v. Centenary Oyster House, et al, 690 So.2d 858, 1997 La.App.Lexis 396 [La. App. 2 Cir. 1997]; reversed, 719 So.2d 421, 1998 La.Lexis 3042 [La. 1998];
- Simpson v. Anthony Auto Sales, Inc., 32 F.Supp.2d 405 [W.D.La., Aug 10, 1998];
- Riggs v. Anthony Auto Sales, Inc., 32 F.Supp.2d 411 [W.D. La., Aug 07, 1998];
- Fitzgerald v. Secretary, U.S. Dept. of Veterans Affairs, 121 F.3d 203, 75 Fair Empl.Prac.Cas. (BNA) 46, 72 Empl. Prac. Dec. P 45,159 [5th Cir.(La.), Sep 05, 1997];
- Gullatt v. Newell Industries, Inc., 688 So.2d 1191, 29,322 [La. App. 2 Cir. 12/11/96];
- Dotzler v. Perot, 914 F.Supp. 328 [E.D. Mo., Feb 06, 1996];
- Edwards v. K & B, Inc., 641 So.2d 1040, 26,002 [La. App. 2 Cir. 8/17/94];
- Taylor v. U.S. Fidelity & Guar. Ins. Co., 630 So.2d 237 [La., Oct 18, 1993];
- Ferguson v. Ferguson, 1992 WestLaw 12092482 [E.D. Ark., Nov 25, 1992].

10/9/2006

Confidential-US v. DISH

PX1340-033

DISH 000003787  
JA013831  
012571

TX 102-013093

**Musso, Reji**

---

**From:** john shahidi [john@xsatellite.com]  
**Sent:** Friday, December 15, 2006 10:53 AM  
**To:** Musso, Reji  
**Subject:** RE: Amount due on Abramson case/settlement  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Reji,

I will have a check mailed out today. This guy really did screw us out of the \$1,160 but I will send it so we can close this case.

Happy Holidays.

John

---

**From:** Musso, Reji [mailto:Reji.Musso@echostar.com]  
**Sent:** Thursday, December 14, 2006 11:40 AM  
**To:** john shahidi  
**Cc:** Hargan, Denise; Neylon, Brian; Origer, Robb; Oberbillig, Mike; Werner, Bruce  
**Subject:** Amount due on Abramson case/settlement

John, please forward a check to the address below in the amount of \$1160 made payable to Echostar Satellite L.L.C. - Legal Department for the services rendered by outside counsel on behalf of Echostar Satellite L.L.C. Had we known that you were settling, we could have avoided these expenses. However, because we were under the impression that there was some responsibility on our part, we retained the legal services necessary.

Should Echostar Satellite L.L.C. be named in any subsequent litigation, we will expect to be kept informed of your actions. Please submit the payment within 10 days of receipt of this e-mail.

Thank you for your cooperation.

*Reji J. Musso*

**Echostar Communications**

**Manager - Compliance**

**Retail Services**

**9601 S. Meridian Blvd.**

**Englewood, CO 80112**

**303.723.3262 (tel)**

1/3/2007

Confidential-US v. DISH

**PX1340-034**

DISH 0060039788  
JA013832  
012572

**TX 102-013094**

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1/3/2007

Confidential-US v. DISH

**PX1340-035**

DISH-0000033789  
JA013833  
012573

TX 102-013095

Musso, Reji

**From:** Musso, Reji  
**Sent:** Thursday, December 14, 2006 12:40 PM  
**To:** 'John shahid'  
**Cc:** Hargan, Denise; Neylon, Brian; Origer, Robb; Oberbillig, Mike; Werner, Bruce  
**Subject:** Amount due on Abramson case/settlement

John, please forward a check to the address below in the amount of \$1160 made payable to Echostar Satellite L.L.C. - Legal Department for the services rendered by outside counsel on behalf of Echostar Satellite L.L.C. Had we known that you were settling, we could have avoided these expenses. However, because we were under the impression that there was some responsibility on our part, we retained the legal services necessary.

Should Echostar Satellite L.L.C. be named in any subsequent litigation, we will expect to be kept informed of your actions. Please submit the payment within 10 days of receipt of this e-mail.

Thank you for your cooperation.

*Reji J. Musso*  
Echostar Communications  
Manager - Compliance  
Retail Services  
9601 S. Meridian Blvd.  
Englewood, CO 80112  
303.723.3262 (tel)

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REDACTED

**From:** john shahidi [mailto:john@xsatellite.com]  
**Sent:** Wednesday, November 29, 2006 11:11 AM  
**To:** Musso, Reji  
**Subject:** RE: Abramson v. EchoStar, Sat. Systems Now (Complaint0

Hi Reji,

I am a bit confused with this email.

We discussed the issue regarding Mr. Abramson on the phone a couple of weeks ago and we both a this guy was trying to sue us for no reason. I believe he is a friend of Michael Todd and was just trying some free money out of us or may have confused us with another retailer. Regardless, the law suit I dropped and both our company and EchoStar have received release letters.

<http://riv-mailarc2.echoStar.com/EnterpriseVault/properties.asp?VaultID=1E51AE883878...> 1/17/2007

Confidential-US v. DISH

PX1340-037

DISH 000003791  
JA013835  
012575

TX 102-013097

We do not market in any shape or form that will harm our company nor will it harm EchoStar, 90% of our business is via shared mail and 10% is via Internet sales. That's it. December 19<sup>th</sup> will mark our 7<sup>th</sup> anniversary as another company and its relationship with DIRECTV. This shows and should prove that we are here for

Please let me know if there is anything else I can do for you.

thx

John

P.S. What the heck are you working on Saturday's for??????

---

**From:** Musso, Reji [mailto:Reji.Musso@echostar.com]  
**Sent:** Saturday, November 25, 2006 5:57 PM  
**To:** John Shahidi  
**Cc:** Hargan, Denise  
**Subject:** FW: Abramson v. EchoStar, Sat. Systems Now (Complaint0  
**Importance:** High

---

**From:** Musso, Reji  
**Sent:** Saturday, November 25, 2006 6:55 PM  
**To:** 'John Shahidi'  
**Cc:** Hargan, Denise  
**Subject:** FW: Abramson v. EchoStar, Sat. Systems Now (Complaint0  
**Importance:** High

Things are not going well for you. We have sent out POE notices on this consumer. I'm sure that you served. I will be contacting you next week, John.

<http://riv-mailarc2.echostar.com/EnterpriseVault/properties.asp?VaultID=1E51AE883878...> 1/17/2007

Confidential-US v. DISH

PX1340-038

DISH-0060038792  
JAO13836  
012576

TX 102-013098

This is getting out of hand. Even if you settle with these folks, somehow you are contacting people tl shouldn't and even after being warned.

Please let me know when you are available.

Reji J. Musso  
Manager - Compliance  
Retail Services  
303.723.3262 (tel)  
720.514.8288 (fax)  
reji.musso@echostar.com

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**From:** Hargan, Denise  
**Sent:** Tuesday, November 14, 2006 10:19 AM  
**To:** Musso, Reji  
**Subject:** FW: Abramson v. EchoStar, Sat. Systems Now (Complaint0

REDACTED

Denise L. Hargan, Paralegal

EchoStar Satellite L.L.C.

9601 S. Meridian Blvd.

Englewood, CO 80112

Direct Line: 720-514-5449

Direct Fax: 303-723-3928

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<http://riv-mailarc2.echostar.com/EnterpriseVault/properties.asp?VaultID=1E51AE883878...> 1/17/2007

Confidential-US v. DISH

PX1340-039

DISH 0000033793  
JA013837  
012577

TX 102-013099

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<http://riv-mailarc2.echoStar.com/EnterpriseVault/properties.asp?VaultID=1E51AE883878...> 1/17/2007

Confidential-US v. DISH

**PX1340-040**

DISH-00000003794  
JA013838  
012578

**TX 102-013100**



(Abramson)

**Musso, Rejl**

**From:** Hargan, Denise  
**Sent:** Friday, October 27, 2006 9:22 AM  
**To:** Musso, Rejl; Steele, Dana  
**Subject:** FW: Abramson; Telemarketing Complaint  
**Attachments:** Satellite Systems Now, XSatellite.pdf; United Satellite.pdf

REDACTED

Denise L. Hargan, Paralegal  
 EchoStar Satellite L.L.C.  
 9601 S. Meridian Blvd.  
 Englewood, CO 80112  
 Direct Line: 720-514-5449  
 Direct Fax: 303-723-3928

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**From:** doo.dah [mailto:doo.dah@verizon.net]  
**Sent:** Thursday, October 26, 2006 6:34 PM  
**To:** Hargan, Denise  
**Subject:** RE: Abramson; Telemarketing Complaint

Ms. Hargan:

I was told by Dish Network's Retailer Services that Satellite Systems Now is Dish retailer number 13508141 (see the enclosed copy of the letter that I sent to Dish complaining about these calls). I believe that Satellite Systems Now does business at the same address as a DirecTV retailer that does business using the name of X-Satellite.

Also enclosed is a copy of the letter that I sent to Dish concerning United Satellite.

All of the information identifying the retailers and the Dish accounts that they set up is in my letters.

Please let me know if you need any additional information or if you or the retailers are interested in settling these matters.

Sincerely  
 Stewart Abramson  
 412-362-4233

11/22/2006

Confidential-US v. DISH

PX1340-041

DISH 50000036795  
 J/A019839  
 012579

TX 102-013101

---

**From:** Hargan, Denise [mailto:Denise.Hargan@echostar.com]  
**Sent:** Thursday, October 26, 2006 7:26 PM  
**To:** doo.dah  
**Subject:** RE: Abramson; Telemarketing Complaint

Mr. Abramson: Per your email below you mention Satellite Systems Now and X Satellite. Have you been able to identify these retailers? We would like to research and follow up with the retailers regarding their contact with you. Thanks very much. Denise Hargan

---

**From:** doo.dah [mailto:doo.dah@verizon.net]  
**Sent:** Thu 10/26/2006 2:26 PM  
**To:** Misso, Rejl; Hargan, Denise; donna.steele@echostar.com; Steele, Donna  
**Cc:** jeff.hughes@sterlingsatellite.com  
**Subject:**

To whom it may concern at Dish Network:

On 10/11/06 I complained in a letter to Dish Network about prerecorded telephone solicitations that I received involving Dish Network and a Dish Network retailer named Sterling Satellite (aka Sterling Commerce Group).

I have spoken with Jeff Hughes of Sterling Satellite, and we have satisfactorily resolved any complaints that I had concerning prerecorded telephone solicitations involving Sterling Satellite.

However, I still have two other remaining complaints with Dish Network concerning prerecorded telephone solicitations that I received involving Dish Network and other Dish Network retailers (ie. Satellite Systems Now, X Satellite, and United Satellite).

If Dish Network, or these other Dish Network retailers, refuse to resolve these two other remaining complaints within the next few days, then I will be forced to file civil complaints with the Court of Common Pleas of Allegheny County Pennsylvania.

Sincerely  
Stewart Abramson  
412-362-4233

11/22/2006

Confidential-US v. DISH

PX1340-042

DISH 5-0060028796  
J/A013840  
012580

TX 102-013102

Dish Network Service, LLC  
EchoStar Satellite, LLC  
c/o David Moskowitz  
9601 South Meridian Boulevard  
Englewood, CO 80112

Satellite Systems Now  
and  
X Satellite  
P.O. Box 50593  
Irvine, CA 92619

Satellite Systems Now, c/o Masoud Vakili  
and  
X Satellite, c/o Roya Nahid  
25712 Demeter Way  
Mission Viejo, CA 92691

Satellite Systems Now  
and  
X Satellite  
c/o John Shahidi, President  
15375 Barranca Parkway, Suite J101  
Irvine, CA 92618

Satellite Systems Now  
and  
X Satellite  
c/o John Shahidi, President  
15375 Barranca Parkway  
Suite or Building D  
Irvine, CA 92618

October 3, 2006

To whom it may concern:

On 8/18/06 I received a telephone call from "O at 702-835-0196". The caller delivered the following prerecorded telephone solicitation:

"Hello, this is April with your local satellite TV provider. Today we are giving away a free digital satellite TV system to all local residents here in our city. Press one now to receive your free satellite TV. Press three to be removed."

On 9/29/06 I received a telephone call from "AS PACIFIC at 571-283-6408". The caller delivered the following prerecorded telephone solicitation:

"Hello. This is Jennifer with your local satellite TV provider. Today we are giving away a free digital satellite TV system to all local residents here in our city. Press one now to receive your free satellite TV. Press three to be removed."

When I pressed the one key I was transferred to someone who said they were "Dish Network Sales". They said that they were an authorized sales agent of Dish Network named "Satellite Systems Now". They tried to charge \$49.99 on my Visa card but the transaction was declined due to lack of funds. They said that I could send a money order for \$59.25 to Satellite Sales, PO Box 50593, Irvine, CA 92619. They opened an account number with Dish Network as 8255-9093-9747-8576.

I called my Visa card company and they confirmed that Dish Network made two attempts to charge my Visa card on 9/29/06 for \$49.99, once at 5:03 PM, and once at 5:05 PM.

I called "Dish Network Retailer Services" at 303-723-3800. They confirmed that "Satellite Systems Now" is an authorized Dish Network Sales Agent located at 15375 Barranca Parkway, Irvine, CA 92618, and that they can be reached by phone at 949-861-4949. They said that the Dish Network retailer number for Satellite Systems Now is 13508141. When I called 949-861-4949 I reached the voice mail of John Shahidi with X Satellite.

If I do not hear from you by 10/15/06, then I will be forced to file a civil complaint in the Allegheny County Court of Common Pleas. I will name Dish Network, EchoStar Satellite, Satellite Systems Now, X Satellite, and John Shahidi as Defendants, and I will request that the court award me \$12,000 in statutory damages from all Defendants, jointly and severally.

I have already sued Dish Network and their authorized sales agents on two separate prior occasions for prerecorded telephone solicitations in violation of the Telephone Consumer Protection Act, and I have already written up a third civil complaint for 6 prerecorded telephone solicitations that I received from United Satellite on behalf of Dish Network between 6/30/06 and 8/7/06. If I do not hear from you by 10/15/06, then will rewrite my third civil complaint against Dish Network to include these two additional more recent telephone calls and the additional defendants.

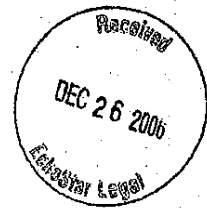
At this point in time I am willing to settle all of this for \$1,500 per telephone call. But if I have to file my 3rd civil complaint against Dish Network, then additional costs will have to be added to any possible settlement negotiations.

Sincerely,

Stewart Abramson  
522 Glen Arden Drive  
Pittsburgh, PA 15208  
412-362-4233 (voice)  
412-362-7668 (fax)

December 14, 2006

Dana Steele  
EchoStar Legal Department  
9601 S. Meridian Blvd.  
Englewood, CO 80112



Re: Customer Research

Dear Ms. Steele,

I understand the urgency regarding this matter and I have put my full attention towards it so we can help you with any information necessary to be reported to the Federal Trade Commission. I am fully aware of the FTC's ruling last year against DIRECTV and understand how urgent this matter is. In no way would we at Satellite Systems Now associate with any type marketing or conduct in any business practice in any way that would jeopardize our relationship with EchoStar or put EchoStar in any type of harm.

Satellite Systems Now markets the Dish Network brand by either direct mail or shared mail. We do follow up calls to customers whom have expressed interest in a Dish Network system however were not ready to order right then and there. When I say follow up calls, it's a live person calling back someone who has previously given us the okay.

I have researched the complaint of Mr. Stewart Abramson and his complaint was during the same week of a huge shared mail drop we had through Advo in the Pittsburgh DMA. I have attached a copy of the ad and a copy of the invoice. We do not telemarket this customer! Telemarketing has never been in our business plan and we do not plan for it to be.

I hope I have been able to help you with your research. If there is anything else you need from me, please feel free to contact me at anytime.

Very truly yours,

John Shahidi  
Satellite Systems Now  
(949) 370-2000



— PLUS PICK ONE PREMIUM —

**HBO**® **cine** ● **3 MONTHS**  
**SHOWTIME** **STARZ**  
**moviepack** **FREE**

Choose to add Local Channels, just **\$500**  
month  
(where available)



**FOX**



**Switch to DISH Network and you'll also get:**

**FREE DVR Receiver Upgrade** – Record up to 100 hours without videotape

**FREE Standard Professional Installation** (up to 4 rooms)

(Monthly DVR fee \$5.99)

**NO Equipment to Buy**

**1-800-946-4818**



**Open 24 hours a day, 7 days a week**

3 free months of qualifying movie package requires participation in Digital Home Advantage. After 3-month period, customer must call to downgrade or then-current price for selected package will apply.

Digital Home Advantage: Pay \$49.99 Activation Fee. Requires Social Security Number, valid major credit card, credit approval and qualifying programming purchase. Equipment must be returned to DISH Network upon termination of qualifying service. Limit 4 tuners per account. Monthly package price includes an equipment rental fee of \$5.00 or \$6.00 for first receiver, based on selected model. In addition, a monthly equipment rental fee of \$5.00 or \$6.00 will be charged for each receiver beyond the first, based on selected model. A \$5.00/mo. additional outlet programming access fee applies for each dual-tuner receiver; fee will be waived monthly for each such receiver continuously connected to Customer's phone line. Lease upgrade fee will apply for HD DVR receiver, and may apply for a second DVR receiver (based on model).

Offer ends 1/31/07 and is available in the continental United States for new, first-time DISH Network residential customers. All prices, packages and programming subject to change without notice. Local and state sales taxes may apply. Where applicable, equipment rental fees and programming are taxed separately. All DISH Network programming, and any other services that are provided, are subject to the terms and conditions of the promotional agreement and Residential Customer Agreement, available at [www.dishnetwork.com](http://www.dishnetwork.com) or upon request. Local channels packages by satellite are only available to customers who reside in the specified local Designated Market Area (DMA). Local channels may require an additional dish antenna from DISH Network, installed free of any charges with subscription to local channels at time of initial installation. Social Security Numbers are used to obtain credit scores and will not be released to third parties except for verification and collection purposes only or if required by governmental authorities. All service marks and trademarks belong to their respective owners.

Dana,

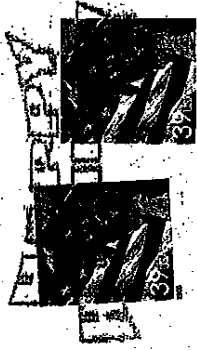
Happy Holidays!

(all we if you  
need anything!

Satellite Systems Now  
15375 Barranca Pkwy #1D  
Irvine, CA 92618

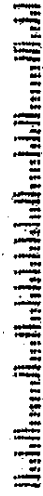
SANTA ANA CA 927

20 DEC 2006 PM 8 T



Ms. Dana Steele  
EchoStar Legal Department  
91601 S. Meridian Blvd.  
Englewood, CO 80112

50112+8503







Retail Audit and Risk  
9601 S. Meridian Blvd.  
Englewood, Colorado 80112

October 31, 2006

Via Facsimile: 949-861-9090

John Shahidi  
Satellite Systems Now  
15375 Barrance PKWY  
Irvine, CA 92618

Re: Notice of Complaint "Do Not Call" Violation

Dear Mr. Shahidi

The purpose of this letter is to inform you that Michael Todd @ 502-426-7633 has notified EchoStar Satellite L.L.C. that he intends to pursue formal action against EchoStar Satellite Corporation ("DISH Network"). Mr. Todd alleges, among other things, that he received repeated pre recorded telephone solicitations attempting to sell him DISH Network. Research connects Satellite Systems Now to these events which are in violation of Telecommunications Consumer Protection Act regulations.

Pursuant to Section 9.1 of your Retailer Agreement you are required, among other things, to comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives and orders. Immediately, you must add this consumer information to your "Do Not List" registry.

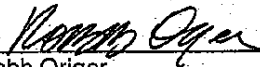
Within five (5) days of the date of this letter, you must completely and thoroughly address the circumstances surrounding the allegation(s) and furnish information relative to specific corrective actions that have created these issues and will eliminate recurrences for Satellite Systems Now, providing a written explanation and documentations of the same to EchoStar. This information should be forwarded to:

EchoStar Satellite L.L.C.  
Retail Services - Reji Musso  
9601 S. Meridian  
Englewood, CO 80112

Additional incidences of this nature may result in disciplinary action up to and including termination of your Retailer Agreement without further warning, as deemed appropriate in our sole and absolute discretion. Dish Network hereby requests that Satellite Systems Now defend and indemnify Dish Network from and against any and all costs that Dish Network incurs therein.

This letter is without prejudice to any rights and remedies that may be available to EchoStar at law, in equity, under contract (including without limitation, its rights to chargeback any and all amounts owing to it pursuant to Section 6 of the Agreement), or otherwise.

Thank you for your attention to this matter.

  
\_\_\_\_\_  
Robb Origer  
Director, Retail Services  
EchoStar Satellite L.L.C.

cc: Dana Steele



Retail Audit and Risk  
9601 S. Meridian Blvd.  
Englewood, Colorado 80112

September 5, 2006

Via Certified Mail 7005 1820 0007 8556 7436

Mr. John Shahidi  
Satellite Systems Now  
15375 Barrance PKWY  
Irvine, CA 92618

*8/29 letter and 9/5  
letter same - just  
different delivery  
methods*

Re: Notice of Complaint - "Do Not Call" Violation

Dear Mr. Shahidi:

Please be advised that Mr. Michael Todd is threatening legal action against EchoStar Satellite L.L.C. ("EchoStar") alleging, among other things, calls placed to Mr. Todd by or on behalf of Satellite Systems Now were in violation of state and federal telemarketing laws. Specifically, Mr. Todd alleges that on August 14, 2006 he received a pre-recorded solicitation to his telephone number 502-426-7633 in violation of telemarketing laws which was traced to Satellite Systems Now through an order placed by Mr. Todd. Mr. Todd is demanding \$2,500.00 in monetary damages to settle his claims. **Please contact me immediately to discuss resolution of Mr. Todd's claims.**

***Demand to Cease & Desist***

You are aware that Section 9.1 of the EchoStar retailer agreement dated 12/31/04 between EchoStar and Satellite Systems Now (the "Agreement") requires Satellite Systems Now to comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise) and all amendments thereto, (hereinafter "Laws"), and Satellite Systems Now is solely responsible for its compliance with all Laws that apply to its obligations under the Agreement. Section 10.4 of the Agreement subjects Satellite Systems Now to automatic termination if it fails to comply with any applicable Laws, or engages in any practice determined to be an unfair trade practice or other violation of any applicable Laws, including without limitation any telemarketing or do-not-call laws. **If Satellite Systems Now directly or indirectly engaged in, or hired someone to engage in, any automated or pre-recorded telemarketing or voice broadcasting you must notify us in writing by September 5, 2006 and provide a detailed explanation of such activities.**

As you are also aware, Section 7.1 of the Agreement prohibits Satellite Systems Now from using any independent contractors, subcontractors, affiliates, agents, sub-agents or any other persons not employed by Satellite Systems Now to market or solicit sales unless Satellite Systems Now first obtains EchoStar's specific prior written consent. Satellite Systems Now is solely responsible for the acts and omissions of such any expressly authorized third parties to same extent Satellite Systems Now is responsible for the acts and omissions of its own employees. **If Satellite Systems Now employed or used any third party for marketing or solicitation of sales through telemarketing or voice broadcasting then you must notify us of that fact in writing by September 5, 2006 and provide a copy of the express written consent to use such third parties, if any.**

Page 1 of 2

Confidential-US v. DISH

PX1340-051

DISH 5003848305  
012589

TX 102-013111

***Violation of Telephone Consumer Protection Act Prohibited***

Section 7.3 of the Agreement requires Satellite Systems Now to take all actions and refrain from taking any action, as requested by EchoStar in connection with Satellite Systems Now's marketing, advertising, promotions or solicitation. **Demand is hereby made that (i) Satellite Systems Now cease all pre-recorded or automated telemarketing and/or voice broadcasting; and (ii) Satellite Systems Now cease all activities that are or in any way may be in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* and all other federal, state and local laws and regulations related to telemarketing. Please provide written confirmation by September 5, 2006 that Satellite Systems Now has ceased or not engaged in such activity and that Satellite Systems Now shall not engage in such activity in the future.**

***Notice & Demand for Defense and Indemnity***

Section 13 of the Agreement requires that Satellite Systems Now indemnify, defend and hold EchoStar harmless for all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorney fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with Satellite Systems Now's telemarketing activities. Demand is hereby made that Satellite Systems Now defend and indemnify EchoStar for such Claims. Please note that EchoStar is entitled to off-set defense costs and indemnification amounts owed by Satellite Systems Now pursuant to Section 6.8 of the Agreement.


