

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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Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 81704

District Court No.
A-17-763397-B

JOINT APPENDIX

Vol. 65 of 85

[JA014832-JA015042]

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Committee of Nominal Defendant
DISH Network Corporation*

[Additional counsel appear on next page.]

<p>Randall J. Baron (<i>Pro Hac Vice</i>) Benny C. Goodman III (<i>Pro Hac Vice</i>) Erik W. Luedeke (<i>Pro Hac Vice</i>) ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway, Suite 1900 San Diego, CA 92101-8498 Tel: (619) 231-1058</p> <p><i>Lead Counsel for Appellants</i></p>	<p>C. Barr Flinn Emily V. Burton YOUNG CONAWAY STARGATT & TAYLOR, LLP Rodney Square 1000 North King Street Wilmington, DE 19801 Tel: (302) 571-6600</p> <p><i>Attorneys for the Special Litigation Committee of Nominal Defendant DISH Network Corporation</i></p>
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Report of the Special Litigation Committee of DISH Network Corporation and Appendices of Exhibits Thereto (Exs. 1-792; Appx. Vols. 1-50)	4-73	JA000739- JA016874	11/27/18
Evidentiary Hearing SLC Exhibit 102²			

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

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

EXHIBIT 738

EXHIBIT 738

JA014832
013558

TX 102-014094

**MINUTES OF THE AUDIT COMMITTEE OF
THE BOARD OF DIRECTORS OF
DISH NETWORK CORPORATION**

August 3, 2010

A regular meeting of the audit committee (the "Audit Committee") of the board of directors (the "Board of Directors") of DISH Network Corporation (the "Corporation"), a Nevada corporation, was held on August 3, 2010 at 9:30 a.m., prevailing Mountain Time, at the Corporation's offices located at 9601 S. Meridian Blvd., Englewood, Colorado 80112.

The following members of the Audit Committee participated:

Tom A. Ortolf, Chairman

Steven R. Goodbarn

Gary S. Howard

Also participating at various times during the meeting at the invitation of the Chairman of the Audit Committee were: R. Stanton Dodge, Executive Vice President, General Counsel and Secretary of the Corporation; Robert E. Olson, Executive Vice President and Chief Financial Officer of the Corporation; Paul W. Orban, Senior Vice President and Controller of the Corporation; Adam Schuster, Vice President, Internal Audit for the Corporation (*present for Items 5 through 15 only*); Brandon Ehrhart, Vice President, Associate General Counsel and Assistant Secretary of the Corporation; Matt Sheers, Vice President, Tax Administration for the Corporation (*present for Items 6 through 15 only*); Carol MacLeod, Accounting Manager II, SEC Accounting for the Corporation (*present for Item 6 only*); Jason Waldron, Lead Engagement Partner, KPMG LLP ("KPMG"), independent registered public accounting firm for the Corporation; and Brad Christensen, Senior Audit Manager, KPMG.

The meeting was called to order by Mr. Ortolf, who served as Chairman and presided. Mr. Dodge acted as Secretary of the meeting.

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

Executive Session of Nonemployee Directors

The first item of business was an executive session of the nonemployee members of the Board of Directors led by Mr. Ortolf.

Approval of Minutes and Signing of Consents

The second item of business was the approval of the minutes of the Regular Meeting of the Audit Committee held on May 3, 2010 and the minutes of the Annual Meeting of the Audit Committee held on May 3, 2010. Mr. Dodge explained that draft minutes of those meetings were attached as Exhibits 2A and 2B, respectively, to the board book for the meeting.

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

NOW, THEREFORE, BE IT RESOLVED, that the minutes of the Regular Meeting of the Audit Committee of the Board of Directors of DISH Network Corporation held on May 3, 2010 and the minutes of the Annual Meeting of the Audit Committee of the Board of Directors of DISH Network Corporation held on May 3, 2010, in substantially the form attached as Exhibits 2A and 2B, respectively, to the board book for the meeting, be, and they hereby are, approved, ratified and confirmed in all respects.

Review of Second Quarter Financial Performance and Marketable Securities

The third item of business was a report presented by Mr. Olson and Mr. Orban regarding the Corporation's unaudited financial statements for the quarter ended June 30, 2010 (the

“Financial Statements”). A summary of their presentation was attached as Exhibit 3A to the board book for the meeting.