In addition to the information requested above, please also provide EchoStar with the following **in writing** no later than **September 5, 2006**:

1. Confirmation that Satellite Systems Now will defend and indemnify EchoStar for any and all claims arising out of or related to Satellite Systems Now's telemarketing activities;
2. Detailed response to Mr. Todd's allegations;
3. Assurance that Satellite Systems Now is in compliance with all telemarketing laws and regulations; and
4. Documentation detailing Satellite Systems Now's telemarketing practices and procedures, including, but not limited to a copy of Satellite Systems Now's Do Not Call Policy and proof of subscription(s) to the national and any applicable state Do Not Call lists and its maintenance of its internal Do Not Call list.

Failure to comply could result in immediate termination of the EchoStar Retailer Agreement.

This letter is without prejudice to any rights and remedies that may be available to EchoStar at law, in equity, under contract (including without limitation, its rights to chargeback any and all amounts owing to it pursuant to Section 6 of the Agreement), or otherwise.

Thank you for your attention to this matter.

  
\_\_\_\_\_  
Robb Origer  
Director, Retail Services  
EchoStar Satellite L.L.C.

cc: Dana Steele

U.S. Postal Service via  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To \_\_\_\_\_  
 Street, Apt. No.,  
 or PO Box No. \_\_\_\_\_  
 City, State, ZIP+4 \_\_\_\_\_

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <u>[Signature]</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>9/6/06</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <u>[Signature]</u> <input checked="" type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p><u>John Shahidi</u>  <u>Satellite Systems Now</u>  <u>18375 Barrance Pkwy</u>  <u>Inline, CA 93618</u></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number          (Transfer from service label) <u>7005 1820 0007 8556 7436</u></p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

Confidential-US v. DISH

PX1340-053

DISH 5019831807  
012591

TX 102-013113



Retail Audit and Risk  
9601 S. Meridian Blvd.  
Englewood, Colorado 80112

August 29, 2006

**Via Facsimile (949) 861 9090**

Mr. John Shahidi  
Satellite Systems Now  
15375 Barrance PKWY.  
Irvine, CA 92618

Re: Notice of Complaint - "Do Not Call" Violation

Dear Mr. Shahidi:

Please be advised that Mr. Michael Todd is threatening legal action against EchoStar Satellite L.L.C. ("EchoStar") alleging, among other things, calls placed to Mr. Todd by or on behalf of Satellite Systems Now were in violation of state and federal telemarketing laws. Specifically, Mr. Todd alleges that on August 14, 2006 he received a pre-recorded solicitation to his telephone number 502-426-7633 in violation of telemarketing laws which was traced to Satellite Systems Now through an order placed by Mr. Todd. Mr. Todd is demanding \$2,500.00 in monetary damages to settle his claims. **Please contact me immediately to discuss resolution of Mr. Todd's claims.**

***Demand to Cease & Desist***

You are aware that Section 9.1 of the EchoStar retailer agreement dated 12/31/04 between EchoStar and Satellite Systems Now (the "Agreement") requires Satellite Systems Now to comply with all applicable governmental statutes, laws, rules, regulations, ordinances, codes, directives, and orders (whether federal, state, municipal, or otherwise) and all amendments thereto, (hereinafter "Laws"), and Satellite Systems Now is solely responsible for its compliance with all Laws that apply to its obligations under the Agreement. Section 10.4 of the Agreement subjects Satellite Systems Now to automatic termination if it fails to comply with any applicable Laws, or engages in any practice determined to be an unfair trade practice or other violation of any applicable Laws, including without limitation any telemarketing or do-not-call laws. **If Satellite Systems Now directly or indirectly engaged in, or hired someone to engage in, any automated or pre-recorded telemarketing or voice broadcasting you must notify us in writing by September 5, 2006 and provide a detailed explanation of such activities.**

As you are also aware, Section 7.1 of the Agreement prohibits Satellite Systems Now from using any independent contractors, subcontractors, affiliates, agents, sub-agents or any other persons not employed by Satellite Systems Now to market or solicit sales unless Satellite Systems Now first obtains EchoStar's specific prior written consent. Satellite Systems Now is solely responsible for the acts and omissions of such any expressly authorized third parties to same extent Satellite Systems Now is responsible for the acts and omissions of its own employees. **If Satellite Systems Now employed or used any third party for marketing or solicitation of sales through telemarketing or voice broadcasting then you must notify us of that fact in writing by September 5, 2006 and provide a copy of the express written consent to use such third parties, if any.**

Page 1 of 2

Section 7.3 of the Agreement requires Satellite Systems Now to take all actions and refrain from taking any action, as requested by EchoStar in connection with Satellite Systems Now's marketing, advertising, promotions or solicitation. Demand is hereby made that (i) Satellite Systems Now cease all pre-recorded or automated telemarketing and/or voice broadcasting; and (ii) Satellite Systems Now cease all activities that are or in any way may be in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* and all other federal, state and local laws and regulations related to telemarketing. Please provide written confirmation by September 5, 2006 that Satellite Systems Now has ceased or not engaged in such activity and that Satellite Systems Now shall not engage in such activity in the future.

Section 13 of the Agreement requires that Satellite Systems Now indemnify, defend and hold EchoStar harmless for all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorney fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with Satellite Systems Now's telemarketing activities. Demand is hereby made that Satellite Systems Now defend and indemnify EchoStar for such Claims. Please note that EchoStar is entitled to off-set defense costs and indemnification amounts owed by Satellite Systems Now pursuant to Section 6.8 of the Agreement.

1. Confirmation that Satellite Systems Now will defend and indemnify EchoStar for any and all claims arising out of or related to Satellite Systems Now's telemarketing activities;
2. Detailed response to Mr. Todd's allegations;
3. Assurance that Satellite Systems Now is in compliance with all telemarketing laws and regulations; and
4. Documentation detailing Satellite Systems Now's telemarketing practices and procedures, including, but not limited to a copy of Satellite Systems Now's Do Not Call Policy and proof of subscription(s) to the national and any applicable state Do Not Call lists and its maintenance of its internal Do Not Call list.

This letter is without prejudice to any rights and remedies that may be available to EchoStar at law, in equity, under contract (including without limitation, its rights to chargeback any and all amounts owing to it pursuant to Section 6 of the Agreement), or otherwise.

*Robb Origer*  
Robb Origer  
Director, Retail Services  
EchoStar Satellite L.L.C.

Page 2 of 2

MyDashboard | Contact Certifications | Home | Opportunities | Contacts | Activities | Calendar | Co-Op Admin (Read Only) | Co-Op Rec

All Accounts | [Search] | [Filter] | [Sort] | [Export] | [Print]

Home | Accounts | Attachments | Contacts | Orders | Service Requests | Opportunities | Profile | Account Team | Activity Plans | Addresses

Name: SATELLITE SYSTEMS NOW  
 Tax Reporting Name: SATELLITE SYSTEMS NOW  
 Primary Contact: [Name]  
 Location: (P) IRVINE, CA  
 Store ID: [ID]  
 National Accounts: [List]  
 Main Phone: (949) 881-4949  
 Main Fax: (949) 881-8090  
 City: [City]  
 State: [State]  
 Zip: [Zip]  
 Email: johnshandi@meo.com

Account Type: [Type]  
 Account Status: [Status]  
 Account Manager: [Manager]  
 Account Notes: [Notes]  
 Account History: [History]  
 Account Settings: [Settings]  
 Account Actions: [Actions]

Active: [Active]  
 Standard: [Standard]  
 Westcoast: [Westcoast]  
 National: [National]  
 Retailer: [Retailer]  
 Agreement on File: [Agreement]  
 Indemnify: [Indemnify]  
 Total Service Order: [Total]  
 Total Service Order Amount: [Amount]  
 Total Service Order Date: [Date]

SHANDI [X]  
 National [X]

(949) 370 2000 - John's cell

Hispanic Global →

indemnify us —

Settling w/ cst -

call was "call back" - agent did say Dish Network -  
 Todd told agent more comfortable buying from DN  
 than retailer. Call recorded. - Unable to produce -

<Unsubstantiated>

Mentioned OE Monitoring



# AUDIT CHECKLIST

TYPE

INCENTIVIZED

BUSINESS NAME

SATELLITE SYSTEMS NOW

DBA

CURRENT AR/OE#

13508141

CURRENT AP#

104908

PREVIOUS AR#

PREVIOUS AP#

CONTACT NAME

JOHN SHAHIDI

CONTACT TITLE

PRESIDENT

REGION

Sacramento

RETAILER PHONE#

(949) 861-4949

RETAILER FAX#

(949) 861-9090

APPLICATION

EFT AUTHORIZATION

W-9

CONTRACTS/AGREEMENTS

NOTES

SET UP BY:

DATA ENTRY

Kim Turk

INITIAL

KT

DATE

10/12/05

	AUDITOR	INITIAL	DATE
INITIAL AUDIT BY:	Shavonne	SH	9/30/05
DATE COMPLIANT			
SYSTEM AUDIT BY:	Audrey	AR	10/17/05

<b>NAME:</b> ATELLITE SYSTEMS NOW <b>Reporting Name:</b> ATELLITE SYSTEMS NOW <b>Address Line 1:</b> 1375 BARRANCE PKWY <b>Address Line 2:</b> TE D <b>City:</b> VINE <b>State:</b> A <b>Zip Code:</b> 8618 <b>County:</b> RANGE		<b>*Status:</b> Submitted to Credit Collections <b>*Business Type:</b> Corporation <b>Annual Revenue:</b> \$0.00 <b>Bankruptcy Details:</b> <b>Business With EchoStar Dealer:</b> <b>Tax Id - Masked:</b> <b>Duplicate TIN?</b>		<b>*Last Name:</b> SHAHDI <b>*First Name:</b> JOHN <b>Middle Initial:</b> H <b>Mr/Ms:</b> Mr. <b>*User ID:</b> JOHN SHAHDI <b>*Job Title:</b> PRESIDENT <b>*Password:</b> <b>*Verify Password:</b> <b>*Email:</b> johnshahdi@msc.com		<b>Preferred Partner Type:</b> EchoStar Retailer Agreement <b>Preferred Partner Type 2:</b> W-9 <b>Preferred Partner Type 3:</b> <b>*Work Phone #:</b> (949) 861-4948 <b>Fax #:</b> (949) 861-9090 <b>Social Security Number:</b> xxxxx1781 <b>Internal Notes:</b> I, Paul Rufener, visited account on 8/2/05 & give my approval.	
---	--	--	--	---	--	---	--

**John Shahidi**

**From:** John Shahidi [johnshahidi@mac.com]  
**Sent:** Thursday, July 28, 2005 8:45 AM  
**To:** John Shahidi  
**Subject:** Fwd: Thank you for completing Pre-Qualification Process.

Begin forwarded message:

**From:** Echosphere Resolution <echosphereresolution@echostar.com>  
**Date:** July 27, 2005 4:00:02 PM PDT  
**To:** johnshahidi@mac.com  
**Subject:** Thank you for completing Pre-Qualification Process.

Dear SATELLITE SYSTEMS NOW,

We have received your on-line application to become an EchoStar retailer. Your Application Tracking Number is 1-581V0B. You will be contacted shortly by a member of our sales team to guide you through the rest of your application process. In order to expedite your application, please have the following information compiled:

- A copy of your Business License or Seller's Permit
- A completed Sales Tax Exemption Form (attached Multi Certificate.pdf)
- An EFT Request Form for direct deposits to your account (attached EFT Form.pdf), there is a \$20 fee per check if you choose not to use our EFT facility.
- A digital photograph of your Storefront (exterior) and of your showroom (interior)
- A copy of your W-9 Form (attached W-9.pdf)
- A completed Partner Credit Check Authorization Form (attached PCCA Form.pdf), signed by all partners in your company.
- A completed Retailer Application Acknowledgement (attached RAA Form.pdf)
- A Signed copy of this E-Mail

Currently this is the company information we have on record for you:

Principal Officer First Name: JOHN  
 Principal Officer Last Name: SHAHIDI  
 Job Title: PRESIDENT  
 Company Name: SATELLITE SYSTEMS NOW  
 Address 1: 15375 BARRANCA PKWY, STE J101  
 Address 2:  
 City: IRVINE  
 State: CA  
 Country: US  
 Main Phone: (949) 861-4949  
 Main Fax: (949) 861-9090  
 E-Mail Address: johnshahidi@mac.com

150-90-1781  
 6581

If you have any changes to this, please let our Sales Team know. Once again we thank you.

9/13/2005

for your interest and look forward to doing business with you. If you have any questions, changes or concerns please call us at 1-800-521-9282.

**Signature and Acknowledgement**

To my knowledge, all of the information I have provided in this Retail Application is true and accurate.

Signature: (X) \_\_\_\_\_

Date: \_\_\_\_\_

Please Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Echosphere L.L.C., EchoStar Satellite L.L.C., and their subsidiaries reserve the right to conduct a background check and request a current credit report from the appropriate agencies. Misrepresentations may result in the immediate termination of the Retailer Agreement by EchoStar Satellite L.L.C., in its sole and absolute discretion.

Thank you,

EchoStar Satellite L.L.C.

9/13/2005

Confidential-US v. DISH

PX1340-060

DISH 500086814  
JA003858  
012598

TX 102-013120



Authorization Agreement For  
Deposits & Credits

Retailer Payment Options (Please check one)

<input checked="" type="checkbox"/> Payment by Electronic Funds Transfer (EFT) Please fill out the required information below, and staple a pre-printed check to the bottom of this form in order to receive payment by EFT.	<input type="checkbox"/> Payment by Check By checking this box you are agreeing to receive payment by check, and will be subject to a \$20.00 processing fee for each check issued on your account.
---	--

Authorization Agreement for Deposits & Credits

I hereby authorize and request Echostar Satellite L.L.C. ("Echostar") to make payments to my company as elected above.

If payment by Electronic Funds Transfer (EFT) is elected, any amounts owed will be paid by credit entries to my account at the Bank indicated on the attached check below ("Bank"). I hereby authorize and request Bank to accept any credit entries initiated by Echostar and to credit all such entries to my account without liability for the correctness of the entries.

I understand and agree that if an erroneous credit is made to my account that Echostar and Bank are authorized to stop payment, reverse the entry or make any adjustments necessary to my account to correct the erroneous entry.

If payment by Check is elected, any amounts owed will be paid in the form of a check payable in the name of my company, and will be mailed to the address specified below. I do understand that all checks sent by Echostar are subject to a processing fee of \$20.00, and I agree to this fee as part of this payment agreement.

I understand and agree that I may terminate this agreement at any time upon three (3) business days prior written notice to Echostar or Bank. Notification to Echostar or Bank shall be effective upon receipt at the address listed below.


Once complete please mail this form and the attached check to your local Echostar sales office.

EFT submissions that fail to meet the above standards will not be setup, your account will be set to check and is subject to a \$20.00 processing fee per check issued.

Company Name <i>Satellite Systems Now</i>	Retailer Number (if available)
Authorizer's Name (Last, First, MI) Please Print <i>Shahidi, John</i>	Authorizer's Title <i>Pres / CEO</i>
Address <i>15375 Barranca Pkwy. Suite D</i>	Phone Number <i>949.861.4949</i>
City <i>Irvine</i>	State <i>CA</i> ZIP Code <i>92618</i>
Authorized Signature (X) <i>[Signature]</i>	Date <i>9/14/2005</i>

Additional Information Is Needed!!

- If signing up for EFT, please attach a pre-printed "VOIDED" check to the space provided below this section.
- Do not alter the check other than writing the word "VOID" on the front.
- Starter checks and checks with company names that do not match the name on your company's retailer agreement will not be setup for electronic payments.

Satellite Systems Now 15375 Barranca Pkwy Suite D Irvine CA 92618		Date _____	89 90-7008/3222
Pay to the order of _____	\$ _____		
Dollars			
 COMMERCIAL CAPITAL BANK (888) 878-3411		SIGNED <i>[Signature]</i>	
MEMO _____		VOID	
⑆322270084⑆ 141565448⑆ 0084			

## Retailer Application Acknowledgement

### New Retailer Policy

The completion of this Retailer Application Acknowledgement is necessary before any business can be transacted between your firm and EchoSphere L.L.C. ("EchoSphere") or EchoStar Satellite L.L.C. ("EchoStar"). Upon completion please send this application to the nearest EchoSphere Distribution Center. No business can be conducted until these requirements are met. An initial equipment order is also required.

### Sales Tax Rules and Regulations – Resale Certificate Form

*This tax may not be applicable to you, but it is required of us by the State. Your cooperation is appreciated.*

Is the address on your resale certificate current? ☒ Yes ☐ No If no, list date of change: \_\_\_\_\_

I Hereby Certify, That I hold a valid State Seller's Permit # 162-646751 (Copy Must Be Attached) issued pursuant to the Sales and Use Tax Law; that I am engaged in the business of selling Direct-to-Home Satellite TV Reception Equipment and that the tangible personal property described herein which I shall purchase from EchoSphere L.L.C. will be resold by me in the form of tangible personal property provided, however, that in the event any of such property is used for purposes other than retention, demonstration or display while holding it for sale in the regular course of business, it is understood that I am required by the Sales and Use Tax Law to report and pay for the tax measured by the purchase price of such property. Description of property to be purchased: Direct-To-Home Satellite Television Reception Equipment.

*Such certificate is good until revoked in writing.*

Signature: (X) [Signature]

Date: 9/14/2005

Please Print Name: John Chan

Title: Pres/CEO



### Principals, Partners or Officers and Credit Authorization

*This section must be completed only by all principals, partners, members, or owners of your firm, as appropriate.*

By signing this section of the application you are authorizing EchoStar or Echosphere to conduct a background check and request a current credit report from the appropriate agencies. Misrepresentations may result in the immediate termination of your relationship with EchoStar Satellite L.L.C. or Echosphere L.L.C., in its sole and absolute discretion.

To whom it may concern:

I hereby give my permission and authorization for the release of credit and banking information to EchoStar Satellite L.L.C. and Echosphere L.L.C. This authorization is valid for both business and personal, credit and banking purposes.

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

Signature: (X) <u>[Signature]</u>	Date: <u>9/14/2005</u>
Please Print Name: <u>John Shahid</u>	Title: <u>Pres / CEO</u>
Signature: (X) _____	Date: _____
Please Print Name: _____	Title: _____
Signature: (X) _____	Date: _____
Please Print Name: _____	Title: _____
Signature: (X) _____	Date: _____
Please Print Name: _____	Title: _____
Signature: (X) _____	Date: _____
Please Print Name: _____	Title: _____
Signature: (X) _____	Date: _____
Please Print Name: _____	Title: _____
Signature: (X) _____	Date: _____
Please Print Name: _____	Title: _____
Signature: (X) _____	Date: _____
Please Print Name: _____	Title: _____

CALIFORNIA STATE BOARD OF EQUALIZATION

**SELLER'S PERMIT**



ACCOUNT NUMBER

10/1/2005 SR EAA 100-642751

SATELLITE SYSTEMS NOW  
15375 BARRANCA PKWY STE D  
IRVINE, CA 92618-2206

THIS PERMIT DOES NOT  
AUTHORIZE THE HOLDER  
TO ENGAGE IN ANY  
BUSINESS CONTRARY TO  
LAWS REGULATING THAT  
BUSINESS OR TO  
POSSESS OR OPERATE  
ANY ILLEGAL DEVICE.

IS HEREBY AUTHORIZED PURSUANT TO SALES AND USE TAX LAW TO ENGAGE IN THE  
BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT THE ABOVE LOCATION.

THIS PERMIT IS VALID UNTIL REVOKED OR CANCELED BUT IS NOT TRANSFERABLE. IF YOU SELL YOUR BUSINESS,  
OR DROP OUT OF A PARTNERSHIP, NOTIFY US OR YOU COULD BE RESPONSIBLE FOR SALES AND USE TAXES  
OWED BY THE NEW OPERATOR OF THE BUSINESS.

Not valid at any other address

For general tax questions, please telephone our Information Center at 800-400-7115.

For information on your rights, contact the Taxpayers' Rights Advocate office at 888-324-2798 or 916-324-2798.

BOE-442-R-REV. 14 (10-04)

**A MESSAGE TO OUR NEW PERMIT HOLDER**

As a seller, you have rights and responsibilities under the Sales and Use Tax Law. In order to assist you in your endeavor and to better understand the law, we offer the following sources of help:

- Visiting our website at [www.boe.ca.gov](http://www.boe.ca.gov)
- Visiting a district office
- Attending a Basic Sales and Use Tax Law class offered at one of our district offices
- Sending your questions in writing to any one of our offices
- Calling our toll-free Information Center at 800-400-7115

As a seller, you have the right to issue resale certificates for merchandise that you intend to resell. Conversely, you have the responsibility of not misusing resale certificates. While the sales tax is imposed upon the retailer;

- You have the right to seek reimbursement of the tax from your customer
- You are responsible for filing and paying your sales and use tax returns timely
- You have the right to be treated in a fair and equitable manner by the employees of the Board
- You are responsible for following the regulations set forth by the Board

As a seller, you are expected to maintain the normal books and records of a prudent businessperson. You are required to maintain these books and records for no less than four years, and make them available for inspection by a Board representative when requested. You are also expected to notify us if you are buying, selling, adding a location, or discontinuing your business, adding or dropping a partner, officer, or member, or when you are moving any or all of your business locations. If it becomes necessary to surrender this permit, you should only do so by mailing it to a Board office, or giving it to a Board representative.

If you would like to know more about your rights as a taxpayer, or if you are unable to resolve an issue with the Board, please contact the Taxpayers' Rights Advocate office for help by calling toll-free, 888-324-2798 or 916-324-2798. Their fax number is 916-323-3319.

Please post this permit at the address for which it was issued and at a location visible to your customers.

THE STATE BOARD OF EQUALIZATION

Sales and Use Tax Department



DISCLOSURE  
9/26/05

Echosphere New Retailer Paperwork Checklist - Web

Retailer Name: Satellite Systems Now  
 Area Manager: Paul Rufen  
 DMA: LA South  
 Paperwork Necessary: \_\_\_\_\_

Retailer Initial Order: \_\_\_\_\_  
 Product: \_\_\_\_\_ Payment Terms: (Circle One)  
 CC COD CASH  
 Order Total: \$ \_\_\_\_\_

Note: All documentation must be consistent. All signatures must match with a Principle listed on the retailer application. All company names must match with the name on the retailer tax certificate, the check, and the storefront/business location picture. Initial order must be greater than \$2500.

- ☒ 1. E-mail w/tracking number
  - a. Signatures on e-mail by a listed Principle.
- ☒ 2. Tax Certificate
  - a. All address and company information must match all other documents.
- ☒ 3. Multi-Jurisdictional Tax Certificate/State Blanket form
  - a. Must be completed with the accurate retailer information
  - b. Must be signed by a company principle
- ☒ 4. EFT Form
  - a. Completed with the accurate company and bank information
  - b. Voided original pre-printed company check, with the correct business name and address matching that on the rest of the application.
- ☒ 5. Picture of the storefront/business location
  - a. Must be matching the address and name on the retailer application/tax certificate.
  - b. Must be a business/storefront location.
- ☒ 6. W-9
  - a. Completed with the applicable type of company from the retailer application
  - b. Signed by a principle, with the correct title by Company type
- ☒ 7. Credit Check Authorization/Partners Verification
  - a. Must be matching the address and name on the retailer application/tax certificate.
  - b. Must be a business/storefront location.

Area Manger Auditor: \_\_\_\_\_  
 Inside Sales Manager: \_\_\_\_\_  
 Regional Director: \_\_\_\_\_

Audit Compliance Issues:  
~~2. Missing Suite # different~~  
~~3. Missing~~  
~~4. Missing~~  
~~5. Missing~~  
~~6. connections not suite #~~  
~~intra-net is different~~  
~~\* Missing RAR form~~

DISH 9/24/05

Echosphere New Retailer Paperwork Checklist - Web

Retailer Name: Satellite Systems NOW  
Area Manager: Paul Rufenor  
DMA: LA South  
Paperwork Necessary: \_\_\_\_\_

Retailer Initial Order: Product: _____	Payment Terms: (Circle One)  CC    COD    CASH
Order Total: \$ _____	

Note: All documentation must be consistent. All signatures must match with a Principle listed on the retailer application. All company names must match with the name on the retailer tax certificate, the check, and the storefront/business location picture. Initial order must be greater than \$2500.

☒

1. E-mail w/tracking number

a. Signatures on e-mail by a listed Principle.

☒

2. Tax Certificate

a. All address and company information must match all other documents

☒

3. Multi-Jurisdictional Tax Certificate/State Blanket form

a. Must be completed with the accurate retailer information  
b. Must be signed by a company principle

☒

4. EFT Form

a. Completed with the accurate company and bank information  
b. Voided original pre-printed company check, with the correct business name and address matching that on the rest of the application.

☒

5. Picture of the storefront/business location

a. Must be matching the address and name on the retailer application/tax certificate.  
b. Must be a business/storefront location.

☒

6. W-9

a. Completed with the applicable type of company from the retailer application.  
b. Signed by a principle, with the correct title by Company type

☒

7. Credit Check Authorization/Partners Verification

a. Must be matching the address and name on the retailer application/tax certificate.  
b. Must be a business/storefront location.

Area Manager Auditor: \_\_\_\_\_

Inside Sales Manager: \_\_\_\_\_

Regional Director: [Signature]

Audit Compliance Issues:  
2. Missing State tax certificate  
3. Missing W-9  
4. Missing EFT form  
5. Missing picture of storefront  
6. Missing FSA form

John Shahidi

**From:** John Shahidi [johnshahidi@mac.com]  
**Sent:** Thursday, July 28, 2005 8:45 AM  
**To:** John Shahidi  
**Subject:** Fwd: Thank you for completing Pre-Qualification Process.

Begin forwarded message:

**From:** Echostar Resolution <echospherreresolution@echostar.com>  
**Date:** July 27, 2005 4:00:02 PM PDT  
**To:** johnshahidi@mac.com  
**Subject:** Thank you for completing Pre-Qualification Process.

Dear SATELLITE SYSTEMS NOW,

We have received your on-line application to become an EchoStar retailer. Your Application Tracking Number is 1-581V0B. You will be contacted shortly by a member of our sales team to guide you through the rest of your application process. In order to expedite your application, please have the following information compiled:

- A copy of your Business License or Seller's Permit
- A completed Sales Tax Exemption Form (attached Multi Certificate.pdf)
- An EFT Request Form for direct deposits to your account (attached EFT Form.pdf), there is a \$20 fee per check if you choose not to use our EFT facility.
- A digital photograph of your Storefront (exterior) and of your showroom (interior)
- A copy of your W-9 Form (attached W-9.pdf)
- A completed Partner Credit Check Authorization Form (attached PCCA Form.pdf), signed by all partners in your company.
- A completed Retailer Application Acknowledgement (attached RAA Form.pdf)
- A Signed copy of this E-Mail

Currently this is the company information we have on record for you:

Principal Officer First Name: JOHN  
Principal Officer Last Name: SHAHIDI  
Job Title: PRESIDENT  
Company Name: SATELLITE SYSTEMS NOW  
Address 1: 15375 BARRANCA PKWY, STE J101  
Address 2:  
City: IRVINE  
State: CA  
Country: US  
Main Phone: (949) 861-4949  
Main Fax: (949) 861-9090  
E-Mail Address: johnshahidi@mac.com

If you have any changes to this, please let our Sales Team know. Once again we thank you

9/13/2005

Confidential-US v. DISH

PX1340-067

DIS 5000003821  
JA003865  
012605

TX 102-013127

EXHIBIT 678

EXHIBIT 678

JA013866  
012606

TX 102-013128

## Vendor is not found. What Next?

If a violation has taken place and you were not able to identify the vendor, what is the next step? Since Vendor inquiries was unable to identify the vendor or next option would be to offer the consumer an option to participate in our Sting program.

### 1. Definition:

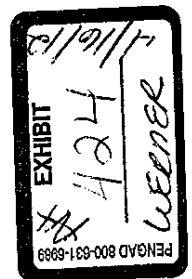
- a. *Sting*: Is a covert operation used to identify the party responsible for placing the call.

### 2. Partner:

- a. DISH Network has teamed up with Equifax in identifying illegal telemarketing calls. Equifax will be assisting DISH Network in this operation.

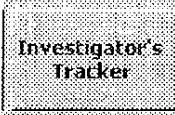
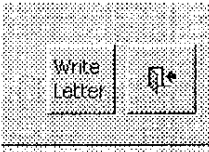
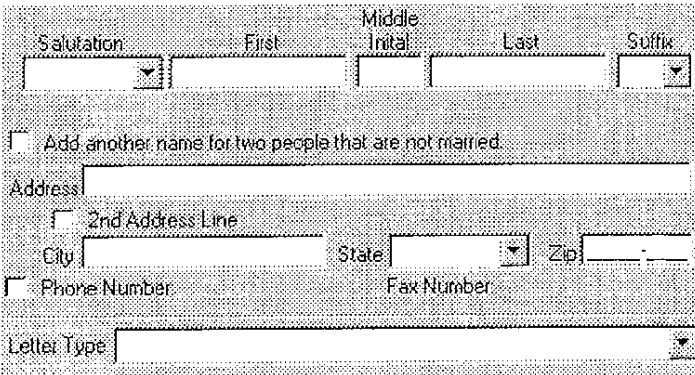
### Sting Process

1.	Contact the consumer back once the email from Vendor Inquiries is received that they were unable to locate the vendor. Example of the email response: <b><i>Based upon the information provided, we are unable to identify the retailer at this time.</i></b>
2.	Explain to the customer that the information they provided (during the initial call) was not sufficient enough for us to identify the vendor.
3.	Offer the Sting <ol style="list-style-type: none"><li>1. Explain to the consumer that we are working with Equifax to identify the party. How?</li><li>2. A qualification must be ran or completed by the party. An actual account or work order to install service is not necessary.</li><li>3. Once a qualification is ran we can contact Equifax to verify who requested the credit qualification!</li><li>4. Advise the consumer that they must use there own Social Security Number. By doing so we are able to catch vendors who qualify in an external data base. (Outside network other than DISH Promo)</li><li>5. The consumer would than wait to receive a call and consent to the sales patch and agree to set up service.</li><li>6. They would offer there SSN to the vendor to complete the qualification. The customer also does not need to be approved for a certain promotion. Any decision returned from the bureau will allow us to identify the vendor. (Example of such; Approved, Declined, Fraud Alert, SSN Overuse)</li><li>7. The customer would need to keep track of the Date and Time the qualification and contact you with that information</li></ol>
4.	Once the qualification was ran you will gather that information and forward it to David Laslo. Below is an example of the format needed: <b><i>Name of Consumer:</i></b> <ol style="list-style-type: none"><li>1. <b><i>Credit Score or Application Control ID:</i></b></li><li>2. <b><i>Date qualification was ran:</i></b></li><li>3. <b><i>Time qualification was ran:</i></b></li></ol> Place successful sting and the name of the consumer in the Subject line of the email. Subject: Successful Sting-David Laslo
5.	If a DISH Network account was created; cancel the work order and submit a refund for any funds that may have been charged.
6.	David Laslo will work with Equifax to verify which vendor qualified the consumer. Once



	known, Mr. Laslo will provide you with the vendor responsible.
7.	<p>Next you will send an email to Vendor Inquiries asking them to provide the Corporate Information of the vendor responsible for placing the calls. Provide Vendor Inquiries with the following:</p> <ol style="list-style-type: none"> <li>1. Consumer's First and Last Name</li> <li>2. Phone Number</li> <li>3. Address</li> <li>4. Vendor Responsible</li> </ol> <p>Label the email as Successful Sting</p> <p>Subject: Successful Sting-</p>
8.	Vendor Inquiries will respond to this email with complete corporate information of the vendor. You will now draft the vendor found letter and send it to the consumer.





### In the Tracker

1.	<p>Locate the consumer in the "Investigator's Tracker" section in the TCPA Tracker.</p>  <p>All complaints that were tracked as a violation will be found here.</p>
2.	<p>On the bottom right hand side select "Write Letter". (Located next to the close button)</p> 
3.	<p>Open "Write Letter" and a letter module tool will open. If the consumer's information was obtain during the initial call, the name and address of the consumer will appear. (Continue to Step 4) If not, please verify the information and update the record.</p> 
4.	Select "Letter Type" in the letter module. For this situation you will select "DNC – Retailer"



	<p>Found – ERT"</p> <p>Letter Type: <b>ONE-Relater Found-ERT</b></p>
5.	<p>Enter in the appropriate information.</p> <p>1. First Date (This is the date you first spoke to the consumer)</p> <p>1st Date: 1/16/2009 January 16, 2009</p> <p>2. Contact Type (How did you receive the complaint; by phone or by letter)</p> <p>Contact type:   <input type="radio"/> call on   <input type="radio"/> letter dated</p> <p>3. Now update the "Company Info"! This will be available from Vendor Inquiries email.</p> <div style="border: 1px solid black; padding: 5px;"> <p align="center"><b>Company Info</b></p> <p>Name: <input type="text"/></p> <p>Address: <input type="text"/></p> <p><input type="checkbox"/> 2nd Address Line</p> <p>City: <input type="text"/> State: <input type="text"/> Zip: <input type="text"/></p> <p>Phone: <input type="text"/></p> </div> <p>4. When you have added all the appropriate information select "Submit Letter". This will send the letter to our editor who will proof read and print for you.</p> <p><input type="button" value="Submit Letter"/></p>

#### Saving your Electronic File

- From the initial call an email was generated and sent to the TCPA Inbox.
 

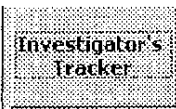
 Mailbox - TCPA  
 Deleted Items  
 Drafts  
 **Inbox (3)**

This email has all the initial data entered when you first tracked the call.
- Change the subject line of the email to match the following:  
**Record # – Your Name – Account # or Not a Customer – Consumer Last Name**  
**(The record number is found in the body of the email, located in the top left corner)**
- Attach a copy of the Brio Report to the email. (Either as an attachment or by coping and pasting the report)
- Move the email out of the TCPA inbox and to your "Pending Vendor Inquiries" folder.
 



 **02.David Laslo (3)**  
 **Pending Vendor Inquiries (5)**
- Add the email response from Vendor Inquiries to your Electronic File. (Email Chain)

	<p>From: Vendor Inquiries          To: Jeger, Richard; Vendor Inquiries          Cc: TCPA          Subject: RE: TCPA - TCPA - 3259429536</p> <p>Based upon the information provided, we are unable to identify the retailer at this t</p> <p>Thank you,          Serena Snyder          Retail Services Compliance          Echostar Satellite LLC          9601 S. Meridian Blvd          Englewood, CO 80112          720-514-5742 (tel)          720-514-8288 (fax)</p>
6.	<p>Add your Sting offer to the Electronic file.</p> <ol style="list-style-type: none"> <li>1. If the customer declines the sting, move file to the Investigation Completed folder in the TCPA Inbox</li> </ol> <div data-bbox="304 650 746 830"> <ul style="list-style-type: none"> <li>Mailbox - TCPA             <ul style="list-style-type: none"> <li>Deleted Items</li> <li>Drafts</li> <li>Inbox (2)                 <ul style="list-style-type: none"> <li>001. Suppression Requests</li> <li><b>01. Investigation Completed (3)</b></li> </ul> </li> </ul> </li> </ul> </div> <ol style="list-style-type: none"> <li>2. If the customer accepts, note the file and continue on.</li> </ol>
7.	<p>If the sting is successful; add the email request sent to David Laslo. (This will be the request that is sent to Equifax)</p>
8.	<p>Add David Laslo's response to your email to the Electronic File.</p>
9.	<p>Add the email to Vendor Inquiries to the Electronic File. (This is the email requesting the corporate information of the Vendor)</p>
10.	<p>Add the response back from Vendor Inquiries and tie the electronic copy of the letter that is generated from the tracker when your letter is printed.</p>
11.	<p>Once this is all completed move the entire email chain to the Investigation Completed Folder in the TCPA Inbox.</p> <div data-bbox="304 1137 746 1317"> <ul style="list-style-type: none"> <li>Mailbox - TCPA             <ul style="list-style-type: none"> <li>Deleted Items</li> <li>Drafts</li> <li>Inbox (2)                 <ul style="list-style-type: none"> <li>001. Suppression Requests</li> <li><b>01. Investigation Completed (3)</b></li> </ul> </li> </ul> </li> </ul> </div>

#### Closing the Record Number

1.	<p>The final step would be to close your issue. You will need to access the record number in your "Investigator Tracker" within the TCPA Tracker.</p> <div data-bbox="304 1541 478 1649">  </div>
2.	<p>Locate the record. Select "Achieve (done)" under the current step section:</p> <div data-bbox="304 1707 804 1748"> <p>Current Step <b>8. Achieved (done)</b></p> </div>



3.	Under "Current Result" select (closed). 
4.	After this close out of this record by selecting the finish button. 

**Congratulations you have successfully managed the Sting Operation for TCPA purposes. The issue has been tracked and saved appropriately.**

**APEN**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants,

DISH NETWORK CORP., a Nevada Corp.,

Nominal Defendant

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

**VOLUME 46 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>
679	03/07/2001	EchoStar Retailer Agreement with Satellite Systems Network	12612
680	05/2003	Assurance of Voluntary Compliance	12633
681	07/29/2004	Email from A. Ahmed to M. Mills et al.	12668
682	09/15/2004	Email from J. Spreitzer to A. Ahmed	12672
683	11/04/2004	Florida Department of Agriculture and Consumer Services: Department Press Release on November 4, 2004	12675
684	03/21/2005	Judgment by Consent and Stipulated Permanent Injunction between Vitana Financial Group, Inc. and North Carolina (March 21, 2005)	12677
685	09/26/2005	Email from A. Ahmed to S. Novak et al.	12690
686	11/11/2006	Facts Blast	12695
687	12/31/2006	EchoStar Retailer Agreement with Satellite Systems Network	12698

DATED this 28th day of November 2018.

By /s/ Robert J. Cassity

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of November 2018, a true and correct copy of the foregoing **VOLUME 46 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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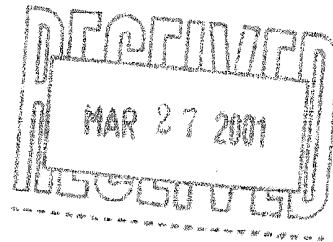
By: /s/ Valerie Larsen  
An Employee of Holland & Hart, LLP

EXHIBIT 679

EXHIBIT 679

JA013875  
012612

TX 102-013137



ECHOSTAR SATELLITE CORPORATION  
RETAILER AGREEMENT

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

INTRODUCTION

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

## 2. APPOINTMENT; TERRITORY

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

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

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

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

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

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

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

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

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

### 3. **PROGRAMMING**

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

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

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

### 5. **COMMISSIONS.**

#### 5.1 **Residual Commissions.**

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



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

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

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

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

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

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

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

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

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

**5.5 Exceptions.**

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

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

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

#### 5.6 Suspension and Termination of Commissions.

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

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

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

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

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

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

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

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

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

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

## 6. **ORDERS.**

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

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

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

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

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

## 8 **CONDUCT OF BUSINESS.**

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

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

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

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

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

## 9. **TERM AND TERMINATION**

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

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

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

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

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

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

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

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

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

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

9.4.6 pay all sums due EchoStar.

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

11. **LIMITATION OF LIABILITY.**

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

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

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

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

13. **CONFIDENTIALITY.**

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

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

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

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

14. **MISCELLANEOUS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by :

ECHOSTAR SATELLITE CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Signature]*  
VP Sales  
4-10-01

RETAILER

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Signature]*  
President  
3-7-01



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

<b>America's Top 40</b> <b>\$19.99 per month</b> <b>\$220.00 per year</b>
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A&E	History Channel (The)
America's Voice	Home & Garden TV
Angel One	Home Shopping Network
Cartoon Network (The)	Learning Channel (The)
CNBC	Lifetime
CNN	MTV
Comedy Central	Nashville Network (The)
Country Music Television	Nickelodeon (East)
Court TV	Nickelodeon (West)
C-SPAN	Nick at Nite (East)
C-SPAN2	Nick at Nite (West)
Discovery Channel	TV Land
Disney Channel (East)	QVC
Disney Channel (West)	Sci-Fi Channel
E! Entertainment	TBN
ESPN	TBS
ESPN2	TNT
ESPNEWS	Travel Channel (The)
EWTN	TV Games
Food Network	USA Network
FOX Family Channel	VH1
Headline News	Weather Channel (The)

<b>America's Top 100 CD</b> <b>\$28.99 per month</b> <b>\$320.00 per year</b>
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**America's Top 40**

**PLUS**

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

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

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

**CD Channels**

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

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

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

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

Updated: 11/15/99

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

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

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

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

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

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

Updated 11/15/99

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

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

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

Updated: 11/15/99

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

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

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

**EXHIBIT B  
COMMISSION SCHEDULE**

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

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

**Terms and Conditions for Residual Commissions**

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

**Additional Commissions**

**Activation Commissions Program**

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

EXHIBIT C

TRADEMARK LICENSE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ECHOSTAR SATELLITE CORPORATION

By: \_\_\_\_\_

Title: VP Sales

LICENSEE

By: \_\_\_\_\_

Title: President



EXHIBIT A TO TRADEMARK LICENSE AGREEMENT

**ECHOSTAR** ®

**dish**  
NETWORK™

**dish**™

EXHIBIT 680

EXHIBIT 680

## ASSURANCE OF VOLUNTARY COMPLIANCE

**In the matter of:**

**DISH NETWORK, L.L.C.,** )  
a Colorado Limited Liability Company )

1.1 This Assurance of Voluntary Compliance ("Assurance")<sup>1</sup> is being entered into between the Attorneys General of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia<sup>2</sup>, Hawaii<sup>3</sup>, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (hereafter referred to as the "Attorneys General") and DISH Network, L.L.C.

## 1. BACKGROUND

1.2 DISH Network, L.L.C. ("DISH Network") is a limited liability company organized under the laws of the state of Colorado. Its principal place of business is located at 9601 S. Meridian Blvd, Englewood, CO 80112.

1.3 DISH Network is in the business of, among other things, providing certain audio and video programming services to its subscribers via direct broadcast satellites. In connection with the provision of these services, DISH Network sells and leases receiving equipment to allow access to such programming transmitted from such satellites. DISH Network sells and leases to its subscribers such receiving equipment both directly and through authorized retailers.

<sup>1</sup> This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

**KRAKAUER v. DISH**  
**1:14-cv-00333-CCE-JEP**  
**Plaintiff's Exhibit**  
**PX0055**

PX0055-001

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1.4 DISH Network maintains a fleet of geosynchronous communications satellites and directly sells access to this satellite system to individuals who request access to audio and video programming licensed to DISH Network from video and audio content providers.

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**TX 102-013160**

**PX0055-003**

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**TX 102-013161**

## **2. DEFINITIONS**

As used in this Assurance the following words or terms shall have the following meanings:

- 2.1 "Advertise," "Advertisement," or "Advertising" shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing or leasing of, impart information about the attributes of, publicize the availability of, or affect the sale, lease, or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, public-transit card, point-of-purchase display, package insert, package label, product instructions, electronic mail, website, homepage, film, slide, radio, television, cable television, program-length commercial or infomercial, or any other medium.
- 2.2 "Agreement" shall refer to all agreements by whatever name between DISH Network and a Consumer for the purpose of the sale, lease, rental, installation and/or activation of any DISH Network Goods and/or DISH Network Services.
- 2.3 "Authorized Telemarketer" shall mean a business or other entity that is hired by DISH Network to conduct telemarketing on DISH Network's behalf in connection with the offer, sale and/or lease of DISH Network Goods and/or DISH Network Services.
- 2.4 "Billing Agent" shall mean a business or other third-party entity with which Consumers directly interact that has been retained by DISH Network to bill Consumers and/or provide DISH Network other services associated with the

billing of Consumers for DISH Network Goods and/or DISH Network Services. "Billing Agent" does not mean any third party who has been retained by DISH Network for the purposes of collecting on delinquent accounts.

- 2.5 "Clear and Conspicuous" or "Clearly and Conspicuously," when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner. Audio disclosure shall be delivered in a volume and cadence sufficient for a Consumer to hear and comprehend it. Visual disclosure shall be of a size and shade and appear on the screen for a duration sufficient for a Consumer to read and comprehend it. In a print Advertisement or promotional material, including, but without limitation, point of sale display or brochure materials directed to Consumers, the disclosures shall be in a type size and location sufficiently noticeable for a Consumer to read and comprehend it, in a print that contrasts with the background against which it appears.
- 2.6 "Complaint" shall refer to a specified problem that a Consumer expresses that represents dissatisfaction with DISH Network Goods and/or DISH Network Services and requests a remedy. It does not include an inquiry or general grievance or concern.
- 2.7 "Consumer" shall have the same meaning as that term is defined in the Consumer Protection Acts identified in paragraph 2.8 of this Assurance. However, in the event that the Consumer Protection Acts identified herein do not define the term "consumer," then it shall have the same meaning as the term "Person" as defined in the Consumer Protection Acts, or other identifying individual or entity term, as defined by the Consumer Protection Acts.<sup>4</sup>
- 2.8 "Consumer Protection Act" shall refer to the respective state consumer protection statutes.<sup>5</sup>

- 2.9 "Covered Marketer" means a Third-Party Retailer (1) who can: directly enter sales into DISH Network's order/entry application system ("O/E Retailer"); or (2) whose business operations have resulted in, on average, over 51 DISH Network service activations per month during the previous calendar year.
- 2.10 "DISH Network Goods" shall mean the equipment and other goods that DISH Network offers, leases and/or sells to Consumers, directly and/or through Third-Party Retailers, that enable customers to receive DISH Network Services.
- 2.11 "DISH Network Services" shall mean the audio and video programming that DISH Network offers, leases, and/or sells to Consumers, directly and/or through Third-Party Retailers, including, but not limited to, the installation, service, activation and/or delivery of DISH Network satellite television programming, equipment, and/or other goods.
- 2.12 "Electronic Fund Transfer" or "EFT" shall mean an "electronic fund transfer," as that term is defined in the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*

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- 2.13 "Telemarketing" shall mean "telemarketing" as that term is defined in the Federal Trade Commission's Telephone Sales Rule, 16 C.F.R. §310.2(cc), and in other federal, state, or local laws defining that term. However, nothing herein shall be construed to affect, restrict, limit, waive, or alter the definition of "telemarketing" under the laws and statutes of the states, and nothing herein shall be construed to limit the authority of the Attorneys General to enforce states' laws and statutes, including those regarding telemarketing.