Mr. Olson reviewed, among other things, certain financial highlights, including, without limitation, certain subscriber related metrics. Mr. Orban then reviewed, among other things, gains and losses in certain investment securities; embedded credit derivatives; the Sirius investment; certain strategic purchases; certain long lived and other assets of the Corporation, including, without limitation, the net book value of the Corporation’s leased set-top boxes, Echo XV, and certain accruals, including, without limitation, the 2005 LTIP, the ESPN lawsuit and the 15 million subscriber goal.

Mr. Orban then led a discussion regarding the draft programming dispute accrual memorandum and the draft late fee analysis that were distributed at the meeting, and walked the members of the Audit Committee through the changes made to the draft programming dispute accrual memorandum from the second quarter 2010.

Mr. Orban then noted that, for the reference of the members of the Audit Committee, a copy of the report regarding the Corporation’s investments in marketable securities, a copy of the report regarding the payments in excess of \$5 million made during the second quarter, and a copy of the portfolio summary for the D&O trust fund as of June 30, 2010, were attached as Exhibits 3B, 3C and 3D, respectively, to the board book for the meeting.

The members of the Audit Committee reviewed and discussed the Financial Statements with Messrs. Olson and Orban and the other members of management present at the meeting.

Litigation Update

The fourth item of business was an update presented by Mr. Dodge, in his capacity as General Counsel of the Corporation, regarding significant litigation in which the Corporation

and/or its subsidiaries are involved. Mr. Dodge explained that his report and any ensuing discussions were subject to the attorney/client and work product privileges.

Internal Audit/SOX 404 Update

The fifth item of business was an update provided by Mr. Schuster regarding the Corporation's internal audit function and compliance with Section 404 of Sarbanes-Oxley ("SOX 404"). A summary of Mr. Schuster's presentation was attached as Exhibit 8A to the board book for the meeting. Mr. Schuster walked the members of the Audit Committee through his presentation, highlighting, among other things, a 2010 status update on SOX 404 compliance, certain improved disclosure controls, IT system security and certain third quarter in-progress operational audits.

Review of Form 10-Q

The sixth item of business was a report presented by Mr. Olson and Mr. Ehrhart regarding the Corporation's quarterly report on Form 10-Q. A draft of the Form 10-Q was attached as Exhibit 5A to the board book for the meeting. The members of the Audit Committee reviewed and discussed the draft Form 10-Q with Messrs. Olson and Ehrhart and the other members of management present at the meeting and KPMG.

Management's Report on Internal Control Evaluation and Officer Certifications

The seventh item of business was a report presented by Mr. Olson regarding management's evaluation of the effectiveness of its disclosure controls and procedures and internal control over financial reporting. Mr. Olson noted that, under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, the Corporation evaluated the effectiveness of its "disclosure controls and procedures" (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of June 30, 2010,

and based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Corporation's disclosure controls and procedures are effective.

Mr. Olson further noted that management conducted an evaluation of the effectiveness of the Corporation's internal control over financial reporting, and that based on that evaluation, management concluded that there has been no change in the Corporation's internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) as of June 30, 2010 that has materially affected, or is reasonably likely to materially affect, the Corporation's internal control over financial reporting. As such, Mr. Robert E. Olson (the Chief Financial Officer of the Corporation) and Mr. Charles W. Ergen (the Chief Executive Officer of the Corporation) do not believe: (i) that there are any significant deficiencies or material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Corporation's ability to record, process, summarize or report financial information; or (ii) that any fraud, whether or not material, has occurred that involves management or other employees who have a significant role in the Corporation's internal control over financial reporting.

Reg. S-K Item 404 "Related Person" Transactions

The eighth item of business was a discussion led by Mr. Dodge of certain new potential SEC Reg. S-K, Item 404 "Related Person" transactions, Nevada Revised Statutes §78.140 transactions and "Sensitive" transactions, as defined by the 2005 Audit Committee Recommendations to generally mean: (i) any non-ordinary course transaction in which the amount involved exceeded \$5,000,000; (ii) related-party transactions; (iii) transactions of a highly confidential nature; (iv) transactions which grant exclusive rights or most favored nations

status to any third party; or (v) any other transaction which in the judgment of the Board of Directors should reasonably be considered sensitive.