**PX0055-007**

- 2.15 "Third-Party Retailer" shall mean one or more independent persons, a corporation, a partnership, or any other type of entity, as the case may be, that is authorized by DISH Network to offer, lease, sell, service, Advertise, and/or install DISH Network Services and/or DISH Network Goods.

### **3. APPLICATION OF ASSURANCE TO DISH NETWORK AND ITS SUCCESSORS**

3.1 DISH Network's duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to DISH Network and all of its subsidiaries, parents, affiliates, predecessors, successors and assigns of all of the foregoing, and the officers, directors, employees, shareholders, agents, servants, and assigns. DISH Network shall provide a copy of this Assurance to its subsidiaries, parents, affiliates, predecessors, successors and assigns of all of the foregoing to whom this Assurance applies, and the officers, directors, employees, shareholders, agents, servants, and assigns who have managerial-level responsibilities for performing the obligations outlined in this Assurance.

3.3 DISH Network shall require its Third-Party Retailers to comply with the terms and conditions of this Assurance.

### **4. TERMS OF ASSURANCE**

Upon execution of this Assurance, DISH Network shall be bound from directly or indirectly engaging in the practices set forth herein and shall be required to directly or indirectly satisfy the affirmative requirements set forth herein.

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**TX 102-013168**

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**DIA 05-3907** 771464  
012644

**TX 102-013169**

**PX0055-012**

Confidential

JA 01-3908  
012645

**TX 102-013170**

**PX0055-013**

Confidential

**QIA013909**  
012646

**TX 102-013171**

**PX0055-014**

Confidential

**JA013910** 1467  
D-515-10000  
012647

**TX 102-013172**



**PX0055-015**

Confidential

**DA05-000071468**  
**012648**

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Confidential

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012649

**TX 102-013174**

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Confidential

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DISC 5-00007 1470  
012650

**TX 102-013175**

**PX0055-018**

Confidential

0A0139004  
012651

**TX 102-013176**

**PX0055-019**

Confidential

**JA 013915**  
03-3900571472  
012652

**TX 102-013177**

**PX0055-020**

Confidential

**JA013916**  
D-105100001473  
012653

**TX 102-013178**

**PX0055-021**

Confidential

**JA013917**  
1474  
012654

**TX 102-013179**

### **Telemarketing and Do Not Call**

4.67 DISH Network shall comply with all federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state, or local do-not-call lists unless otherwise exempted by such laws.

4.68 DISH Network shall comply with all federal, state and local laws requiring the acquisition or purchase of national and state do-not-call databases and shall not make any Telemarketing calls to Consumers in the applicable state or municipality until it has acquired or purchased all do-not-call databases required by federal, state, or local laws.



4.74 DISH Network shall affirmatively investigate Complaints regarding alleged violations of federal, state and local laws regarding Telemarketing, including, but not limited to those which prohibit calling Consumers who are on any federal, state, or local do-not-call lists, unless otherwise exempted by such laws, and shall take appropriate action as soon as reasonably practicable against any Authorized Telemarketers and Covered Marketers it has determined to be in violation of the requirements of this Assurance. Upon request from an Attorney General, DISH Network shall provide the Attorney General with the following information: (i) the name, address, and phone number of the Consumer who made the allegation or Complaint; (ii) a copy or description of the allegation or Complaint; and (iii) the name, address and phone number of the Authorized Telemarketer or Covered Marketer against whom the allegation or Complaint was lodged. Further, DISH Network shall be required to notify the Attorney General of the specific action it took regarding the Complaint or allegation if so requested.

4.75 Within thirty (30) days of the date of the execution of this Assurance, DISH Network shall provide each Authorized Telemarketer and each Covered Marketer with a copy of this Assurance and inform them that in order to continue acting as DISH Network Authorized Telemarketers or Covered Marketers, they must abide by the terms and conditions of this Assurance.

4.77 DISH Network shall require any Covered Marketer that Telemarkets any DISH Network Goods and/or DISH Network Services to establish written policies and procedures to comply with all federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state and local do-not-call list.

4.78 DISH Network shall monitor, directly or through a third-party monitoring service approved by DISH Network, its Covered Marketers to determine whether they are Telemarketing Consumers and, if so, to determine whether the Covered Marketer is complying with all applicable federal, state, and local do-not-call laws. Upon request from an Attorney General, DISH Network shall provide the requesting Attorney General with a copy of such written policies and procedures. DISH Network states that it has had persons pose as potential subscribers in order to engage in "sting"-type operations to determine if certain Covered Marketers are complying with its do not call policies. Among other things, DISH Network will continue engaging in such practices as part of the monitoring process described above.

4.79 DISH Network shall appropriately and reasonably discipline a Covered Marketer if DISH Network reasonably determines that, in connection with Telemarketing DISH Network Goods and/or DISH Network Services, the Covered Marketer has: (a) failed to fulfill contract requirements with respect to compliance with federal, state, or local telemarketing laws; (b) violated federal, state, or local telemarketing laws; and/or (c) failed to comply with the terms of this Assurance as they relate to this Telemarketing and Do Not Call section. Such disciplinary action shall include one or more of the following remedies:

- 1) termination;
- 2) imposing monetary fines;
- 3) withholding of compensation;
- 4) suspending the right to Telemarket for a period of time;
- 5) prohibiting Telemarketing;

**PX0055-024**

Confidential

**JA013920** 71477  
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- 6) requiring the Covered Marketer to improve its process and procedures for compliance with the TCPA and/or any other federal, state and local laws regarding Telemarketing;
- 7) requiring the Covered Marketer to terminate certain employees involved in TCPA violations and/or violations of any other federal, state and local laws regarding Telemarketing;
- 8) requiring the Covered Marketer to terminate Telemarketing affiliates;
- 9) requiring the Covered Marketer to retrain employees in TCPA compliance and/or compliance with any other federal, state and local laws regarding Telemarketing; and/or
- 10) other appropriate and reasonable discipline under the circumstances.

In determining what disciplinary action shall be taken, DISH Network shall take into consideration the egregiousness of the Covered Marketer's conduct, the number of violations, the Covered Marketer's willingness to cure the problem, and whether DISH Network has previously disciplined the Covered Marketer.

**PX0055-025**

**PX0055-026**

Confidential-

DA 618922 1479  
JA 618922  
012659

**TX 102-013184**

**PX0055-027**

Confidential- |

**JA010923** 1480  
012660

**TX 102-013185**



## **7. GENERAL PROVISIONS**

7.2 This Assurance does not constitute an admission by DISH Network for any purpose of any fact or of a violation of any law, rule or regulation, nor does this Assurance constitute evidence of any liability, fault or wrongdoing. This Assurance is entered into without trial or adjudication of any issue of fact or finding of liability of any kind. Neither this Assurance, nor any negotiations, statements or documents related thereto, shall be offered or received in evidence as an admission of liability or wrongdoing. This Assurance is not intended to confer upon any person any rights or remedies, shall not create any third-party beneficiary rights and may not be enforced by any person, entity or sovereign except the Attorneys General.

7.3 DISH Network shall comply with the terms of this Assurance within ninety (90) days following the execution of this Assurance, or within the time frames otherwise set by this Assurance.

**PX0055-029**

Confidential-

DISH-0600071482  
JA013925  
012662

**TX 102-013187**

**PX0055-030**

Confidential-

**DA05-3926**  
012663

**TX 102-013188**



**PX0055-031**

Confidential-

012664

TX 102-013189

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 DISH Network represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, and that this Assurance is the result of good faith negotiations.

8.2 DISH Network represents and warrants that signatories to this Assurance have authority to act for and bind DISH Network.

## **9. COMPLIANCE WITH ALL LAWS**

9.1 Nothing in this Assurance shall be construed as relieving DISH Network of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

## **11. MONITORING FOR COMPLIANCE**

11.2 Within thirty (30) days of entry of this Assurance, DISH Network shall submit a copy of this Assurance to each of its officers, directors, and any employee necessary to ensure DISH Network's compliance with the terms of this Assurance.

## **12. PRIVATE RIGHT OF ACTION**

12.1 Nothing in this Assurance shall be construed to affect, restrict, limit, waive or alter any private right of action that a Consumer may have against DISH Network.

**PX0055-034**

Confidential-

**JA013930** 1487  
012667

**TX 102-013192**

EXHIBIT 681

EXHIBIT 681

JA013931  
012668

TX 102-013193

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

---

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

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

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

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

Mike –

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

Mike

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

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

Amir,

**KRAKAUER v. DISH**

**Plaintiff's Exhibit  
PX0503**

Confidential

**PX0503-001**

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012669  
JA013932  
012669

**TX 102-013194**

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

Thanks

MJO

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

**From:** Ahmed, Amir

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

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

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

**Subject:** RE: Satellite Systems Network OE Tool # 821970

Mike and Jim,

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

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

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

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

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

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

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

**PX0503-002**

**JA013933**  
012670

Confidential

DISH11-029659

**TX 102-013195**

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

Thanks,

Amir



EXHIBIT 682

EXHIBIT 682

JA013935  
012672

TX 102-013197

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

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

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

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

We will have our own pod there (Dish).

THANKS for the approval.

It will happen.

End of Oct 1000

End of Nov 2000

End of Dec 2500

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

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

**KRAKAUER v. DISH**

**Plaintiff's Exhibit  
PX0656**

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

**PX0656-001**

Confidential

DISH-139366144  
USA-13936  
012673

**TX 102-013198**

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

**From:** DeFranco, Jim

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

**To:** Ahmed, Amir

**Subject:** RE: Satellite Systems Network

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

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

**From:** Ahmed, Amir

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

**To:** DeFranco, Jim

**Subject:** Satellite Systems Network

Jim,

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

Satellite Systems Network current economics:

\$175.00 activation fee

\$25.00 DVR/HD bonus

Request:

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

\$25.00 DVR/HD bonus

**PX0656-002**

**JA013937**  
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Confidential

DISH5-0000126145  
**TX 102-013199**

EXHIBIT 683

EXHIBIT 683

Florida Department of Agriculture  
and Consumer Services



**Department Press Release**

**11-04-2004**

Liz Compton

850-488-3022

[comptol@doacs.state.fl.us](mailto:comptol@doacs.state.fl.us)

**Bronson Takes Action in Telemarketing Case**

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

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

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

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

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

**KRAKAUER v. DISH**  
**1:14-cv-00333-CCE-JEP**  
**Plaintiff's Exhibit**  
**PX0191**

**PX0191-001**

Confidential-

DISH5-0000012396

**JA013939**  
012676

**TX 102-013201**

EXHIBIT 684

EXHIBIT 684

JA013940  
012677

TX 102-013202

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

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

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

vs. )

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

**JUDGMENT BY CONSENT**  
**AND STIPULATED**  
**PERMANENT INJUNCTION**

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

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

-1-

PX0186-001

KRAKAUER v. DISH

Plaintiff's Exhibit  
PX0186

JA013941  
012678

TX 102-013203

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

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

**DEFINITIONS**

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

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



Consent Judgment by personal service or otherwise.

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

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

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

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

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

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

### **FINDINGS**

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

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

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

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

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

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

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

## **I.**

### **PERMANENT INJUNCTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

## II.

### **MONETARY JUDGMENT - \$15,000**

#### **IT IS FURTHER ORDERED, ADJUDGED AND DECREED that**

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

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

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

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

### **III.**

#### **COMPLIANCE REPORTING BY DEFENDANTS**

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

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

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

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

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

**IV.**

**FEES AND COSTS**

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

**V.**

**STIPULATED PENALTIES AND COSTS**

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

**VI.**

**CLAIMS AGAINST DEFENDANT TEHRANCHI**

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

**VII.**

**RETENTION OF JURISDICTION**

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



**VII.**

**RETENTION OF JURISDICTION**

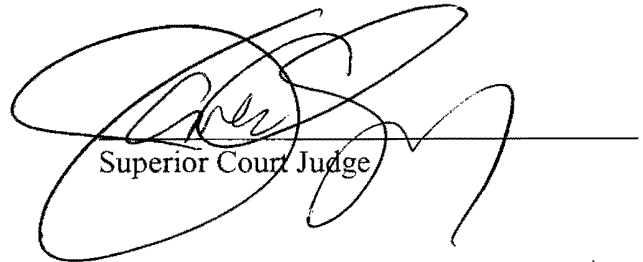
**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement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

**VIII.**

**COMPLETE SETTLEMENT**

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

This the 21<sup>st</sup> day of March, 2005.

  
Superior Court Judge

(Signatures of the Parties on the Following Page)

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

Vitana Financial Group, Inc., Defendant

By: 

Title: PRESIDENT

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

By: 

David N. Kirkman

Assistant Attorney General

North Carolina Department of Justice

EXHIBIT 685

EXHIBIT 685

JA013953  
012690

TX 102-013215

**From:** Oberbillig, Mike  
**Sent:** Tuesday, January 30, 2007 5:40:23 PM  
**To:** Werner, Bruce  
**Subject:** FW: Dish Network Auto Dialer calls [Indiana AG]

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

**From:** Ahmed, Amir  
**Sent:** Monday, September 26, 2005 4:21 PM  
**To:** Novak, Scott; Oberbillig, Mike; Mills, Mike  
**Cc:** Keller, Steven; Miller, Kerry; Steele, Dana; Gowland, Jim  
**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, 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

**KRAKAUER v. DISH**

**Plaintiff's Exhibit  
PX0194**

**HIGHLY CONFIDENTIAL**

**PX0194-001**

**DISH9-0005567**

Produced Over Defendant's Privilege Designation Consistent With Court Order

**JA013954**  
012691

**TX 102-013216**

-----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]

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

HIGHLY CONFIDENTIAL

PX0194-002

Produced Over Defendant's Privilege Designation Consistent With Court Order

JA013955  
DISH9-0005568  
012692

TX 102-013217

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  
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

HIGHLY CONFIDENTIAL

PX0194-003

Produced Over Defendant's Privilege Designation Consistent With Court Order

JA013956  
DISH9-0005569  
012693

TX 102-013218

Indianapolis, IN 46204  
Telephone 317.232.1011  
Facsimile 317.232.7979 \_

HIGHLY CONFIDENTIAL

**PX0194-004**

Produced Over Defendant's Privilege Designation Consistent With Court Order

JA013957  
DISH9-0005570  
012694

**TX 102-013219**

EXHIBIT 686

EXHIBIT 686





## FACTS BLAST

Krakauer  
v.  
Dish Network  
1:14-CV-00333-CCE-JEP  
DX-2

### IMPORTANT REMINDER TO INDEPENDENT RETAILERS WHO ENGAGE IN TELEPHONE MARKETING AND SALES OF DISH NETWORK™ PRODUCTS AND SERVICES

#### Your EchoStar Retailer Agreement prohibits Retailers from violating any applicable laws, including federal and state marketing and telemarketing laws

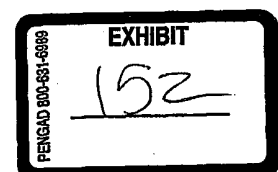
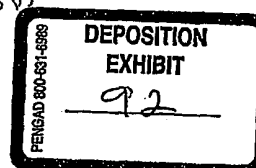
EchoStar takes consumer satisfaction very seriously. We do not tolerate or condone marketing activities that fail to comply with the Retailer Agreement or applicable state and federal laws. If a Retailer is engaged in any form of telemarketing sales of DISH Network AT A MINIMUM, it must:

- Comply with all applicable state and federal "Do Not Call" laws, including, but not limited to, the Telemarketing Sales Rule, the Telephone Consumer Protection Act, and any and all state laws governing telemarketing for the state to which calls are placed. Such compliance includes, but is not limited to:
  1. Subscribe to the federal and applicable state Do Not Call lists. Retailers should be able to provide the dates of subscription, proof of required updates, and be able to demonstrate their compliance with federal and state laws;
  2. Maintain an internal Do Not Call list. If a consumer requests that you cease calling them, you are required to place their number on your internal Do Not Call list and no longer contact that number, regardless of whether that consumer previously gave their consent for you to contact them. This statement applies even if a phone number is not on the federal or state Do Not Call list;
  3. Maintain current Do Not Call documentation:
    - a. Do Not Call Policy. You must maintain your own written "Do Not Call Policy" which should be made available in accordance with the law to those consumers who request it;
    - b. Do Not Call Procedures. You must be able to provide documentation describing your process for compliance with Do Not Call laws, including written employee training documents;
  4. Retain call records. You should be able to produce documentation for each and every outbound call placed by you or on your behalf by a third party (see below for restrictions):
    - a. Lead and existing business relationship records. You should be able to prove the reason for calling a number listed on a Do Not Call list with proof of lead generation, existing business relationships, etc. and the applicable dates that support the calls were placed in compliance;
  5. Comply with all state and federal legal requirements governing pre-recorded messaging. These laws may vary by state. EchoStar strongly discourages the use of pre-recorded messages or solicitations. In the event that state or federal laws permit you to engage in pre-recorded messaging you should ensure that you strictly comply with such laws. As you should be aware, some states prohibit pre-recorded calls entirely and you must comply with the laws of the state(s) to which your calls are placed;

November 11, 2006

Facts Blast 111106 V2

Page 1 of 2



DISH004187

JA013959  
012696

**For More Information:**

- The Federal Communications Commission publishes information about the rules and regulations related to telephone and facsimile advertisements: <http://www.fcc.gov> and the Federal Trade Commission publishes information about rules and regulations related to telemarketing at <http://www.ftc.gov>.
- Retailers should also be aware that many state governments may also regulate marketing, telemarketing, and advertising activities. Retailer should make themselves aware of applicable laws and comply with them.

**Your EchoStar Retailer Agreement prohibits hiring or using third-parties to perform any activity under your agreement without EchoStar's express written consent in advance. This includes hiring third parties, such as a marketing or telemarketing companies, to perform any activity on your behalf.**

- Retailers are prohibited by their Retailer Agreement from hiring or using third-parties, independent contractors, agents, sub-agents, companies, or any other person or entity—including telemarketers—to solicit, take, or transmit any orders for DISH Network products or services, unless such third party is APPROVED IN ADVANCE IN WRITING BY ECHOSTAR.
- It is also a violation of the Trademark License Agreement in your Retailer Agreement to transfer, sublicense, or otherwise grant any third-party any right to use an EchoStar trademark, service mark, or trade name, including the DISH Network name.
- To request that a vendor be approved or to request your ability to use an approved vendor, please send an email to Retail Services at [vendorinquiries@echostar.com](mailto:vendorinquiries@echostar.com)

**NO RETAILER IS PERMITTED TO REPRESENT ITSELF AS DISH NETWORK.**

The Retailer Agreement clearly provides that your relationship with EchoStar is that of an independent contractor. Your outbound and inbound call agents MUST identify the company that they work for. AGENTS MAY NOT SAY THAT THEY WORK FOR DISH NETWORK.

Failure to comply with the obligations in your EchoStar Retailer Agreement, applicable state and federal laws, and the cautionary statements in this document could lead to disciplinary action against you by EchoStar, up to and including termination.

EXHIBIT 687

EXHIBIT 687

JA013961

TX 102-013223

## ECHOSTAR RETAILER AGREEMENT

This EchoStar Retailer Agreement (the "Agreement") is made and effective as of December 31, 2006 (the "Effective Date"), by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("EchoStar"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112; and " , having a place of business at 9831 IRVINE CENTER DR IRVINE, CA 92618 ("Retailer").

### INTRODUCTION

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

### AGREEMENT

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

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

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

1.3 "Any Time" means any time and from time to time.

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

1.5 "Bulk Programming" means the Programming that EchoStar makes generally available for viewing in Guest Properties and bulk-billed MDU Properties, in each case assuming 100% penetration, subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Bulk Programming offered and/or any restrictions applicable to such Bulk Programming at Any Time in its Sole Discretion.

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

1.7 "Business Rule(s)" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule by EchoStar which is communicated to Retailer by EchoStar or an Affiliate of EchoStar either directly (including without limitation via e-mail) or through any method of mass communication reasonably directed to EchoStar's retailer base, including, without limitation, a "Retailer Chat", e-mail, facts blast, or posting on EchoStar's retailer web site. Retailer agrees that EchoStar has the right to modify any Business Rule at Any Time in its Sole Discretion, upon notice to Retailer.

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

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

1.10 "Commercial Location" means a Public Commercial Location and/or a Private Commercial Location, as those terms are defined below in Sections 1.33 and 1.29, respectively.

1.11 "Commercial Programming" means the Programming that EchoStar makes generally available for viewing in Commercial Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Commercial Programming offered and/or any restrictions applicable to such Commercial Programming at Any Time in its Sole Discretion.

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

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

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

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

1.16 "Eligible Bulk Programming" means the Bulk Programming packages designated by EchoStar as qualifying for the payment of Bulk Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.17 "Eligible Commercial Programming" means the Commercial Programming packages designated by EchoStar as qualifying for the payment of Commercial Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.18 "Eligible Residential MDU Programming" means the Residential MDU Programming packages designated by EchoStar as qualifying for the payment of Residential MDU Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.19 "Eligible Residential Programming" means the Residential Programming packages designated by EchoStar as qualifying for the payment of Residential Incentives under this Agreement, as set forth in applicable Business Rules, as such Business Rules may be modified in whole or in part at Any Time in EchoStar's Sole Discretion, upon notice to Retailer.

1.20 "Guest Property" means a hotel, motel, hospital, other healthcare facility or any other similar type of facility located in the Territory that regularly permits overnight or otherwise short-term stays by individuals. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Guest Property or is more appropriately considered another type of location.

1.21 "Incentives" mean Monthly Incentives together with any Additional Incentives, as such terms are defined in Sections 1.25 and 1.1, respectively.

1.22 "Institutional/Residential Location" means a property located in the Territory that displays Programming in a non-public, common viewing area within a property that is owned or operated by a government or commercial entity, in which employees are being provided residential living accommodations to facilitate the requirements of their job responsibilities. For example (and without limitation of the foregoing), non-public, common viewing areas within fire stations, oil rigs and coast guard stations are typically Institutional/Residential Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes an Institutional/Residential Location or is more appropriately considered another type of location.

1.23 "Laws" shall have the meaning set forth in Section 9.1.

1.24 "MDU Property" means a dormitory, apartment building, condominium complex, retirement community or other type of multifamily living establishment located in the Territory that affords residents living quarters. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes an MDU Property (and, if so, what type of MDU Property, e.g., bulk-billed, non-bulk-billed or other) or is more appropriately considered another type of location.

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

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

1.27 "Permitted Subcontractors" shall have the meaning set forth in Section 7.1.

1.28 "Prepaid Card" means a card, serialized certificate, approval code sequence and/or other identifier issued in connection with a Promotional Program offered by EchoStar which is sold directly to Retailer by EchoStar or an Affiliate of EchoStar for resale by Retailer directly to a consumer and which, among other things, provides such consumer with certain rights to receive Residential Programming for a fixed duration or in a certain amount.

1.29 "Private Commercial Location" means a place of business located in the Territory that may be accessible to the public, and is not classified within the hospitality industry. For example (and without limitation of the foregoing), office reception areas or waiting rooms and the private offices of attorneys, doctors/dentists, and other business professionals are typically Private Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Private Commercial Location, or is more appropriately considered another type of location.

1.30 "Programming" means DISH Network video, audio, data and interactive programming services. EchoStar reserves the right to change the Programming offered and/or any restrictions applicable to such Programming at Any Time in its Sole Discretion.

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

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

1.33 "Public Commercial Location" means a place of business located in the Territory that: (i) is generally accessible to the public, (ii) is typically classified within the hospitality industry, (iii) typically serves food and/or liquor for immediate consumption, and (iv) is typically registered with a fire occupancy certificate. No satellite master antenna television or private cable system in a commercial or residential multiple dwelling unit (i.e., hotels, hospitals, dormitories, etc.) shall be considered a Public Commercial Location; provided, however, that a place of business located within such multiple dwelling units that otherwise meets the definition of a Public Commercial Location (e.g., a restaurant within a hotel or hospital) may be considered a Public Commercial Location. For example (and without limitation of the foregoing), bars, restaurants, clubs, casinos, lounges, and shopping malls are typically Public Commercial Locations. Notwithstanding the foregoing, EchoStar reserves the right to determine at Any Time, in its Sole Discretion, whether a location constitutes a Public Commercial Location, or is more appropriately considered another type of location.

1.34 "Qualifying Bulk Subscriber" means a commercial enterprise providing Bulk Programming on a bulk basis, assuming 100% penetration, to a Guest Property and/or a bulk-billed MDU Property that orders Eligible Bulk Programming, that timely pays for all Bulk Programming ordered in full, that has not violated any of the terms and conditions set forth in an EchoStar Commercial Customer Agreement, and that has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Bulk Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

1.35 "Qualifying Commercial Subscriber" means a commercial enterprise operating a business at a Commercial Location that orders Eligible Commercial Programming, that timely pays for all Commercial Programming ordered in full, that has not violated any of the terms and conditions set forth in an EchoStar Commercial Customer Agreement, and that has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Commercial Subscriber shall not include any commercial enterprise that would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

1.36 "Qualifying Residential MDU Subscriber" means an individual at a non-bulk-billed MDU Property who orders



Eligible Residential MDU Programming, who timely pays for all Residential MDU Programming ordered in full, who has not violated any of the terms and conditions set forth in an EchoStar Residential Customer Agreement, and who has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Residential MDU Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

1.37 "Qualifying Residential Subscriber" means an individual at a Residential Location or an Institutional/Residential Location who orders Eligible Residential Programming, who timely pays for all Residential Programming ordered in full, who has not violated any of the terms and conditions set forth in an EchoStar Residential Customer Agreement, and who has not previously received any audio, video, data, interactive or any other programming services from EchoStar or any Affiliate of EchoStar (i) within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or (ii) at any time (in all other cases). A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment EchoStar, in its Sole Discretion, declines to activate.

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

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

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

1.41 "Residential MDU Programming" means the Programming that EchoStar makes generally available for viewing in non-bulk-billed MDU Properties subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Residential MDU Programming offered and/or any restrictions applicable to such Residential MDU Programming at Any Time in its Sole Discretion.

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

1.43 "Residential Programming" means the Programming that EchoStar makes generally available for viewing in Residential Locations and Institutional/Residential Locations subject to any restrictions (geographic, blackout, or otherwise) as EchoStar may impose on some or all of such programming services at Any Time in its Sole Discretion. EchoStar reserves the right to change the Residential Programming offered and/or any restrictions applicable to such Residential Programming at Any Time in its Sole Discretion.

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

1.45 "Retailer Account" means the bank account, including without limitation account and ABA routing numbers, designated by Retailer in the manner prescribed by EchoStar at Any Time in its Sole Discretion, which Retailer may change from time to time by providing at least sixty (60) days' prior written notice to EchoStar.

1.46 "Sole Discretion" means a person's or entity's sole and absolute discretion for any reason or no reason.

1.47 "Subscriber Accounts" means Residential Subscriber Accounts, Residential MDU Subscriber Accounts, Commercial Subscriber Accounts and Bulk Subscriber Accounts, as such terms are defined in Sections 1.44, 1.42, 1.12 and 1.6, respectively.

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

1.49 "Territory" shall have the meaning set forth in Section 2.2 below.

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

1.51 "Unit" means: (i) solely in the case of hospitals and other healthcare facilities, each television on the premises; (ii) solely in the case of all Guest Properties other than hospitals and other healthcare facilities, each room in the Guest Property; and (iii) solely in the case of bulk-billed or non-bulk-billed MDU Properties, each separate living quarters in the bulk-billed or non-bulk-billed MDU Property.

## 2. **APPOINTMENT: TERRITORY.**

2.1 **Appointment.** EchoStar hereby appoints Retailer as a non-exclusive Authorized Retailer to market, promote and solicit orders for Programming, subject to all of the terms and conditions of this Agreement and all Business Rules (which are hereby incorporated into this Agreement by reference in their entirety). The appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same DBS service which may be operated by EchoStar and/or its Affiliates under a different name in the future. Retailer's authorization hereunder is limited to: (i) the solicitation of orders for Residential Programming from, and the marketing, advertising and promotion of Residential Programming to, consumers at Residential Locations and Institutional/Residential Locations; (ii) the solicitation of orders for Residential MDU Programming from, and the marketing, advertising and promotion of Residential MDU Programming to, consumers at non-bulk-billed MDU Properties; (iii) the solicitation of orders for Commercial Programming from, and the marketing, advertising and promotion of Commercial Programming to, commercial enterprises operating businesses at Commercial Locations; and (iv) the solicitation of orders for Bulk Programming from, and the marketing, advertising and promotion of Bulk Programming to, commercial enterprises providing Bulk Programming on a bulk-basis, assuming 100% penetration, to Guest Properties and bulk-billed MDU Properties.

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

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

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

2.5 **Certain Purchases by Retailer.** In the event that Retailer orders any DISH DBS Systems, related accessories, other equipment, Promotional Certificates and/or Prepaid Cards from Echosphere L.L.C. or any of its Affiliates (collectively, "Echosphere" for purposes of this Section 2.5), Retailer shall order such products by phone order, via Echosphere online ordering or by written purchase order (each, a "Purchase Order") issued during the Term of this Agreement. A Purchase Order shall be a binding commitment by Retailer. Any failure to confirm a Purchase Order shall not be deemed acceptance by Echosphere. Purchase Orders of Retailer shall state only the: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. Any additional terms and conditions stated in a Purchase Order shall not be binding upon Echosphere unless expressly agreed to in writing by Echosphere. In no event shall Echosphere be liable for any delay, or failure to fulfill, any Purchase Order (or any portion thereof), regardless of the cause of such delay or failure. In the event of any conflict between the terms and conditions of a Purchase Order and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control. In the event of any ambiguity between or among the terms and conditions of this Agreement and the terms and conditions of any Purchase Order, EchoStar shall have the sole and exclusive authority to interpret and/or make a final determination in its Sole Discretion concerning any issue arising from such ambiguity. Echosphere shall be considered a third party beneficiary of Retailer's obligations under this Agreement. Retailer hereby acknowledges and agrees that Echosphere has no obligation to re-purchase DISH DBS Systems, related accessories, other equipment,



Promotional Certificates or Prepaid Cards back from Retailer at any time or for any reason or no reason.

**2.6 Certain Prohibited Transactions.** Retailer agrees that as a condition precedent to its eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease or otherwise transfer possession of a DISH DBS System, Promotional Certificate or Prepaid Card to any person or entity whom Retailer knows or reasonably should know: (i) is not an end-user and/or intends to resell, lease or otherwise transfer it for use by another individual or entity; (ii) intends to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location; (iii) intends to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property; (iv) intends to use it, or to allow others to use it in Canada, Mexico or at any other location outside of the Territory; or (v) intends to have, or to allow others to have, Programming authorized for a DISH DBS System under a single DISH Network account or Prepaid Card that has or will have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property). It shall be Retailer's sole and exclusive responsibility to investigate and determine whether any direct or indirect sale, lease or other transfer by Retailer would be in violation of this Section 2.6. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional Certificate or Prepaid Card to a person or entity who uses it or allows others to use it to: (a) view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, or (b) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, then Retailer agrees to pay to EchoStar upon demand: (1) the difference between the amount actually received by EchoStar for the Prepaid Card or the Programming authorized for the corresponding DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (2) the total amount of any admission charges or similar fees imposed and/or collected for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional Certificate or Prepaid Card to a person or entity who has, or allows others to have, Programming authorized for a DISH DBS System under a single DISH Network account or Prepaid Card that at any time has Programming activated for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of bulk-billed MDU Properties), and Retailer knew or reasonably should have known that the person or entity intended to have, or allow others to have, Programming authorized for the DISH DBS System under such an account or Prepaid Card, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Prepaid Card or the Programming authorized under the single account, as applicable, and the full retail price for such Programming or the full amount that EchoStar would have received for multiple Prepaid Cards in each case had each DISH DBS System authorized under the single account or Prepaid Card been authorized under a separate account or Prepaid Card, as applicable. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 2.6, ECHOSTAR SHALL BE ENTITLED TO CHARGE BACK AT ANY TIME (EVEN AFTER THE TERMINATION OR EXPIRATION OF THIS AGREEMENT) THE INCENTIVES, IF ANY, PAID TO RETAILER BY ECHOSTAR WITH RESPECT TO ANY SUBSCRIBER ACCOUNT AFFECTED BY SUCH BREACH OR DEFAULT. IN THE EVENT THAT RETAILER WISHES TO DISPUTE ANY SUCH CHARGEBACK, RETAILER SHALL FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 15 BELOW. ECHOSTAR'S CALCULATION OF AMOUNTS OWING TO ECHOSTAR FROM RETAILER UNDER THIS SECTION 2.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 2.6 are without prejudice to any other rights and remedies that EchoStar and/or any of its Affiliates may have under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

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

**2.9 Installation Services.** Retailer represents, warrants, covenants and agrees that all installation and after-sales services performed by Retailer and its employees and Permitted Subcontractors in connection with the sale, lease or other transfer of DISH DBS Systems, Promotional Certificates and/or Prepaid Cards will be performed by Retailer and its employees and Permitted Subcontractors, in full compliance with all applicable Laws, and subject to all of the terms, conditions, standards and guidelines set forth

in the DISH Network Installation Manual (located on the retailer web site), as such terms, conditions, standards and guidelines may be changed at Any Time by EchoStar and/or any of its Affiliates (including, without limitation, Dish Network Service L.L.C. and Dish Network California Service Corporation (collectively, "DNSLLC")) in their Sole Discretion, upon notice to Retailer. In addition to (and without limitation of) the foregoing, Retailer represents, warrants, covenants and agrees that any and all related accessories and/or other equipment installed for, or otherwise provided to, a consumer in fulfillment of, or otherwise in connection with, such installation and after-sales services shall strictly comply with any and all specifications and other terms and conditions, including without limitation any approved part number and/or vendor lists, as set forth by EchoStar and/or any of its Affiliates (including without limitation DNSLLC) in applicable Business Rules at Any Time in their Sole Discretion.

## 2.10 Prior Retailer Agreements.

2.10.1 IN THE EVENT THAT RETAILER PREVIOUSLY ENTERED INTO ANY ECHOSTAR RETAILER AGREEMENT, INCENTIVIZED RETAILER AGREEMENT, COMMISSIONED RETAILER AGREEMENT, COMMISSIONED DEALER AGREEMENT OR ANY OTHER AGREEMENT WITH ECHOSTAR OR ANY OF ITS AFFILIATES RELATING TO THE MARKETING, PROMOTION, ADVERTISING OR SOLICITATION OF ORDERS FOR PROGRAMMING BY RETAILER AND THE PAYMENT OF CERTAIN AMOUNTS BY ECHOSTAR THEREFOR (EACH A "PRIOR RETAILER AGREEMENT"), WHICH IS IN EFFECT (IN WHOLE OR IN PART) AS OF THE EFFECTIVE DATE, THEN UPON EXECUTION OF THIS AGREEMENT BY RETAILER (WHETHER VIA SIGNATURE OR ELECTRONIC ACCEPTANCE): (I) ALL PRIOR RETAILER AGREEMENTS SHALL BE AUTOMATICALLY TERMINATED, EXCEPT THAT THE PROVISIONS (EXCLUDING ANY PROVISIONS RELATED TO THE PAYMENT OF COMMISSIONS OR INCENTIVES) IN SUCH PRIOR RETAILER AGREEMENTS THAT EXPRESSLY SURVIVE AND SUCH OTHER RIGHTS AND OBLIGATIONS THEREUNDER AS WOULD LOGICALLY BE EXPECTED TO SURVIVE TERMINATION OR EXPIRATION SHALL CONTINUE IN FULL FORCE AND EFFECT FOR THE PERIOD SPECIFIED OR FOR A REASONABLE PERIOD OF TIME UNDER THE CIRCUMSTANCES IF NO PERIOD IS SPECIFIED; (II) ALL INCENTIVES, COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE DUE TO RETAILER UNDER SUCH PRIOR RETAILER AGREEMENTS SHALL BE PAYABLE BY ECHOSTAR TO RETAILER AS INCENTIVES SOLELY IN ACCORDANCE WITH AND SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT; AND (III) EXCEPT AS SET FORTH IN SECTION 2.10.1(I), ALL RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND ALL PRIOR RETAILER AGREEMENTS SHALL BE OF NO FURTHER FORCE OR EFFECT.

2.10.2 RETAILER AND ITS AFFILIATES HEREBY ACKNOWLEDGE AND AGREE THAT THEY DO NOT, AS OF THE EFFECTIVE DATE, HAVE ANY CLAIMS OR CAUSES OF ACTION AGAINST ECHOSTAR OR ANY OF ITS AFFILIATES FOR ANY ACTS OR OMISSIONS THAT MAY HAVE OCCURRED PRIOR TO THE EFFECTIVE DATE AND, IN CONSIDERATION OF RETAILER BEING APPOINTED AS AN AUTHORIZED RETAILER HEREUNDER BY ECHOSTAR, RETAILER AND ITS AFFILIATES HEREBY WAIVE ANY AND ALL SUCH CLAIMS AND CAUSES OF ACTION, WITH THE SOLE EXCEPTION OF ANY CLAIMS OR CAUSES OF ACTION FOR WHICH RETAILER PROVIDES WRITTEN NOTICE TO ECHOSTAR IN THE SAME FORM REQUIRED FOR A NOTICE OF CLAIM UNDER SECTION 15 BELOW WITHIN NINETY (90) DAYS (OR THE SHORTEST PERIOD OF TIME ALLOWED BY APPLICABLE LAW IF SUCH PERIOD IS MORE THAN 90 DAYS) AFTER THE DATE THAT RETAILER EXECUTES THIS AGREEMENT (WHETHER VIA SIGNATURE OR ELECTRONIC ACCEPTANCE). ECHOSTAR SHALL HAVE THE SAME RIGHTS WITH RESPECT TO REQUESTS FOR ADDITIONAL INFORMATION AND ACCESS TO RETAILER'S BOOKS AND RECORDS IN CONNECTION WITH ANY SUCH CLAIMS AND CAUSES OF ACTION AS ECHOSTAR HAS UNDER SECTION 17.9 BELOW. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 2.10.2 WITH RESPECT TO A PARTICULAR CLAIM AND/OR CAUSE OF ACTION SHALL CONSTITUTE A WAIVER BY RETAILER AND ITS AFFILIATES WITH RESPECT TO THE RELEVANT CLAIM AND/OR CAUSE OF ACTION. HOWEVER, NOTWITHSTANDING ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NOTHING CONTAINED IN THIS AGREEMENT WILL WAIVE ANY RIGHT RETAILER MAY HAVE IN THE CLAIMS BROUGHT IN THE FOLLOWING CLASS ACTION LAWSUITS IN THE EVENT THE FOLLOWING LAWSUITS ARE CERTIFIED: CASE NO. 00-CV-1989, STYLED *JOHN DEJONG, D/B/A ANEXWAVE, @ AND JOE KELLY, D/B/A AKEL-TRONICS, @ AND JAGUAR TECHNOLOGIES, INC. V. ECHOSTAR SATELLITE CORPORATION*, UNITED STATES DISTRICT COURT, DISTRICT OF COLORADO; CASE NO. 00-CV-3130, STYLED *AIR COMMUNICATION & SATELLITE, INC. ET AL. V. ECHOSTAR SATELLITE CORPORATION*, DISTRICT COURT, ARAPAHOE COUNTY, COLORADO. IN THE EVENT THAT NO PRIOR RETAILER AGREEMENT IS IN EFFECT AS OF THE EFFECTIVE DATE, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE INCENTIVES FOR NEW SUBSCRIBER ACCOUNTS ACTIVATED FROM AND AFTER THE EFFECTIVE DATE, NOTWITHSTANDING PAYMENT BY ECHOSTAR OF ANY INCENTIVES, COMMISSIONS OR OTHER PAYMENTS OF ANY TYPE TO RETAILER PRIOR TO THE EFFECTIVE DATE. THIS AGREEMENT SHALL NOT AMEND, MODIFY, ALTER OR CHANGE ANY TERMS OR CONDITIONS OF ANY LEASE PLAN DEALER AGREEMENT, OR ANY SIMILAR AGREEMENT RELATING TO LEASING, WHICH IS NOW EXISTING OR LATER MADE WITH ECHOSTAR OR ANY OF ITS AFFILIATES.

2.11 Promotional Programs. Retailer shall be eligible to participate in such Promotional Programs as EchoStar and/or any of its Affiliates may make available to Retailer at Any Time in their Sole Discretion. Retailer agrees to be bound by, and to use its best efforts to support, all of the terms and conditions of (and all of such terms and conditions are hereby incorporated into this Agreement by reference in their entirety) the Promotional Programs in which Retailer elects to participate. Retailer acknowledges and

agrees that: (i) under no circumstances shall EchoStar or any of its Affiliates have at any time any obligation to offer any Promotional Programs to Retailer, or if Promotional Programs are offered to others, to permit Retailer to be eligible to participate in them; (ii) EchoStar and its Affiliates may, at Any Time in their Sole Discretion, add, discontinue, substitute, modify, amend or otherwise alter any or all of the terms and conditions of any Promotional Programs; and (iii) if EchoStar and/or any of its Affiliates offer any Promotional Programs to Retailer, then Retailer shall only be eligible to participate in each such Promotional Program if and to the extent that it meets all of the qualification criteria and other terms and conditions as EchoStar and/or its Affiliates may establish at Any Time in their Sole Discretion. In the event of any conflict or inconsistency between the terms and conditions of a Promotional Program and/or applicable Business Rules and the terms or conditions of this Agreement, the terms and conditions of this Agreement shall control. In the event of any ambiguity between or among the terms and conditions of a Promotional Program, Business Rule and/or this Agreement, EchoStar shall have the sole and exclusive authority to interpret and/or make a final determination in its Sole Discretion concerning any issue arising from such ambiguity.

2.12 **MDU Property / Guest Properties.** Retailer shall ensure that no Guest Property or bulk-billed MDU Property directly or indirectly engages in: (i) the reselling of Bulk Programming (i.e., the property cannot charge more for Bulk Programming than they pay to EchoStar for such Bulk Programming); (ii) the retransmission or rebroadcast of any Programming, except with the express written consent of EchoStar which consent EchoStar may withhold in its Sole Discretion; or (iii) modifying, adding to, or deleting any of the Bulk Programming offered. In addition to (and without limitation of) the foregoing, Retailer shall not directly or indirectly engage, and shall ensure that no Guest Property or bulk-billed MDU Property directly or indirectly engages, in any act or omission through which EchoStar and/or any of its Affiliates could be deemed a cable operator or any other similar term, including without limitation any act or omission arising from or relating to the crossing of a public right of way by a provider of video programming services, in each case as defined under any applicable Laws ("Cable Operator"). Retailer shall promptly notify EchoStar if it is aware of or suspects (a) a change in the number of Units at any Guest Property or bulk-billed MDU Property subscribing to Bulk Programming or (b) any act or omission as set forth in the immediately preceding sentence through which EchoStar and/or any of its Affiliates could be deemed a Cable Operator. Retailer further understands and agrees that bulk-billed MDU Properties, non-bulk-billed MDU Properties and Guest Properties may require the purchase of commercially-invoiced DISH DBS Systems, if required and in such case, as further described in applicable Business Rules and adjustable at Any Time in EchoStar's Sole Discretion.

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

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

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

3.3 Retailer represents and warrants that: (i) it is a valid and existing entity in compliance with all Laws related to the maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not currently violating and has never violated any Laws; (iv) neither it nor any of its Affiliates has ever engaged in any of the acts prohibited under Section 2.6, 2.7, 2.8, 2.9, 2.12, 6.10, 6.14, 7, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9 or 14 below; (v) neither it nor any of its Affiliates has ever engaged in any acts that would have resulted in automatic termination or be considered a default or breach under any current or former EchoStar Retailer Agreement, Incentivized Retailer Agreement, Commissioned Retailer Agreement, Commissioned Dealer Agreement, Distributor Retailer Agreement, Non-Incentivized Retailer Agreement, Non-Commissioned Retailer Agreement, or Non-Commissioned Dealer Agreement with EchoStar and/or any of its Affiliates or under any other current or former Other Agreement; (vi) it is not dependent upon EchoStar and/or any Affiliates of EchoStar for a major part of Retailer's business; and (vii) it either sells or could sell other products or services in addition to EchoStar products or services that compete with EchoStar products or services.

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

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

3.6 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT IS NOT RELYING UPON, AND IT HAS NOT BEEN INDUCED INTO ENTERING INTO THIS AGREEMENT BY, ANY STATEMENTS, PROMISES,

REPRESENTATIONS, WARRANTIES, COVENANTS, AGREEMENTS, GUARANTEES, ACTS OR OMISSIONS NOT EXPRESSLY SET FORTH HEREIN.

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

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

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

#### 4. PROGRAMMING.

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

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

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

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

##### 6.1 Monthly Incentives.

6.1.1 Monthly Residential Incentives. Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System or Promotional Certificate that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates (in the case of DISH DBS Systems and Promotional Certificates), or a Third Party Manufacturer (solely with respect to DISH DBS Systems); (ii) is re-sold by Retailer directly to a Qualifying Residential Subscriber; and (iii) results in the activation of Eligible Residential Programming for a new Residential Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential Incentive"), in accordance with applicable Business Rules. Solely for the purposes of this Section 6.1.1 and solely with respect to DISH DBS Systems activated under a Promotional Program involving the leasing of equipment by EchoStar to end users, a DISH DBS System (a) for which title is automatically transferred from Retailer to EchoStar pursuant to the Business Rules applicable to such Promotional Program, and (b) which is leased by EchoStar directly to a Qualifying Residential Subscriber pursuant to such Business Rules, in each case during the Term of this Agreement, shall be deemed to be re-sold by Retailer directly to such Qualifying Residential Subscriber for purposes of clause (ii) above. The amount of such Monthly Residential Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.