REDACTED-ATTORNEY-CLIENT PRIVILEGED



Mr. Dodge explained that the Corporation and/or its subsidiaries are considering amending or entering into the following agreements with EchoStar Corporation (“SATS”) and/or its subsidiaries: (i) an agreement pursuant to which the Corporation will purchase Sling Extender place shifting devices from SATS; (ii) a settlement agreement with Western Digital Technologies, Inc. (“WDTI”) relating to certain hard drives purchased by SATS and the Corporation from WDTI; (iii) exercise of DISH’s unilateral right to extend the duration of the commercial lease agreements between SATS and DISH Network L.L.C. (“DNLLC”), a wholly owned subsidiary of the Corporation, for the leases covering the properties located at: (x) 9601 S. Meridian Blvd.; and (y) 5701 S. Santa Fe Drive, upon the same terms and conditions and at the current market rate (which rate will be brought before the Audit Committee for approval at the November meeting); and (iv) exercise of DISH’s unilateral right to extend the duration of the Telemetry, Tracking and Control Services Agreement dated December 31, 2007 upon the same terms and conditions, the terms and conditions of which were more fully described in the spreadsheet attached as Exhibit 7A to the board book for the meeting and the memoranda distributed prior to the meeting (collectively, the “SATS Transactions”).

Mr. Dodge further explained that management has found, and recommended that the Audit Committee and Board of Directors find, that the SATS Transactions are fair to the Corporation.

Mr. Dodge further explained that those members of the Board of Directors who are not also members of the Board of Directors of SATS, Mr. James DeFranco, Mr. Carl E. Vogel, Mr. Steven R. Goodbarn and Mr. Gary S. Howard, met with certain members of management who are not also members of SATS management to discuss the SATS Transactions and found, and recommended that the Audit Committee and Board of Directors find, that the SATS Transactions are fair to the Corporation and approved, and recommended that the Audit Committee and the Board of Directors approve, the SATS Transactions on substantially the same terms and conditions described in the spreadsheet attached as Exhibit 7A to the board book for the meeting and the memoranda distributed prior to the meeting, with such non-material modifications, changes, or amendments to such terms and conditions as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation, shall in their discretion approve.

Mr. Dodge further explained that the Corporation is proposing to make a charitable donation to Miracles on Ice, a charitable organization founded by Mr. Gary Howard, consisting of \$2,500 for general purposes plus a satellite receiver complete with installation and 12 months of pre-paid programming to be a prize in a raffle to be conducted by Miracles on Ice (the "Howard Transaction").

Mr. Dodge further explained that Summit Capital L.L.C., an entity controlled by Mr. Charles W. Ergen, is proposing to sublease approximately 1,100 square feet of office space at 5701 S. Santa Fe Drive with the cost of such sublease to be: (i) the same amount per square foot

that the Corporation pays to SATS pursuant to that certain commercial lease agreement for 5701 S. Santa Fe Drive; and (ii) a maintenance fee allocated based on the pro rata percentage of space occupied by Summit Capital L.L.C. (the "Ergen Transaction").

After discussion and deliberation, upon motion duly made and seconded, the following resolutions were unanimously adopted (with Mr. Howard abstaining with respect to the Howard Transaction):

WHEREAS, the SATS Transactions, the Howard Transaction and the Ergen Transaction may potentially be considered related party transactions under SEC Regulation S-K, Item 404, Nevada Revised Statutes §78.140 transactions or "Sensitive" transactions and therefore, out of an abundance of caution, the Audit Committee has been asked to review such transactions; and

SATS Transactions

WHEREAS, (a) management and those members of the Board of Directors who are not also members of the Board of Directors of SATS, Mr. James DeFranco, Mr. Carl E. Vogel, Mr. Steven Goodbarn and Mr. Gary S. Howard, have found and recommended that the Audit Committee and the Board of Directors find, that the SATS Transactions are fair to the Corporation and its subsidiaries; and (b) Messrs. DeFranco, Vogel, Goodbarn and Howard have approved, and recommended that the Audit Committee and the Board of Directors approve, the SATS Transactions on substantially the same terms and conditions described in the spreadsheet attached as Exhibit 7A to the board book for the meeting and the memoranda distributed prior to the meeting, with such non-material modifications, changes, or amendments to such terms and conditions as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Corporation (each, a "proper officer" and collectively, the "proper officers"), or any one of them, shall in their discretion approve;