6.1.2 **Monthly Residential MDU Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Residential MDU Subscriber; and (iii) results in the activation of Eligible Residential MDU Programming for a new Residential MDU Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Residential MDU Incentive"), in accordance with applicable Business Rules. Solely for the purposes of this Section 6.1.2 and solely with respect to DISH DBS Systems activated under a Promotional Program involving the leasing of equipment by EchoStar to end users, a DISH DBS System (a) for which title is automatically transferred from Retailer to EchoStar pursuant to the Business Rules applicable to such Promotional Program, and (b) which is leased by EchoStar directly to a Qualifying Residential MDU Subscriber pursuant to such Business Rules, in each case during the Term of this Agreement, shall be deemed to be re-sold by Retailer directly to such Qualifying Residential MDU Subscriber for purposes of clause (ii) above. The amount of such Monthly Residential MDU Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY RESIDENTIAL MDU INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.3 **Monthly Commercial Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Commercial Subscriber; and (iii) results in the activation of Eligible Commercial Programming for a new Commercial Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Commercial Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Commercial Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW COMMERCIAL SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY COMMERCIAL INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY COMMERCIAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

6.1.4 **Monthly Bulk Incentives.** Subject to the terms and conditions of this Agreement (including without limitation the Exhibits attached hereto) and any applicable Business Rules, for each DISH DBS System that during the Term of this Agreement: (i) is sold to Retailer directly by EchoStar or any of its Affiliates, or a Third Party Manufacturer; (ii) is re-sold by Retailer directly to a Qualifying Bulk Subscriber; and (iii) results in the activation of Eligible Bulk Programming for a new Bulk Subscriber Account, Retailer may be eligible to receive a monthly incentive (the "Monthly Bulk Incentive"), in accordance with applicable Business Rules. The amount of such Monthly Bulk Incentive together with payment terms and other applicable terms and conditions shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER. ECHOSTAR SHALL DETERMINE FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON WHETHER A PARTICULAR DISH NETWORK SUBSCRIBER IS A NEW BULK SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF MONTHLY BULK INCENTIVES HEREUNDER. ECHOSTAR'S CALCULATION AND PAYMENT OF MONTHLY BULK INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.

## 6.2 Additional Incentives.

6.2.1 **Additional Residential Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential Incentives with respect to new Residential Subscriber Accounts, such as, co-op accrual, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Residential Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to

time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

**6.2.2 Additional Residential MDU Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Residential MDU Incentives with respect to new Residential MDU Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Residential MDU Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Residential MDU Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

**6.2.3 Additional Commercial Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Commercial Incentives with respect to new Commercial Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Commercial Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Commercial Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

**6.2.4 Additional Bulk Incentives.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Bulk Incentives with respect to new Bulk Subscriber Accounts, such as, activation fee payments, flex payments, equipment discounts and professional installation payments ("Additional Bulk Incentives") under such Promotional Programs as EchoStar may make available to Retailer at Any Time in EchoStar's Sole Discretion. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Bulk Incentive shall be set forth in applicable Business Rules, which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 1.7 above. ECHOSTAR EXPRESSLY RESERVES THE RIGHT TO CHANGE APPLICABLE BUSINESS RULES AT ANY TIME AND FROM TIME TO TIME IN ITS SOLE AND ABSOLUTE DISCRETION FOR ANY REASON OR NO REASON, UPON NOTICE TO RETAILER.

**6.2.5 RETAILER ACKNOWLEDGES AND AGREES THAT:**

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

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

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

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

(V) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, SOLELY WITH RESPECT TO PROMOTIONAL PROGRAMS INVOLVING THE LEASING OF EQUIPMENT

BY ECHOSTAR, ADDITIONAL RESIDENTIAL INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS (A) THAT ARE SOLD TO RETAILER BY ECHOSTAR, AN AFFILIATE OF ECHOSTAR, OR A THIRD PARTY MANUFACTURER; (B) FOR WHICH TITLE IS AUTOMATICALLY TRANSFERRED DIRECTLY FROM RETAILER TO ECHOSTAR PURSUANT TO THE BUSINESS RULES APPLICABLE TO SUCH PROMOTIONAL PROGRAM; (C) THAT ARE LEASED BY ECHOSTAR DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER; AND (D) THAT RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL PROGRAMMING FOR A NEW RESIDENTIAL SUBSCRIBER ACCOUNT;

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

(VII) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, SOLELY WITH RESPECT TO PROMOTIONAL PROGRAMS INVOLVING THE LEASING OF EQUIPMENT BY ECHOSTAR, ADDITIONAL RESIDENTIAL MDU INCENTIVES SHALL ONLY BE PAID TO RETAILER WITH RESPECT TO DISH DBS SYSTEMS (A) THAT ARE SOLD TO RETAILER BY ECHOSTAR, AN AFFILIATE OF ECHOSTAR, OR A THIRD PARTY MANUFACTURER; (B) FOR WHICH TITLE IS AUTOMATICALLY TRANSFERRED DIRECTLY FROM RETAILER TO ECHOSTAR PURSUANT TO THE BUSINESS RULES APPLICABLE TO SUCH PROMOTIONAL PROGRAM; (C) THAT ARE LEASED BY ECHOSTAR DIRECTLY TO A QUALIFYING RESIDENTIAL MDU SUBSCRIBER; AND (D) THAT RESULT IN THE ACTIVATION OF ELIGIBLE RESIDENTIAL MDU PROGRAMMING FOR A NEW RESIDENTIAL MDU SUBSCRIBER ACCOUNT;

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

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

(X) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER APPLICABLE BUSINESS RULES, IN NO EVENT SHALL RETAILER BE ELIGIBLE TO RECEIVE ANY MONTHLY INCENTIVES OR ADDITIONAL INCENTIVES HEREUNDER IN CONNECTION WITH THE MARKETING, PROMOTION, SALE, TRANSFER, HANDLING OR ANY OTHER ACTIVITY RELATING TO OR IN CONNECTION WITH PREPAID CARDS AND/OR THE INSTALLATION, SALE OR OTHER TRANSFER OF DISH DBS SYSTEMS, RELATED EQUIPMENT OR OTHER ACCESSORIES IN CONNECTION THEREWITH.

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

### 6.3 Chargeback of Incentives.

6.3.1 IN THE EVENT THAT RETAILER IS PAID AN INCENTIVE TO WHICH IT IS NOT ENTITLED PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY PROMOTIONAL PROGRAM OR APPLICABLE BUSINESS RULES, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK SUCH INCENTIVE PAID TO

RETAILER. IN ADDITION TO (AND WITHOUT LIMITATION OF) THE FOREGOING, ECHOSTAR SHALL HAVE THE RIGHT TO CHARGE BACK ALL OR ANY PORTION OF THE MONTHLY INCENTIVES (AT ANYTIME) OR ADDITIONAL INCENTIVES (TO THE EXTENT THAT THE APPLICABLE CHARGEBACK PERIOD SET FORTH IN THIS AGREEMENT OR APPLICABLE BUSINESS RULES HAS NOT EXPIRED) PAID:

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

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

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

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

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

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

6.4.1 **Electronic Funds Transfer.** Retailer shall provide EchoStar with the Retailer Account information and any changes thereto ("EFT Instructions"), in the manner prescribed by EchoStar. Until Retailer provides EchoStar with EFT Instructions, or in the event that Retailer elects to receive payments by check, EchoStar shall pay Incentives to Retailer by check and Retailer will be assessed EchoStar's standard processing fee, which may be changed by EchoStar at Any Time in its Sole Discretion.

6.4.2 **Reliance on Retailer Account Information.** With respect to Retailer's EFT Instructions, and any purported changes or modifications thereof by Retailer, EchoStar may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such writing or instrument and may assume that any person purporting to give any such writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized by Retailer to do so. The provisions of this Section 6.4.2 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

6.4.3 **EchoStar EFT Liability Limitation.** Retailer agrees that in no event shall EchoStar have any liability



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

**6.4.4 Incentive Statements.** EchoStar shall make available to Retailer, in an electronic format determined by EchoStar at Any Time in its Sole Discretion, periodic statements reflecting the Incentives (if any) payable to Retailer as well as any Chargebacks assessed against Retailer. For the avoidance of doubt, such statements will only be made available during periods when Incentives are payable to Retailer. Retailer acknowledges that EchoStar is not required to provide Retailer with any additional information, including but not limited to communications between EchoStar and any DISH Network Subscriber or any customer account information regarding any DISH Network Subscriber.

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

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

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

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

**6.5.4** Retailer shall not be entitled to Monthly Bulk Incentives (at anytime) or Additional Bulk Incentives (to the extent that the applicable Chargeback period set forth in this Agreement or applicable Business Rules has not expired) with respect to any Bulk Subscriber Account for which: (i) Eligible Bulk Programming has been cancelled by anyone; (ii) payment in full for Eligible Bulk Programming has not been timely received by EchoStar in accordance with the terms and conditions of the then current EchoStar Commercial Customer Agreement; (iii) a credit or refund has been issued by EchoStar for any reason (EchoStar shall have the right to issue credits or refunds at Any Time in its Sole Discretion); (iv) the subscriber would otherwise be a Qualifying Bulk Subscriber, but is already receiving—or previously received within the time period set forth in applicable Business Rules (solely with respect to Promotional Programs (if any) that provide for such a time period) or at any time (in all other cases)—any of the Programming, or any other audio, video, data, interactive or other programming services from EchoStar or any of its Affiliates on the date of the order; (v) the Bulk Subscriber Account is otherwise terminated, disconnected or deactivated for any reason or no reason whatsoever; or (vi) the

Qualifying Bulk Subscriber alleges that Retailer committed fraud or any other deceptive act or practice.

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

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

#### 6.6 Suspension and Termination of Incentives.

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

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

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

6.8 **Offsets.** In no event shall Retailer or any of its Affiliates offset any amounts due to EchoStar or any of its Affiliates from Retailer or any of its Affiliates against any Incentives or other amounts due to Retailer or any of its Affiliates from EchoStar or any of its Affiliates. In the event that the Incentives paid by EchoStar to Retailer exceed the amount to which Retailer was entitled, or if Retailer and/or any of its Affiliates are indebted to EchoStar and/or any of its Affiliates under Section 13 below or for any other reason (including without limitation for any Chargebacks permitted hereunder), Retailer and its Affiliates hereby acknowledge and agree that EchoStar and its Affiliates shall have the right, but not the obligation, to offset any such amounts against any Incentives or other amounts otherwise due to Retailer or any of its Affiliates from EchoStar or any of its Affiliates, as well as any and all amounts for which EchoStar

and/or any of its Affiliates may become liable to third parties by reason of Retailer's and/or any of its Affiliate's acts in performing, or failing to perform, Retailer's and/or any of its Affiliate's obligations under this Agreement or any Other Agreement. Further, EchoStar may, but shall have no obligation to, withhold such sums from any monies due or to become due to Retailer hereunder as EchoStar, at Any Time in its Sole Discretion, deems necessary to protect EchoStar and/or any of its Affiliates from any loss, damage, or expense relating to or arising out of Retailer's actions, inaction or performance hereunder, or in response to any claim or threatened claim of which EchoStar becomes aware concerning Retailer or the performance of Retailer's duties hereunder. EchoStar's right to money due and to become due hereunder shall not be subject to any defense (except payment), offset, counterclaim or recoupment of Retailer whatsoever, including, but not limited to, any which might arise from a breach of this Agreement by EchoStar or any of its Affiliates. The provisions of this Section 6.8 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

**6.10 Collection of Programming and Other Fees.**

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

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

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

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

**6.12 No Admission.** No payment to Retailer under this Agreement, whether in full or in part, shall be deemed to operate as EchoStar's acceptance, waiver or admission that Retailer has complied with any provision of this Agreement or the requirements of any Promotional Program including, without limitation, any Business Rules related thereto. The parties acknowledge and agree that at all times (including without limitation in connection with any arbitration or court proceeding) it shall remain Retailer's burden to prove eligibility for receipt of any Incentive (including, without limitation, performance of any conditions precedent thereto) or that any Chargeback was incorrect.

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

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

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

## 7. **ORDERS.**

7.1 Retailer agrees to use its best efforts to promote and enhance EchoStar's business, reputation and goodwill. Retailer shall allow only its employees, and shall not use any independent contractors, subcontractors, Affiliates, agents, sub-agents or any other persons not employed by Retailer to fulfill any of its obligations hereunder without EchoStar's specific prior written consent, which consent may be withheld in EchoStar's Sole Discretion. In the event that EchoStar does grant consent to Retailer to use persons not employed by Retailer to perform any activities contemplated hereunder ("Permitted Subcontractors"), Retailer shall be responsible for the acts and omissions of such Permitted Subcontractors to the same extent it is responsible for the acts and omissions of its own employees.

7.2 Retailer shall not sell Programming under any circumstances. All sales of Programming are transactions solely between EchoStar and DISH Network Subscribers. Retailer shall promptly forward to EchoStar all orders for Programming in the manner prescribed by EchoStar from time to time. Retailer understands that EchoStar shall have the right, in its Sole Discretion, to accept or reject, in whole or in part, all orders for Programming. Retailer also agrees that it shall not condition, tie or otherwise bundle any purchase of Programming with the purchase of any other services or products other than as specifically consented to in writing by EchoStar in advance, which consent may be withheld in EchoStar's Sole Discretion.

7.3 Retailer shall comply with all Business Rules, including without limitation all Business Rules which govern or are otherwise applicable to any Promotional Program in which Retailer participates. Retailer shall disclose to each prospective DISH Network Subscriber the relevant terms and conditions of each Promotional Program in which such prospective DISH Network Subscriber is interested as well as any other terms and conditions as set forth in any applicable Business Rules. Furthermore, Retailer shall take all actions and refrain from taking any action, as requested by EchoStar in connection with the marketing, advertisement, promotion and/or solicitation of orders for Programming and/or the sale, lease or other transfer of DISH DBS Systems, Promotional Certificates and/or Prepaid Cards and Retailer shall cooperate by supplying EchoStar with any information arising from or relating to those actions as EchoStar reasonably requests. The failure of Retailer to adhere to any Business Rules may result in disciplinary action by EchoStar in its Sole Discretion up to and including termination of this Agreement and/or any Other Agreement, and/or the exercise by EchoStar of any other right or remedy available to it under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved).

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

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



9. **CONDUCT OF BUSINESS.**

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

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

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

9.3.1 In addition to (and without limitation of) the Territory restrictions contained in this Agreement, Retailer hereby acknowledges that the U.S. Department of State and/or the U.S. Department of Commerce may in the future assert jurisdiction over DISH DBS Systems, and that DISH DBS Systems, Promotional Certificates, Prepaid Cards and Programming may not currently be sold outside of the Territory. Retailer represents, warrants and agrees that it will not directly or indirectly arrange for or participate in the export or sale of DISH DBS Systems, Promotional Certificates, Prepaid Cards or Programming, in whole or in part, outside of the Territory, and agrees that it will take all reasonable and adequate steps to prevent the export or sale of DISH DBS Systems, Promotional Certificates, Prepaid Cards and Programming outside of the Territory by others who purchase from Retailer and who might reasonably be expected to export or sell them outside of the Territory.

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

9.4 **Bounty Programs.** Retailer acknowledges that it is in the best interest of both EchoStar and Retailer for DISH Network Subscribers to be long-term customers of EchoStar and/or its Affiliates. Retailer acknowledges that churning of DISH Network Subscribers is detrimental to EchoStar and negatively affects EchoStar's ability to offer Monthly Incentives and/or Additional Incentives. Retailer acknowledges that for any Promotional Program to be viable, DISH Network Subscribers must be long-term subscribers to DISH Network. Therefore, Retailer agrees that during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever operate, offer to any other person or entity, participate in, or assist any other person or entity to participate in, any promotion or program offered by any person or entity (including without limitation Retailer and/or any of its Affiliates) other than EchoStar or an Affiliate of EchoStar which directly or indirectly provides for the delivery of an economic incentive or other benefit to Retailer, DISH Network Subscribers or any other person or entity in any form directly or indirectly in connection with the direct or indirect solicitation of customers of EchoStar or any other DBS provider or customers of any DTH satellite programming service provider, for any purpose whatsoever (including, without limitation, in connection with such person or entity directly or indirectly assisting in the process of attempting to cause a customer of EchoStar or any other DBS provider or a customer of any DTH programming service provider to become a subscriber to any other programming service provider). In addition to (and without limitation of) the foregoing, Retailer agrees that during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer and its Affiliates will not directly or indirectly produce, place, display or use any advertising or marketing material that explicitly references DISH Network, EchoStar, an Affiliate of EchoStar or

DISH Network Subscribers and attempts to persuade DISH Network Subscribers to cancel their EchoStar service and/or switch to a service offered by any other DBS provider, DTH programming service provider or multi-channel video programming distributor ("MPVD"). Further (and without limitation of the foregoing), during the Term of this Agreement and for a period of five (5) years following the expiration or termination of this Agreement for any reason or no reason, Retailer shall not convert, or directly or indirectly assist any other person or entity who Retailer actually knew or reasonably should have known intended to convert, any DISH Network Subscriber to the services of any other DBS provider, DTH programming service provider or MPVD. The provisions of this Section 9.4 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) for five (5) years.

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

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

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

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

**9.9 Restricted EchoStar Employees.** Retailer acknowledges that EchoStar and its Affiliates have invested substantial economic and other resources and goodwill in the training and professional development of Restricted EchoStar Employees (as defined below) and that Restricted EchoStar Employees have acquired certain trade secrets and/or other confidential and proprietary information of EchoStar and/or its Affiliates in which EchoStar and its Affiliates have a valuable interest in protecting and for which disclosure to Retailer and/or any of its Affiliates or any other DBS provider, DTH programming service provider or MPVD would be detrimental to EchoStar and its Affiliates (solely for the purposes of this Section 9.9, "Confidential Company Information"). Therefore, Retailer agrees that during the Term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement

for any reason or no reason, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever solicit, recruit, entice, induce or otherwise attempt to persuade any Restricted EchoStar Employee to terminate or otherwise discontinue his or her employment with EchoStar and/or any of its Affiliates for the purpose of becoming an employee, independent contractor, subcontractor, Affiliate, agent, or sub-agent of Retailer and/or any of its Affiliates or any other DBS provider, DTH programming service provider or MVPD providing and/or performing any services within the Territory. In addition to (and without limitation of) the foregoing and except as otherwise agreed to by EchoStar or an EchoStar Affiliate in a writing signed by an Executive Vice President of EchoStar or an EchoStar Affiliate (or his or her designee), Retailer agrees that during the Term of this Agreement and for a period of twelve (12) months following the expiration or termination of this Agreement, Retailer and its Affiliates will not directly or indirectly in any manner whatsoever, employ, hire or otherwise contract for the performance of any services of any Restricted EchoStar Employee within the Territory, or directly or indirectly in any manner whatsoever assist or attempt to assist any other DBS provider, DTH programming service provider or MVPD to directly or indirectly in any manner whatsoever employ, hire or otherwise contract for the performance of any services by any Restricted EchoStar Employee within the Territory. For the purposes of this Section 9.9, "Restricted EchoStar Employee" shall mean any person currently employed by EchoStar and/or any of its Affiliates or previously employed by EchoStar and/or any of its Affiliates at any time within the immediately prior twelve (12) months: (i) as a regional sales manager, national sales manager, senior manager, director, vice president, or senior vice president, (ii) in any other position (a) involving the management, supervision and/or control of other persons employed by EchoStar and/or any of its Affiliates and (b) through which such person enjoys and exercises a degree of unsupervised independence and control over the business area, unit, team, division, group, region, territory, subject matter, and/or other similar segment or distinction (collectively, "Business Segment") for which he or she is responsible that would logically be considered reasonably similar to or greater than the degree of unsupervised independence and control generally enjoyed and exercised by any persons who satisfy the description set forth in clause (i) above with respect to their applicable Business Segment, (iii) in any position involving the performance of any professional services (including without limitation legal, financial or accounting services) for any person who satisfies the description set forth in clause (i) or (ii) above, and/or (iv) who obtains or otherwise acquires any Confidential Company Information in any manner whatsoever and for any reason or no reason (regardless of whether such acquisition is within the scope of employment or authority of such employee). The provisions of this Section 9.9 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) for twelve (12) months.

#### 10. TERM AND TERMINATION.

10.1 **Term.** This Agreement shall commence on the Effective Date and shall continue through December 31, 2008 (the "Term"), unless earlier terminated by either party hereto or otherwise in accordance with the terms and conditions of this Agreement. This Agreement is not automatically renewable, and neither party hereto shall be under any obligation whatsoever to offer or to accept an agreement to renew or replace this Agreement upon its expiration. RETAILER RECOGNIZES THAT THIS AGREEMENT MAY BE TERMINATED PRIOR TO THE EXPIRATION OF THE TERM AND THAT NO REPRESENTATIONS, WARRANTIES, COVENANTS OR GUARANTEES HAVE BEEN MADE TO RETAILER THAT RETAILER WILL REMAIN AN AUTHORIZED RETAILER DURING THE ENTIRE TERM OR THAT THE AGREEMENT WILL NOT BE TERMINATED PRIOR TO EXPIRATION OF THE TERM PURSUANT TO SECTION 10.2, 10.3, 10.4 OR 10.5 BELOW.

10.2 **Termination by Either Party for Convenience.** Either party hereto may, in its Sole Discretion, terminate this Agreement for its convenience (without cause) by giving the other party no less than sixty (60) days prior written notice.

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

10.4 **Automatic Termination.** This Agreement shall terminate automatically should any of the following occur, unless EchoStar notifies Retailer to the contrary in writing at any time thereafter: (i) Retailer becomes insolvent, or voluntary or involuntary bankruptcy, insolvency or similar proceedings are instituted against Retailer; (ii) Retailer, for more than twenty (20) consecutive days, fails to maintain operations as a going business; (iii) Retailer, for more than twenty (20) consecutive days, ceases to continuously and actively market and promote DISH DBS Systems, Promotional Certificates, Prepaid Cards and/or Programming; (iv) Retailer, or any officer, director, substantial shareholder or principal of the Retailer is convicted in a court of competent jurisdiction of any criminal offenses greater than a Class C (or comparable) Misdemeanor; (v) Retailer fails to comply with any applicable Laws, or engages in any practice, substantially related to the business conducted by Retailer in connection with this Agreement, which is determined to be an unfair trade practice or other violation of any applicable Laws, including without limitation any telemarketing/do-not-call laws, spam laws, privacy laws, fair credit reporting laws or warranty laws; (vi) Retailer falsifies any records or reports required hereunder or under any Business Rule; (vii) Retailer fails to renew, or loses, due to suspension, cancellation or revocation, for a period of fifteen (15) days or more, any license, permit or similar document or authority required by any Laws or by any governmental authority having jurisdiction, that is necessary in carrying out the provisions of this Agreement or to maintain its corporate or other business status in effect as of the Effective Date; (viii) Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional



Certificate or Prepaid Card to a person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another individual or entity, (b) intended to use it, or to allow others to use it, to view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, (c) intended to use it, or to allow others to use it, to view Residential MDU Programming at a location other than a non-bulk-billed MDU Property, (d) intended to use it, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory, or (e) intended to authorize, or to allow others to authorize, Programming for a DISH DBS System using a single DISH Network account or Prepaid Card that had or would have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property); (ix) Retailer makes, or attempts to make, any representation, promise or agreement for or on behalf of EchoStar; (x) the Trademark License Agreement or any Other Agreement expires or terminates for any reason or no reason; (xi) Retailer directly or indirectly uses a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property); (xii) any actual or alleged fraud, misrepresentation, or illegal action of any sort by Retailer in connection with this Agreement, the Trademark License Agreement, and/or any Other Agreement; (xiii) Retailer Pre-Activates any DISH DBS System or directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System, Promotional Certificate or Prepaid Card to a person or entity who Retailer knew or reasonably should have known intended to Pre-Activate a DISH DBS System; (xiv) Retailer directly or indirectly makes any payment to EchoStar for Programming services or otherwise on behalf of any retail end-user of any DISH DBS System; (xv) the churn rate experienced by EchoStar for DISH Network Subscribers activated through Retailer is equal to or greater than 125% of the churn rate experienced by EchoStar with respect to DISH Network subscribers generally during any consecutive three-month period; (xvi) Retailer is in breach or default of any of its obligations under Section 2.6, 2.7, 2.8, 2.9, 2.12, 6.10, 6.14, 7, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9 or 14; (xvii) Retailer indefinitely ceases to actively market and promote DISH DBS Systems, Promotional Certificates, Prepaid Cards and/or Programming, as determined by EchoStar in its Sole Discretion; (xviii) Retailer fraudulently receives, or attempts to receive, an Incentive or any other payment of any type to which it is not entitled under the terms and conditions of this Agreement or any Other Agreement, including without limitation by misrepresenting any information concerning a prior DISH Network Subscriber to make that person or entity appear to be a new DISH Network Subscriber or creating a fictitious or fraudulent customer account; or (xix) Retailer fails to activate the applicable minimum number of new subscribers set forth in any applicable Business Rules.

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

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

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



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

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

13. **INDEMNIFICATION.** Retailer shall indemnify, defend and hold EchoStar and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively the "EchoStar Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorney fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims"), that arise out of, or are incurred in connection with: (i) Retailer's performance or failure of performance under this Agreement, the Trademark License Agreement and/or any Other Agreement, and any direct or indirect results thereof, including but not limited to Retailer's sale and/or installation of DISH DBS Systems, Promotional Certificates or Prepaid Cards; (ii) Retailer's lawful or unlawful acts or omissions (or those of any of Retailer's employees whether or not such acts are within the scope of employment or authority of such employees) relating to the sale, leasing, transfer of possession, marketing, advertisement, promotion and/or solicitation of orders for Programming, Promotional Certificates, Prepaid Cards and/or DISH DBS Systems and/or any other products or services of EchoStar or any of its Affiliates; (iii) the failure of Retailer to comply with any provision of this Agreement or any Business Rule; (iv) the breach of any of Retailer's representations or warranties contained herein; (v) all purchases, contracts, debts and/or obligations made by Retailer; (vi) the failure of Retailer to comply with, or any actual or alleged violation of, any applicable Laws; (vii) any claim brought by Retailer's employees, independent contractors, subcontractors, Affiliates, agents, sub-agents and/or any other person or entity for compensation and/or damages arising out of or relating to the expiration or termination of this Agreement; (viii) any claim of pirating, infringement or imitation of the logos, trademarks or service marks of programming providers or any other person or entity (except with respect to any marketing materials supplied to Retailer by EchoStar); (ix) any installation and/or after-sale services performed by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (x) Retailer's, or any of its employees', independent contractors', subcontractors', Affiliates', agents' or sub-agents' failure to comply with any performance standard; (xi) a DISH Network Subscriber's dissatisfaction with any aspect of the installation and/or after-sale services performed by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (xii) the termination, disturbance, interruption or other interference with the service provided by any public utility or damage to the equipment of any public utility caused directly or indirectly by Retailer, or any of its employees, independent contractors, subcontractors, Affiliates, agents or sub-agents; (xiii) Retailer directly or indirectly selling, leasing or otherwise transferring possession of a DISH DBS System, Promotional Certificate or Prepaid Card to any person or entity whom Retailer knew or reasonably should have known: (a) was not an end-user and/or intended to resell it, lease it or otherwise transfer possession of it for use by another individual or entity; (b) intended to use it, or to allow others to use it, to (1) view Residential Programming at a location other than a Residential Location or Institutional/Residential Location, or (2) view Residential MDU Programming at a location other than a non-bulk-billed MDU Property; (c) intended to use it, or to allow others to use it, in Canada, Mexico or at any other location outside of the Territory; or (d) intended to authorize, or to allow others to authorize, Programming for a DISH DBS System using a single DISH Network account or Prepaid Card that has or would have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property); and/or (xiv) Retailer directly or indirectly using a single DISH Network account or Prepaid Card for the purpose of authorizing Programming for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, bulk-billed MDU Property, Unit of a non-bulk-billed MDU Property, Guest Property or Commercial Location, as applicable based upon the type of Programming authorized for the relevant DISH Network account or Prepaid Card, and connected to the same land-based phone line (except in the case of a bulk-billed MDU Property). In the event of any claim for indemnification by the EchoStar Group under this Section 13, the EchoStar Group shall be entitled to representation by counsel of its own choosing, at Retailer's sole cost and expense. The EchoStar Group shall have the right to the exclusive conduct of all negotiations, litigation, settlements and other proceedings arising from any such claims and Retailer shall, at its own cost and expense, render all assistance requested by EchoStar in

connection with any such negotiation, litigation, settlement or other proceeding. Each indemnity obligation set forth in this Section 13 shall be in addition to (and without limitation of) any other indemnity obligations set forth in this Agreement. The provisions of this Section 13 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

15. **DISPUTE RESOLUTION.**

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

15.1 **Claims for Breach or Default.** IN THE EVENT OF AN OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR LIABLE TO RETAILER FOR ANY DAMAGES OR INJUNCTIVE RELIEF AS A RESULT OF ANY ALLEGED BREACH OR DEFAULT OF THIS AGREEMENT OR ANY OTHER AGREEMENT, RETAILER SHALL GIVE WRITTEN NOTICE OF SUCH OCCURRENCE AS SOON AS PRACTICABLE TO ECHOSTAR (A "NOTICE OF CLAIM"). IN NO EVENT SHALL ANY NOTICE OF CLAIM BE PROVIDED LATER THAN NINETY (90) DAYS AFTER THE DATE OF THE RELEVANT OCCURRENCE, OR THE SHORTEST PERIOD PERMITTED UNDER APPLICABLE LAW (IN THE EVENT THAT SUCH PERIOD IS IN EXCESS OF THE APPLICABLE PERIOD SET FORTH ABOVE). EACH NOTICE OF CLAIM SHALL STATE: (I) THE DATE, TIME AND NATURE OF THE OCCURRENCE; (II) THE TOTAL AMOUNT CLAIMED BY RETAILER, IF ANY, IN CONNECTION WITH SUCH OCCURRENCE AND THE BASIS FOR ANY AMOUNT CLAIMED, AND (III) IDENTIFICATION OF ALL DOCUMENTS AND OTHER INFORMATION IN RETAILER'S CONTROL OR POSSESSION ARISING FROM OR RELATING TO SUCH OCCURRENCE. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING INCENTIVE PAYMENTS THROUGH ECHOSTAR'S RETAILER WEBSITE (<http://retailer.echostar.com>) IN ACCORDANCE WITH APPLICABLE BUSINESS RULES. RETAILER MAY SUBMIT A NOTICE OF CLAIM CONCERNING ALL OTHER CLAIMS VIA ELECTRONIC MAIL TO [executiveresolution@echostar.com](mailto:executiveresolution@echostar.com) WITH THE SUBJECT LINE "NOTICE OF CLAIM." AFTER SUBMITTING A NOTICE OF CLAIM, RETAILER SHALL PROVIDE ECHOSTAR WITH ANY AND ALL ADDITIONAL INFORMATION REQUESTED BY ECHOSTAR WITHIN THIRTY (30) DAYS AFTER RECEIPT OF ECHOSTAR'S REQUEST. ECHOSTAR SHALL BE ENTITLED TO HAVE ACCESS TO RETAILER'S BOOKS AND RECORDS DURING ITS INVESTIGATION OF RETAILER'S CLAIM. FAILURE TO STRICTLY COMPLY WITH THE PROVISIONS OF THIS SECTION 15.1 WITH RESPECT TO A PARTICULAR OCCURRENCE THAT RENDERS, OR MIGHT RENDER, ECHOSTAR IN BREACH OR DEFAULT OF THIS AGREEMENT AND LIABLE TO RETAILER FOR DAMAGES OR INJUNCTIVE RELIEF, SHALL CONSTITUTE A WAIVER BY RETAILER WITH RESPECT TO THE RELEVANT OCCURRENCE, INCLUDING WITHOUT LIMITATION ANY DAMAGES RELATED THERETO.

**15.2 Mediation.** The parties agree to submit any and all disputes, controversies or claims not otherwise barred or resolved under Section 15.1 or exempted under Section 15.4, which may arise between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all disputes, controversies, and claims arising out of or relating to this Agreement including, without limitation, any and all disputes, controversies or claims related to: (i) the execution and delivery of this Agreement (whether via signature or electronic acceptance); (ii) the interpretation of this Agreement; (iii) a party's performance or failure to perform hereunder; (iv) the termination of this Agreement; and (v) any rights Retailer may have under dealer termination or non-renewal laws (collectively "Disputes"), to mandatory non-binding mediation (a "Mediation") in front of a single mediator. Either party may initiate a Mediation by giving written notice to the other party pursuant to Section 17.10 describing the Dispute (a "Notice of Mediation"). The Notice of Mediation shall include: (a) a statement of the initiating party's position and a summary of arguments supporting that position and (b) the name and title of the executive who will represent that party and of any other persons who will accompany the executive. The Mediation shall take place in the City and County of Denver, Colorado at a mutually agreeable time and location before a mediator chosen by mutual agreement of the parties. In the event that either party fails to negotiate the selection of a mediator in good faith or unreasonably withholds its approval of a mediator, such party shall be deemed to have waived its right to select the mediator by mutual agreement of the parties and shall be required to participate in the Mediation with the mediator chosen by the other party. Each party shall participate through a representative with full settlement authority and shall bear its own costs and expenses and one-half of the costs and expenses of the mediator. Any such Mediation must be concluded within sixty (60) days of the Notice of Mediation. Nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration (as defined below) and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 11 or 14 or any provision of the Trademark License Agreement or any Other Agreement. In the event that a party (the "Non-Mediating Party") fails to: (1) pay one-half of the costs and expenses of the mediator to the mediator when due; or (2) otherwise refuses or fails to participate in or attend a Mediation that has been properly initiated pursuant to this Section 15, then the Non-Mediating Party agrees that: (A) the Non-Mediating Party shall be deemed to have waived its right to initiate an Arbitration (as defined below) pursuant to Section 15.3, as fully participating in a Mediation pursuant to this Section 15.2 is a condition precedent to a party's right to initiate an Arbitration; (B) the other party (the "Mediating Party") shall have the right (but not the obligation) to initiate an Arbitration pursuant to Section 15.3 without any further obligation under this Section 15.2; and (C) the Mediating Party shall have the option, exercisable upon written notice to the Non-Mediating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below. In the event that the Mediating Party elects to initiate an Arbitration pursuant to clause (B) above or to resolve the underlying dispute, controversy or claim in court pursuant to clause (C) above, the parties agree that the Non-Mediating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such Arbitration or court proceeding as fully participating in a Mediation pursuant to this Section 15.2 is a condition precedent to recovery.

**15.3 Arbitration.** Except as set forth to the contrary in this Section 15.3 or Section 15.4 below, any and all disputes, controversies or claims between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including without limitation any and all disputes, controversies or claims arising out of or in connection with this Agreement, including but not limited to the validity of this Section 15, the circumstances concerning the execution and delivery of this Agreement (whether via signature or electronic acceptance), and any allegations of fraud in the inducement, or which relate to the parties' relationship with each other or either party's compliance with any Laws, which are not settled through negotiation, the claim process set forth above in Section 15.1, or the mediation process set forth above in Section 15.2, shall be resolved solely and exclusively by binding arbitration (an "Arbitration") administered by the American Arbitration Association in accordance with both the substantive and procedural laws of Title 9 of the U.S. Code ("Federal Arbitration Act") and the Commercial Arbitration Rules of the American Arbitration Association (the "Commercial Arbitration Rules"). In the event of any conflict or inconsistency between or among the Federal Arbitration Act, the Commercial Arbitration Rules, and/or the terms and conditions of this Agreement, such conflict or inconsistency shall be resolved by giving precedence in the following order: (i) this Agreement; (ii) the Federal Arbitration Act; and (iii) the Commercial Arbitration Rules. In consideration of EchoStar entering into this Agreement with Retailer, Retailer agrees that it will not serve as a class representative in any class action lawsuit brought by any person or legal entity concerning this Agreement in any respect. NEITHER PARTY NOR ANY OF ITS AFFILIATES MAY BRING ANY DEMAND FOR ARBITRATION AGAINST THE OTHER PARTY AND/OR ANY OF ITS AFFILIATES IF IT AND/OR ANY OF ITS AFFILIATES HAS FAILED TO FULLY COMPLY WITH THE PROCEDURES SET FORTH IN SECTIONS 15.1 AND 15.2; provided, however, that nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 11 or 14 or any provision of the Trademark License Agreement or any Other Agreement.

**15.3.1 Initiation of Arbitration; Selection of Arbitrators.** The Arbitration must be initiated within ninety (90) days from the final day of the Mediation, or one hundred fifty (150) days from the Notice of Mediation in the event that the Mediation is not concluded within sixty (60) days of the Notice of Mediation, and shall be initiated by written notice from the initiating party to the other party pursuant to Section 17.10 stating the initiating party's intent to initiate arbitration ("Notice of Arbitration"). The Arbitration shall be conducted in the City and County of Denver, Colorado by a panel of three arbitrators who shall be selected as follows: (i) one arbitrator shall be selected by the claimant(s) within thirty (30) days of sending the Notice of Arbitration; (ii) one arbitrator shall be



selected by the respondent(s) within thirty (30) days of the claimant(s) notifying respondent of the identity of claimant's arbitrator; and (iii) the third arbitrator shall be selected by the arbitrators chosen by the claimant(s) and the respondent(s) within thirty (30) days of the appointment of the respondent(s)' arbitrator. The parties acknowledge and agree that each party shall have the option, exercisable upon written notice to the other party, to designate the arbitrator selected by such party as a non-neutral arbitrator in which event such arbitrator shall not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence. Notwithstanding the foregoing, in the event that either party fails to timely select an arbitrator pursuant to this Section 15.3: (a) such party shall be deemed to have waived its right to a three-member arbitration panel and shall be required to participate in the arbitral proceedings with the one arbitrator selected by the other party without any objection and (b) the one arbitrator selected by the other party shall thereafter be deemed a neutral arbitrator with whom neither party shall communicate *ex parte* concerning the Arbitration.

**15.3.2 Authority of the Arbitrator(s); Awards.** The parties hereby agree that the arbitrator(s) selected pursuant to Section 15.3.1 (the "Arbitrator(s)") are not authorized to: (i) conduct "class arbitration" in any form; and/or (ii) arbitrate any dispute on a representative basis in any form. The parties hereby agree that the Arbitrator(s) have the authority to entertain and rule upon dispositive motions, including but not limited to, default judgments as governed by Rule 55 of the Federal Rules of Civil Procedure, motions for summary judgment as governed by Rule 56 of the Federal Rules of Civil Procedure and motions to dismiss as governed by Rule 12 of the Federal Rules of Civil Procedure. The decision of the Arbitrator(s) shall be final and binding on the parties and any award of the Arbitrator(s) may be entered and enforced as a final judgment in any state or federal court of competent jurisdiction in the United States. The parties agree that, in no event, shall the Arbitrator(s)' decision include a recovery under any theory of liability, or award in any amount, not expressly allowed under this Agreement, any Promotional Program or applicable Business Rules. In furtherance (and without limitation) of the foregoing, any award made by the Arbitrator(s) shall be within the limitations set forth in Section 12. The parties further agree that the Arbitrator(s) may not award damages, injunctive relief or any other remedy to any person or legal entity who is not present at the Arbitration or who does not submit proof of any alleged damages at the Arbitration.

**15.3.3 Arbitration Costs.** The party(ies) determined by the Arbitrator(s) to be the prevailing party(ies) shall be entitled to recover from the non-prevailing party(ies) any and all costs and expenses arising from any Arbitration hereunder, including without limitation all costs of the record or transcripts thereof, if any, administrative fees, and all other fees involved (including but not limited to reasonable attorney fees of the prevailing party(ies)); provided, however, that such costs and expenses may otherwise be allocated in an equitable manner as determined by the Arbitrator(s).

**15.3.4 Remedies for Non-Participation.** The parties acknowledge and agree that: (i) in addition to (and without limitation of) the other provisions of this Section 15, each party is relying upon the provisions of this Section 15.3 to efficiently address and resolve any and all disputes, controversies and claims arising out of or relating to this Agreement and (ii) any failure or refusal by a party (the "Non-Participating Party") to: (a) pay any amount to the American Arbitration Association ("AAA") when due ("Arbitration Payment Default") or (b) otherwise participate in or attend an Arbitration that has been properly initiated pursuant to this Section 15 ("Other Arbitration Default") will cause substantial and irreparable harm and injury to the other party (the "Participating Party"), for which monetary damages alone would be an inadequate remedy, including without limitation the termination of arbitral proceedings by the AAA. Accordingly, each party agrees that, in the event of an Arbitration Payment Default or Other Arbitration Default (each a "Non-Participation Event"), the Participating Party shall have the right (but not the obligation), in addition to (and without limitation of) any other rights and remedies available to such party at law, in equity, under contract (including without limitation this Agreement) or otherwise (all of which are hereby expressly reserved), to obtain immediate relief from the Arbitrator(s) or a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below, in each case in the form of specific performance and/or a preliminary or permanent injunction, whether prohibitive or mandatory, against any violation or threatened violation of this Section 15.3, and without the necessity of posting or filing a bond or other security to restrain the threatened or actual violation of this Section 15.3 by the Non-Participating Party. In addition to (and without limitation of) the foregoing, in the event of a Non-Participation Event, the Participating Party shall have the option, exercisable upon written notice to the Non-Participating Party, to have the underlying dispute, controversy or claim resolved solely and exclusively before a court of competent jurisdiction located in the State of Colorado, as delineated in Section 15.5 below. In the event that the Participating Party elects to resolve the underlying dispute, controversy or claim in court pursuant to this Section 15.3.4, the parties agree that the Non-Participating Party shall be deemed to have waived its right to pursue any affirmative claims or counterclaims in such court proceeding as fully participating in an Arbitration pursuant to this Section 15.3 is a condition precedent to recovery.

**15.4 Exceptions.** Notwithstanding the foregoing, any request by either party for preliminary or permanent injunctive relief, whether prohibitive or mandatory, shall not be subject to mediation or arbitration and may be adjudicated solely and exclusively in the United States District Court for the District of Colorado or in the appropriate state court of competent jurisdiction located in Arapahoe County, Colorado pursuant to Section 15.5 below; provided, however, that nothing contained herein (excluding the provisions of Section 2.10, which shall apply in full force and effect) shall limit or restrict the rights of either party and/or any of its Affiliates to file a Notice of Arbitration and/or bring a request for injunctive relief against the other party and/or any of its Affiliates for any violations of Section 2.2, 2.6, 2.7, 2.8, 2.12, 5, 6.10, 7.2, 7.3, 9.1, 9.2, 9.3, 9.4, 9.5, 9.8, 9.9, 11 or 14 or any provision of the Trademark License Agreement or any Other Agreement.

**15.5 Choice of Law; Exclusive Jurisdiction.** The relationship between the parties and their present and future Affiliates, including without limitation all disputes, controversies or claims, whether arising in contract, tort, under statute or otherwise, shall be

governed by and construed in accordance with the laws of the State of Colorado, applicable to contracts to be made and performed entirely within the State of Colorado by residents of the State of Colorado, without giving any effect to its conflict of law provisions. In the event that a lawsuit is brought for injunctive relief pursuant to Section 15.2, 15.3, or 15.4 above or as otherwise permitted in clause (C) of Section 15.2 or the penultimate sentence of Section 15.3.4, such lawsuit shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties and their present and future Affiliates consent to the *in personam* jurisdiction of the United States District Court for the District of Colorado and the appropriate State Court located in Arapahoe County, State of Colorado for the purposes set forth in this Section 15 and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to Title 28 U.S.C. Section 1404 or 1406 (or any successor statute). In the event that the United States District Court for the District of Colorado does not have subject matter jurisdiction over any such matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado.

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

16. **INSURANCE.**

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

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

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

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

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

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

17. **MISCELLANEOUS.**

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

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

17.3 **Construction and Interpretation.** Retailer and EchoStar hereby represent, warrant, acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or the Business Rules, including without limitation any amendments hereto or thereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

17.5 **Entire Agreement.** This Agreement and the Business Rules constitute the entire agreement between the parties with respect to the subject matter of this Agreement. Except as otherwise expressly provided herein, no party shall be bound by any communications between them on the subject matter of this Agreement, unless such communication is: (i) in writing; (ii) bears a date contemporaneous with or subsequent to the Effective Date; and (iii) is signed by both parties to this Agreement. On the Effective Date, all prior agreements (except as set forth to the contrary in Section 2.10 and with further exception of the Business Rules and Other Agreements (including without limitation any previous "Exclusive Bounty Hunter Agreements")) or understandings between the parties shall be null and void. The parties specifically acknowledge there are no unwritten side agreements or oral agreements between the parties which alter, amend, modify or supplement this Agreement. In addition to (and without limitation of) any provisions of this Agreement that expressly survive termination or expiration, any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances.

17.6 **Compliance with Laws.** Retailer hereby agrees to comply with, and hereby agrees that this Agreement is subject to, all applicable Laws in force or effect at any time during the Term of this Agreement.

17.7 **Force Majeure.** Notwithstanding anything set forth to the contrary in this Agreement, neither party shall be liable to the other party for its failure to fulfill any of its obligations hereunder if such failure is caused by or arises out of an act of force majeure including without limitation acts of God, war, riot, natural disaster, technical failure (including without limitation the failure of all or part of any communications satellite or transponders on which the Programming is delivered to DISH Network Subscribers, or of related uplinking or other equipment) or any other reason beyond the reasonable control of the party whose performance is prevented during the period of such occurrence.

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

17.9 **Records and Audit Rights.** During the Term of this Agreement and for a period of three (3) years thereafter, Retailer shall keep and maintain at its principal place of business complete and accurate records and books of account, as well as all documentation of all material processes and procedures, in connection with: (i) its performance under this Agreement, the Trademark License Agreement and any Other Agreement; (ii) the payment of Incentives and any other payments to Retailer and/or any of its Affiliates by EchoStar and/or any of its Affiliates; and (iii) all payments made by Retailer and/or any of its Affiliates to EchoStar and/or any of its Affiliates. Such books, records and documentation shall be in sufficient detail to show all information necessary to support any Retailer claim, request or entitlement of any nature from EchoStar and/or any of its Affiliates. EchoStar shall have the right, upon two (2) days prior written notice, to review, audit and make copies of Retailer's books, records and documentation for the purposes of: (a) determining Retailer's compliance with its duties and obligations under this Agreement, the Trademark License Agreement or any Other

Agreement; (b) determining Retailer's compliance with applicable Laws, including without limitation any telemarketing/do-not-call laws, spam laws, privacy laws, fair credit reporting laws or warranty laws; (c) investigating any claims against EchoStar and/or any of its Affiliates made by Retailer and/or any of its Affiliates; (d) investigating any Claims for which Retailer is obligated to indemnify the EchoStar Group pursuant to Section 13 hereof; and/or (e) verifying that Incentive payments and any and all other payments of any type made to Retailer and/or any of its Affiliates by EchoStar and/or any of its Affiliates are being properly calculated (an "Audit"). EchoStar shall be entitled to conduct an Audit regardless of the existence of any claim, dispute, controversy, mediation, arbitration or litigation between the parties. In the event that Retailer refuses to allow EchoStar to conduct an Audit, Retailer acknowledges that EchoStar shall be entitled to obtain immediate relief in the form of specific performance from either the panel of arbitrators (if arbitration has been commenced pursuant to Section 15 above) or a court located within the State of Colorado, as delineated in Section 15.5 of this Agreement. Any audit conducted by EchoStar shall be conducted by EchoStar or its representative(s) at Retailer's offices during normal business hours. If, during the course of an Audit, EchoStar uncovers that: (1) Retailer has failed to comply with any of its obligations under this Agreement, and/or (2) Retailer and/or any of its Affiliates has made a frivolous claim against EchoStar and/or any of its Affiliates, Retailer shall pay to EchoStar the costs and expenses incurred by EchoStar in connection with such Audit. If an Audit reveals that (A) Retailer and/or any of its Affiliates have underpaid EchoStar and/or any of its Affiliates, or (B) Retailer has miscalculated any item bearing upon the Incentives paid to Retailer resulting in an overpayment of Incentives by EchoStar and/or any of its Affiliates, Retailer agrees to repay to EchoStar the amount of any such underpayment or overpayment, as applicable, made together with interest thereon at the highest rate allowed by law, computed from the date of such underpayment or overpayment, as applicable; and pay all reasonable costs and expenses, including without limitation reasonable attorney fees and accountant fees incurred by EchoStar and/or any of its Affiliates in connection with an Audit and with enforcing the collection of such amounts. The provisions of this Section 17.9 are without prejudice to any other rights and remedies that EchoStar and/or any of its Affiliates may have under contract (including without limitation this Agreement), at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

**17.10 Notices.**

**17.10.1 Notice to EchoStar.** Except as otherwise provided in Sections 15 and 17.19, all notices to be given to EchoStar pursuant to this Agreement shall be in writing, signed by Retailer, and sent by: (i) first class certified mail, postage prepaid; or (ii) overnight courier service, charges prepaid, to the following address(es) or such other address(es) as EchoStar may designate to Retailer at any time and from time to time in accordance with Section 17.10.2:

If by first class certified mail:

To EchoStar: EchoStar Satellite L.L.C.  
Attn: Director of Retail Services  
P.O. Box 6627  
Englewood, CO 80155

With a copy to: David K. Moskowitz  
Executive Vice President, General Counsel and Secretary  
EchoStar Satellite L.L.C.  
P.O. Box 6655  
Englewood, CO 80155

If by overnight courier service:

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

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

The receipt of such notice shall constitute the giving thereof.

**17.10.2 Notice to Retailer.** All notices to be given to Retailer pursuant to this Agreement shall be in writing and sent by: (i) first class certified mail, postage prepaid; (ii) overnight courier service, charges prepaid; (iii) facsimile transmission, to Retailer at the address listed on the first page of this Agreement or the fax number listed on the signature page of this Agreement, or such other address or other fax number as Retailer may designate in writing delivered to EchoStar in accordance with Section 17.10.1; or (iv) with the exception of notices given pursuant to Sections 10, 13 or 15, any method of mass communication reasonably directed to



EchoStar's retailer base, including, without limitation, facts blast, e-mail posting on EchoStar's retailer web site or broadcast on a "Retailer Chat". The sending of such notice with confirmation of successful receipt of the entire transmission (in the case of facsimile transmission), receipt of such notice (in the case of first class certified mail or overnight courier service), sending of such notice (in the case of e-mail), posting (in the case of EchoStar's retailer web site) or broadcast (in the case of Retailer Chats) shall constitute the giving thereof. It shall be Retailer's sole responsibility to keep itself informed of all notices, changes and other information set forth in any facts blast, e-mail, "Retailer Chat" or posting on EchoStar's retailer web site.

17.10.3 The provisions of this Section 17.10 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

17.11 **Attorney Fees.** In the event of any suit, action or arbitration between Retailer and/or any of its Affiliates, on the one hand, and EchoStar and/or any of its Affiliates, on the other hand, including but not limited to any and all suits, actions or arbitrations to enforce this Agreement, any Business Rules, any Promotional Program or any provisions hereof or thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney fees, at arbitration, at trial and on appeal, in addition to (and without limitation of) all other sums allowed by law. The provisions of this Section 17.11 shall survive expiration or termination of this Agreement (for any reason or no reason) indefinitely.

17.12 **Modifications.** Retailer acknowledges that EchoStar competes in the multi-channel video distribution market, which is highly competitive, fluid and volatile and that EchoStar must make changes to its marketing, promotion and sales of products and services from time to time to stay competitive. Therefore, Retailer agrees that EchoStar may, at Any Time in its Sole Discretion, change, alter, delete, add or otherwise modify Incentives, Incentive schedules, Incentive structures, Promotional Programs and/or Business Rules, payment terms, or the Chargeback rules associated therewith, upon notice to Retailer, without the need for any further consent, written or otherwise, from Retailer. IF ANY SUCH CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION IS MATERIAL AND UNACCEPTABLE TO RETAILER, RETAILER'S ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. RETAILER'S CONTINUED PERFORMANCE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF NOTICE OF A CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION WILL CONSTITUTE RETAILER'S BINDING ACCEPTANCE OF THE CHANGE, ALTERATION, DELETION, ADDITION OR OTHER MODIFICATION.

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

17.14 **General Provisions.** The exhibit(s) hereto are hereby incorporated into this Agreement by reference in their entirety.

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

17.16 **Consent to Receive Faxes.** Retailer hereby acknowledges that this Agreement serves as Retailer's express written consent to receive facsimile transmittals from EchoStar and its Affiliates, including without limitation facsimile transmittals which contain unsolicited advertisements. For the avoidance of doubt, such permitted facsimile transmittals from EchoStar or any of its Affiliates shall include, but not be limited to, information about the commercial availability or quality of products, goods or services; notices of conferences and seminars; and new product, programming or promotion announcements. This written consent shall include (without limitation) all facsimile transmittals regulated by future Federal Communications Commission action.

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

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

17.19 **Alteration of Terms and Conditions.** Retailer acknowledges and agrees that, because among other things EchoStar has thousands of authorized retailers, it is in each party's best interest to establish an orderly process for Retailer to propose additions, deletions, changes, alterations and/or other modifications to the terms and conditions set forth in this Agreement and for EchoStar to receive such proposals prior to the parties entering into an agreement. Therefore, Retailer further acknowledges and agrees that any additions, deletions, changes, alterations and/or other modifications to the terms and conditions of this Agreement proposed by Retailer must be sent to EchoStar solely and exclusively via an e-mail message addressed to proposedchanges@echostar.com with the subject line



"Proposed Changes to EchoStar Retailer Agreement" (a "Proposal") and that such Proposals must be received by EchoStar prior to Retailer executing this Agreement (whether via signature or electronic acceptance). RETAILER ACKNOWLEDGES AND AGREES THAT: (I) ANY AND ALL PROPOSALS RECEIVED BY ECHOSTAR AFTER RETAILER HAS EXECUTED THIS AGREEMENT SHALL BE OF NO FORCE OR EFFECT; AND (II) IN THE EVENT THAT RETAILER EXECUTES THIS AGREEMENT AFTER ECHOSTAR HAS RECEIVED ONE OR MORE PROPOSALS, ALL SUCH PROPOSALS SHALL BE DEEMED TO HAVE BEEN WITHDRAWN BY SUCH EXECUTION AND SHALL BE OF NO FURTHER FORCE OR EFFECT. Consequently, in the event that the following events occur in the following order: (a) EchoStar receives a Proposal from Retailer; (b) Retailer executes this Agreement (whether via signature or electronic acceptance); and (c) EchoStar executes this Agreement, then Retailer acknowledges and agrees that the execution of this Agreement by Retailer withdrew the Proposal and Retailer and EchoStar will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Further, in the event that the following events occur in the following order: (1) Retailer executes this Agreement (whether via signature or electronic acceptance); (2) EchoStar receives a Proposal from Retailer; and (3) EchoStar executes this Agreement, then Retailer acknowledges and agrees that the Proposal shall be of no force or effect because it was submitted after Retailer executed this Agreement and Retailer and EchoStar will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Further, in the event that the following events occur in the following order: (A) EchoStar receives a Proposal from Retailer; (B) Retailer executes this Agreement (whether via signature or electronic acceptance); (C) EchoStar receives a second Proposal from Retailer; and (D) EchoStar executes this Agreement, then Retailer acknowledges and agrees that the execution of this Agreement by Retailer withdrew the first Proposal and the second Proposal shall be of no force or effect because it was submitted after Retailer executed this Agreement, and Retailer and EchoStar will therefore have a binding agreement on the terms and conditions set forth herein, without any additions, deletions, changes, alterations or other modifications thereto. Retailer further acknowledges and agrees that a Proposal may only be accepted by EchoStar in a writing signed by an Executive Vice President of EchoStar (or his or her designee), which specifically acknowledges receipt of the applicable Proposal, includes the portion(s) of the Proposal that EchoStar is willing to accept, and expressly states that EchoStar has agreed to accept such portion(s) of the Proposal. Notwithstanding anything to the contrary set forth herein, EchoStar is under no obligation to receive, consider or accept any Proposals, and in the event that a Proposal received by EchoStar is not accepted in the manner provided in the immediately preceding sentence, then such Proposal shall automatically be deemed to have been rejected by EchoStar. For the avoidance of doubt, EchoStar has the right to not receive, consider or accept any Proposal and to reject any Proposal in its Sole Discretion.

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

**ECHOSTAR SATELLITE L.L.C.**

By: \_\_\_\_\_

Name:  
Title:

**RETAILER**

Retailer Number: **821970**

Retailer Company Name: "  
(please print)

Street Address: **9831 IRVINE CENTER DR**  
(please print)

City, State, Zip Code: **IRVINE, CA 92618**  
(please print)

Fax Number: **(949) 643-7173**  
(for notice to Retailer pursuant to Section 17.10.2)  
(please print)

By: \_\_\_\_\_

(signature)

Name (please print): **ALEX TEHRANCHI**

Title (please print): **PRESIDENT**

[SIGNATURE PAGE OF ECHOSTAR RETAILER AGREEMENT]

## EXHIBIT A

### TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the "Agreement") is made and effective as of the Effective Date, by and between EchoStar Satellite L.L.C., formerly known as EchoStar Satellite Corporation ("ESLLC"), having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112; and " ", having a place of business at 9831 IRVINE CENTER DR IRVINE, CA 92618 ("Licensee").

### INTRODUCTION

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

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

WHEREAS, Licensee desires to be permitted to use the Trademarks (as defined below) in accordance with and subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### AGREEMENT

1. ESLLC and its Affiliates hereby grant to Licensee a non-exclusive, non-transferable, revocable license (the "License") to use the Trademarks during the term of this Agreement, and no other term or license whatsoever, solely to market, promote and solicit orders for Programming and the hardware necessary to receive such Programming ("Hardware") in its advertising and promotional materials and at its business locations.

(a) Licensee expressly recognizes and agrees that Licensee shall not, in whole or in part, modify, alter, supplement, delete or otherwise change any of the Trademarks (whether in typewritten, stylized or any other form) as provided to Licensee by ESLLC and/or any of its Affiliates, including without limitation through dissecting in any manner the form of stylized "I" in "DISH". Licensee shall have no right to use any logos, service marks or trademarks (whether in typewritten, stylized or any other form) of any programming providers (collectively, "Programmer Trademarks"), other than the Programmer Trademarks that are contained in the advertising and promotional material provided to Licensee by ESLLC and/or its Affiliates. No such materials shall indicate that any agreement of agency, partnership, joint venture, franchise or exclusive or non-exclusive distributorship exists between Licensee on the one hand, and ESLLC and/or its Affiliates on the other hand, unless ESLLC and/or its Affiliates on the one hand, and Licensee on the other hand, enter into a separate written agreement permitting Licensee to do so.

(b) Notwithstanding the above, Licensee shall provide to ESLLC, at least thirty (30) days prior to first use: (i) an example of any advertising or promotional materials in which Licensee intends to use any Trademarks or Programmer Trademarks (in each case whether in typewritten, stylized or any other form) which use has not, within the past twelve (12) months, been approved by ESLLC in exactly the manner intended for use and (ii) an example of any Trademark Paid Search Terms which have not been approved by ESLLC in exactly the manner intended for use by Licensee within the past twelve (12) months. ESLLC may reject and prohibit Licensee from using such materials or Trademark Paid Search Terms in its Sole Discretion. If Licensee is required to, but fails to provide ESLLC with proposed advertising or promotional materials or Trademark Paid Search Terms at least thirty (30) days prior to first use in compliance with the foregoing, ESLLC shall have just cause to immediately terminate this Agreement upon written notice to Licensee.

(c) For the purposes of this Agreement: (i) "Trademarks" shall mean (a) the trademarks, service marks and trade names of ESLLC and/or its Affiliates set forth in Exhibit 1 hereto and incorporated herein by reference in its entirety, as such exhibit may be modified at Any Time in EchoStar's Sole Discretion upon notice to Licensee and (b) such other trademarks, service marks and trade names of ESLLC and/or its Affiliates as may be set forth by ESLLC at Any Time in its Sole Discretion in applicable Business Rules which expressly permit their use by Licensee and (ii) "Trademark Paid Search Terms" shall mean any Internet search terms that (a) include any of the Trademarks and (b) for which Licensee has directly or indirectly made any payment or provided any other economic benefit of any type whatsoever to any person or entity other than ESLLC or any of its Affiliates in connection with the placement of any advertising or promotional materials or links thereto on an Internet website. Licensee acknowledges and agrees that ESLLC may, at Any Time in its Sole Discretion, change, alter, delete, add or otherwise modify Exhibit 1 hereto and/or any Business Rules otherwise applicable to any of the Trademarks, upon notice to Licensee, without the need for any consent, written or otherwise, from Licensee.

2. This Agreement is not intended, nor shall it be construed, as creating any agreement of agency, partnership, joint venture, franchise or of exclusive or non-exclusive distributor, or as creating any obligation on the part of ESLLC to enter into any such agreement with Licensee. Further, this Agreement is not intended, nor shall it be construed, as providing any rights to Licensee to purchase or sell products or programming manufactured and/or distributed by ESLLC. Licensee expressly recognizes and agrees that any goodwill now existing or hereafter created through any sales or solicitation of orders by Licensee of Programming, Hardware and/or any other products, programming and/or other services manufactured and/or distributed by ESLLC in association with the Trademarks shall inure to ESLLC's sole and exclusive benefit. This License shall be effective until terminated by either party in accordance with the terms and conditions of this Agreement, or until expiration or termination of the EchoStar Retailer Agreement to which this Agreement is attached (the "EchoStar Retailer Agreement") for any reason or no reason whatsoever.

3. Licensee agrees that all products and services promoted and/or rendered by Licensee in connection with any of the Trademarks, and all promotional and other uses of any of the Trademarks by Licensee in association with any Programming, Hardware and/or any other products and services offered by Licensee in connection with this Agreement and/or the EchoStar Retailer Agreement, shall be of a nature and quality that conforms to such standards as may be required by ESLLC from time to time in its Sole Discretion. Licensee acknowledges and agrees that ESLLC shall have the right (but not the obligation) to take any and all actions as may be determined by ESLLC at Any Time in its Sole Discretion to be necessary to ensure that the nature and quality of the services and/or products offered by Licensee in connection with any of the Trademarks, this Agreement and/or the EchoStar Retailer Agreement conform to, and are otherwise maintained at a level which reflects, the high standards of ESLLC and its Affiliates, including without limitation by directly or indirectly through its authorized representatives inspecting Licensee's use of the Trademarks in accordance with the audit provisions of the EchoStar Retailer Agreement.

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

5. Licensee expressly recognizes and acknowledges that this License, as well as any past use by Licensee of the Trademarks in any manner whatsoever (including but not limited to use on signs, on business cards, in advertisements or in Trademark Paid Search Terms) or in any form whatsoever (including but not limited to typewritten or stylized form), shall not confer upon Licensee any proprietary or other rights, title or interest in, to or under any of the Trademarks including, but not limited to, any existing or future goodwill in any of the Trademarks. Further, Licensee waives any and all past, present, or future claims it has or might have in the future in, to, or under any of the Trademarks (whether in typewritten, stylized or any other form) and acknowledges that as between ESLLC and its Affiliates on the one hand, and Licensee and its Affiliates on the other hand, ESLLC and its Affiliates have the exclusive rights to own and use the Trademarks (whether in typewritten, stylized or any other form), and that ESLLC and its Affiliates retain full ownership of the Trademarks (whether in typewritten, stylized or any other form) notwithstanding the License granted herein.

6. Licensee represents and warrants that Licensee has not previously reserved, filed or registered, and hereby agrees that Licensee shall not in the future, reserve, file, or register, any formative mark that contains or incorporates in whole or in part any of the Trademarks (whether in typewritten, stylized or any other form). In addition to (and without limitation of the foregoing), Licensee represents and warrants that Licensee has not previously registered, and hereby agrees that Licensee shall not in the future register, any domain name (i) which includes all or any portion of the Trademarks, (ii) which may otherwise be confusingly similar to all or any portion of the Trademarks, or (iii) for which such registration would not be in accordance with the Usage Standards (as defined below). In the event that Licensee (a) has previously reserved, filed or registered, or in the future reserves, files or registers, any such trademark or (b) has previously registered, or in the future registers, any domain name in each case in contravention of any of the foregoing, Licensee agrees to notify ESLLC immediately, and shall immediately upon the request of ESLLC, assign to ESLLC or its designated Affiliate any and all rights, title, and interests that are obtained through the reservation, filing, or registration of any such trademarks (whether in the U.S. or any foreign jurisdiction) or the registration of any such domain name, as applicable, and hereby acknowledges and agrees that any such reservation, filing, or registration, whenever occurring, shall be on behalf of and for the sole and exclusive benefit of ESLLC, and Licensee waives any and all claims or rights to any compensation whatsoever therefor. Licensee's obligations in this Section 6 shall survive the expiration or termination (for any reason or no reason whatsoever) of this Agreement indefinitely.

7. Licensee agrees not to hold itself out as DISH Network, ESLLC, any ESLLC Affiliate or any other related or affiliated entity. To avoid any confusion in this respect, Licensee agrees not to use either: (i) the formative "DISH" in combination with the formative "NET", or (ii) the formative "ECHO", as part of its business name. In addition to (and without limitation of any of) the foregoing, Licensee shall conform any and all use of the word mark "DISH" to such usage standards as may be set forth by ESLLC at Any Time in its Sole Discretion in applicable Business Rules ("Usage Standards"), including without limitation in connection with

Licensee's business name, any domain name registered by Licensee and/or any toll free or other phone number used by Licensee for any purpose whatsoever. Furthermore (and without limitation of any of the foregoing), Licensee agrees not to register any domain name which (a) contains either (1) the formative "DISH", in combination with the formative "NET", (2) the formative "ECHO", or (3) a misspelling of DISH Network (e.g., www.dishnetwork.com) or any other ESLLC mark, or (b) may otherwise be confusingly similar to any of the foregoing and/or any other domain name registered by ESLLC. Licensee further agrees to immediately transfer to ESLLC or its designated Affiliate, upon ESLLC's request, any domain names which it has registered in contravention of any of the provisions of this Agreement, any applicable Business Rules and/or the Usage Standards. In no event shall Licensee use any toll free or other phone number confusingly similar to DISH Network, any other Trademark, ESLLC, any ESLLC Affiliate or any other related or affiliated entity, and Licensee further agrees to immediately transfer to ESLLC or its designated Affiliate, upon ESLLC's request any and all of its rights, title and interest in, to and under any such phone number and any phone number otherwise used by Licensee in contravention of any of the provisions of this Agreement, applicable Business Rules and/or the Usage Standards. Licensee's failure to comply with the provisions of this Section 7 shall constitute a material breach of this Agreement. Upon request, Licensee shall provide ESLLC with a list of all domain names Licensee uses to market, promote or solicit orders for Programming, Hardware and/or any other services or products offered by ESLLC and/or its Affiliates.

8. Nothing in this Agreement shall be construed to bar ESLLC and its Affiliates from protecting their right to the exclusive use of the Trademarks (whether in typewritten, stylized or any other form) against infringement thereof by any party or parties, including without limitation Licensee, either during the term of this Agreement or following any expiration or termination of Licensee's right to use the Trademarks pursuant to this Agreement for any reason or no reason whatsoever. Licensee will promptly and fully advise ESLLC of any use of any mark that may appear to infringe the Trademarks (whether in typewritten, stylized or any other form). Licensee will also fully cooperate with ESLLC and its Affiliates in the defense and protection of the Trademarks (whether in typewritten, stylized or any other form), at ESLLC's and/or its Affiliates' expense. Similarly, nothing in this Agreement shall be construed to require that ESLLC and/or its Affiliates take any action to protect any of the Trademarks in any instance, and ESLLC and its Affiliates shall not be liable to Licensee in any manner whatsoever for failure to take any such action.

9. (a) This Agreement shall continue for a period of time equal to the term of the EchoStar Retailer Agreement, unless terminated earlier for any reason provided herein. The provisions of this Agreement that expressly survive and such other rights and obligations hereunder as would logically be expected to survive expiration or termination of this Agreement shall continue in full force and effect for the period specified or for a reasonable period under the circumstances if no period is specified.

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

(c) This Agreement shall terminate automatically upon the expiration or termination of the EchoStar Retailer Agreement for any reason or no reason whatsoever and upon termination of any Other Agreement for any reason or no reason whatsoever, unless ESLLC notifies Licensee to the contrary in writing.

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

11. Any and all disputes, controversies or claims arising out of, or in connection with, the interpretation, performance or nonperformance of this Agreement and any and all disputes, controversies or claims arising out of, or in connection with, transactions in any way related to this Agreement and/or the relationship for any reason whatsoever between the parties (including but not limited to the termination of this Agreement or the relationship and Licensee's rights thereunder or disputes under rights granted pursuant to statutes or common law, including without limitation those in the state in which Licensee is located) shall be litigated solely and exclusively before the United States District Court for the District of Colorado. The parties consent to the *in personam* jurisdiction of said court for the purposes of any such litigation, and waive, fully and completely, any right to dismiss and/or transfer any action pursuant to 28 U.S.C.S. 1404 or 1406 (or any successor statute). In the event the United States District Court for the District of Colorado does not have subject matter jurisdiction of said matter, then such matter shall be litigated solely and exclusively before the appropriate state court of competent jurisdiction located in Arapahoe County, State of Colorado.

12. Licensee agrees that any breach of its obligations under this Agreement will cause substantial and irreparable harm and injury to ESLLC for which monetary damages alone would be an inadequate remedy, and which damages are difficult to accurately measure. Accordingly, Licensee agrees that ESLLC shall have the right, in addition to (and without limitation of) any other rights and



remedies available to ESLLC at law, in equity, under contract or otherwise (all of which are hereby expressly reserved), to obtain immediate injunctive relief (without the necessity of posting or filing a bond or other security) to restrain the threatened or actual violation hereof by Licensee, its Affiliates, employees, independent contractors, subcontractors, agents or sub-agents, as well as other equitable relief allowed by the federal and state courts. The provisions of this Section 12 shall survive expiration or termination of this Agreement (for any reason or no reason whatsoever) indefinitely.

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

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

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

**ECHOSTAR SATELLITE L.L.C.**

By: \_\_\_\_\_

Name:  
Title:

**LICENSEE**

Retailer Number: **821970**

Retailer Company Name: "  
(please print)

Street Address: **9831 IRVINE CENTER DR**  
(please print)

City, State, Zip Code: **IRVINE, CA 92618**  
(please print)

By: \_\_\_\_\_

(signature)

Name (please print): **ALEX TEHRANCHI**

Title (please print): **PRESIDENT**

**[SIGNATURE PAGE OF TRADEMARK LICENSE AGREEMENT]**

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*Confidential and Proprietary*

1:JDG\echostar retailer agreement FINAL 111006

Confidential

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**TX 102-013258**

EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT