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

RESOLVED, that based upon the information received by the Audit Committee from management, the above-referenced discussions with the General Counsel of the Corporation and other members of management, and upon such other inquiries and other matters as are deemed appropriate or relevant by the Audit Committee, the Audit Committee hereby finds, and recommends that the Board of Directors

find, that the SATS Transactions are fair to the Corporation and its subsidiaries; and further

RESOLVED, (a) that the Audit Committee hereby approves, and recommends that the Board of Directors approve, the SATS Transactions on substantially the same terms and conditions described in the spreadsheet attached as Exhibit 7A to the board book for the meeting and the memoranda distributed prior to the meeting, with such non-material modifications, changes, or amendments to such terms and conditions as the proper officers, or any one of them, shall in their discretion approve; and (b) that the consummation of such transactions by any proper officer, with such non-material modifications, changes, or amendments to the terms and conditions of the SATS Transactions as any proper officer shall approve, shall constitute conclusive evidence that such transactions have been approved hereby; and further

Howard Transaction

WHEREAS, management desires to engage in the Howard Transaction; and

WHEREAS, Gary S. Howard, a member of the Board of Directors, was the founder of Miracles on Ice and sits on the board of directors of the Miracles on Ice charitable organization, and therefore it is advisable for the independent directors to review and approve the proposed recipient of such donation, due to the potential conflict of interest;

NOW, THEREFORE, BE IT RESOLVED, that the Audit Committee hereby determines that, although the Audit Committee has been advised of and recognizes the potential appearance of a conflict of interest, that the proposed Howard Transaction is an arm's length transaction based on prior discussions with management; and further

Ergen Transaction

RESOLVED, that based upon the information received by the Audit Committee, the above-referenced discussions with the General Counsel of the Corporation, and upon such other matters as are deemed relevant by the Audit Committee, the Audit Committee hereby finds, and hereby recommends that the Board of Directors find, that the Ergen Transaction is fair to the Corporation and its subsidiaries; and further

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

RESOLVED, that the Audit Committee hereby authorizes, ratifies and adopts in all respects, and hereby recommends that the Board of Directors authorize, ratify and adopt, the Ergen Transaction; and further

RESOLVED, that, for so long as Mr. Ergen and/or Mrs. Ergen is a member of the Board of Directors of Summit Capital or retains a significant financial stake in Summit Capital, Mr. Ergen and Mrs. Ergen shall recuse themselves from any matters presented to the Corporation that directly or indirectly involve Summit Capital; and further

General Enabling Resolutions

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

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

Review of Non-Audit Tax Services, Audit-Related Technical Accounting Services and Other Services Performed by KPMG Year-To-Date

The ninth item of business was a discussion led by Mr. Sheers regarding the non-audit tax services previously authorized by the Audit Committee and actually provided by KPMG to the Corporation and its subsidiaries during the quarter ended June 30, 2010. Mr. Sheers noted that to assist the members of the Audit Committee, a list of such items was included in Exhibit 11A to the board book for the meeting.

Mr. Olson reviewed the audit-related technical accounting services previously authorized by the Audit Committee and actually provided by KPMG to the Corporation and its subsidiaries

year-to-date. Mr. Olson noted that to assist the members of the Audit Committee, a list of such items was attached as Exhibit 11B to the board book for the meeting.

Mr. Sheers then reviewed the other non-audit services previously authorized by the Audit Committee and actually provided by KPMG to the Corporation and its subsidiaries during the year-to-date. Mr. Sheers noted that to assist the members of the Audit Committee, a list of such items was included in Exhibit 11A to the board book for the meeting.

Discussion of 2010 Annual Audit Plan, Quarterly Review Procedures and SOX 404 Update

The tenth item of business was a report presented by Mr. Brad Christensen regarding KPMG's 2010 Annual Audit Plan, a summary of which was included as Exhibit 9A to the board book for the meeting.

Mr. Christenson then presented a report regarding results of KPMG's review of the Corporation's Financial Statements and Form 10-Q for the quarter ended June 30, 2010. A summary of Mr. Christensen's presentation was attached as Exhibit 9B to the board book for the meeting. The discussion with the independent registered public accounting firm included, among other things, the status of their review as of August 3, 2010, certain findings from their review, certain matters related to significant Accounting Policies, and certain required communications. Mr. Christensen then noted, among other things, that KPMG's comments on management's judgments and accounting estimates were covered during Mr. Orban's presentation. Mr. Christensen then led a discussion regarding KPMG's 2010 Annual Audit Plan.

The members of the Audit Committee reviewed and discussed the Financial Statements and draft of the Form 10-Q with Mr. Waldron, Mr. Christensen and other members of KPMG present at the meeting.

Approval of Form and Filing of Form 10-Q

The eleventh item of business was the approval of the form and filing of the Corporation's quarterly report on Form 10-Q for the quarter ended June 30, 2010. After discussion and deliberation, upon motion duly made and seconded, the following resolution was unanimously adopted, subject to the incorporation of the comments made by the members of the Audit Committee at the meeting:

WHEREAS, the Corporation is required to file with the Securities and Exchange Commission (the "Commission") by August 9, 2010, a Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 (the "Form 10-Q");

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the Audit Committee hereby (i) approves, ratifies and confirms the recommendation of management concerning the approval (a) as to form of the Draft Form 10-Q, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and (b) of the filing with the Commission of the Form 10-Q (with any such non-material changes) at such time as the General Counsel and Chief Financial Officer of the Corporation shall determine; and (ii) based on the review and discussions with management and the independent registered public accounting firm referred to above, recommends to the Board of Directors that (a) the unaudited financial statements for the quarter ended June 30, 2010 be included in the Form 10-Q, and (b) the Board of Directors approve as to form the Draft Form 10-Q, with such non-material changes as the General Counsel and Chief Financial Officer of the Corporation shall deem necessary and appropriate, and the filing with the Commission of the Form 10-Q

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

Review of Items Approved by the Audit Committee Year-To-Date

The twelfth item of business was a review led by Mr. Dodge of certain items (other than the matters discussed as part of Items 8 and 9 above) that have been approved by the Audit Committee year-to-date and the status of each such item. Mr. Dodge noted that a list of such items was set forth in Item 12 to the board book for the meeting.

Private Discussion with Vice President of Internal Audit (Management and KPMG excused)

The thirteenth item of business was a private discussion between the members of the Audit Committee and the Vice President of Internal Audit.

Private Discussion with KPMG (Management excused)

The fourteenth item of business was a private discussion between the members of the Audit Committee and KPMG.

Private Discussion with Management (KPMG excused)

The fifteenth item of business was a private discussion between the members of the Audit Committee and management.

Adjournment

There being no further business to come before the Audit Committee, upon motion duly made, seconded and unanimously approved, the meeting was adjourned at 1:00 p.m., prevailing Mountain Time.

Tom A. Ortolf
Chairman of the Audit Committee

We, the undersigned, who together with Mr. Ortolf constitute all members of the Audit Committee, hereby waive any and all formal notice of the above meeting and hereby ratify and approve the foregoing minutes.

Steven R. Goodbarn

Gary S. Howard

EXHIBIT 739

EXHIBIT 739

JA014847
013573

TX 102-014109

From: Mills, Mike
Sent: Thursday, May 17, 2007 10:51:01 AM
To: Werner, Bruce
Subject: RE: Subscriber Growth

OE – about 12k. Can't speak the retailer base as a whole but if I had to guess I'd say about 20k.

Mike Mills
National Sales Manager
303.723.2865
mike.mills@echostar.com

From: Werner, Bruce
Sent: Thursday, May 17, 2007 8:46 AM
To: Mills, Mike
Subject: Subscriber Growth

Mike I'm trying to answer to answer the following question:

Echostar Retailers that use outbound telemarketing as a primary strategy for acquiring new subscribers add **how many** gross additions per month.

Bruce M. Werner
General Manager of Risk in Retail Services
720.514.5745

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PX0129-001

Confidential-US v. DISH

DISH-50048108726
JAO-14848
013574

TX 102-014110

EXHIBIT 740

EXHIBIT 740

JA014849
013575

TX 102-014111

Appointment

From: Beggs, Timothy [/O=ECHOSTAR COMMUNICATIONS CORP/OU=ECHOSTAR/CN=RECIPIENTS/CN=TIMOTHY.BEGGS]
Sent: 3/8/2012 11:26:17 PM
To: Borders, Kellie [kellie.borders@dish.com]; Salvatori, Brian [brian.salvatori@dish.com]; Halbach, Patrick [patrick.halbach@dish.com]; Joe, Patrick [patrick.joe@dish.com]; VerBrugge, Brant [brant.verbrugge@dish.com]; Schneider, Kathy [kathleen.schneider@dish.com]

Subject: Updated: Overview of Outsourced Call Center Operations

Location: Echo X

Start: 3/16/2012 5:30:00 PM

End: 3/16/2012 6:00:00 PM

Show Time As: Busy

Required Attendees: Beggs, Timothy; Schneider, Kathy; Joe, Patrick; Salvatori, Brian; Borders, Kellie; VerBrugge, Brant; Halbach, Patrick

When: Friday, March 16, 2012 11:30 AM-12:00 PM (GMT-07:00) Mountain Time (US & Canada).

Where: Echo X

~~*~*~*~*~*~*~*

Moving this as Kathy has a conflict.

Kathy, Pat J. & Brian:

We are planning to conduct an operational audit of select outsourced call centers during Q2 and would like to get your input on locations and processes that you feel would benefit most from an independent assessment by Internal Audit. We scoped outsourced call centers into our audit plan for 2012 for several reasons: the processes are performed by 3rd parties, call centers have a direct impact on the customer experience and our brand perception (which in turn impacts most key corporate objectives), and we have not previously observed the processes and controls at outsourced locations to ensure compliance with DISH policies and procedures.

Your input will allow us to focus our efforts on only the most critical areas so that we can minimize any disruption to the business as well as utilize our resources effectively. We would also like to ensure our review results in findings and recommendations that will be useful to your team.

We look forward to meeting with you.

Regards,

Tim Beggs
DISH Network, LLC
Director, Internal Audit
o) 720-514-5293
m) 303-842-7203

Confidential

SLC_ DNC_ Investigation 0006456
JRA 14850
013576

TX 102-014112

EXHIBIT 741

EXHIBIT 741

JA014851
013577

TX 102-014113

TCPA Retailer Activity - Internal Stings
As of January 12, 2007

Complaint Date	Consumer/customer	Phone Number Called	Phone Number of Retailer	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type
7/17/2006	Aaron Hakeem	415-640-0519	not listed	All Sat		Y	Legal handled this	Consumer is on the DNC. Tied through a "referral" sting - Scott Anderson - Legal worked with this consumer. Indicated the callers were very persistent. Notified via e-mail 10/25/06	F, P, U
9/15/2006	K Rawal	630-289-6699	not listed	All Sat	Legal	y	Legal handled this	Legal worked with this consumer 8255909065757624	Unk
9/20/2006	Robert Parker	305-412-5151	not listed	American Satellite	10/6/2006	y	Y	No final determination on investigation	F, P, U
10/13/2006	Michael Brawner	858-756-7562	not listed	American Satellite	10/31/2006	y	Y	Based on investigation, lead gen company, Trifecta was termed.	Unk
10/27/2006	Tina Corbin		not listed	American Satellite	12/27/2007	y	Y	Response being evaluated	F, U
10/20/2006	Bob Olive	631-583-8195	503-426-3120	Atlas Assets	10/20/2006	y	Response was insufficient. Retailer was termed.	This "sting" resulted in the identification of 38 other complaints associated with the caller id.	F, P, U, R
11/8/2006	Bob Olive	631-583-8195	571-431-1985	Atlas Assets	11/8/2006	y	Response was insufficient. Retailer was termed.	This "sting" resulted in the identification of 32 other complaints associated with the caller id.	F, P, U, R
9/26/2006	Laura Barron	661-722-4487	800-701-8414	Brandvein	10/6/2006	y	Response was swift and effective.	This "sting" yielded 9 additional complaints. None before, none after notification.	F, P
8/25/2006	John Healey	501-650-4333	not listed	Dish Pronto Inc	10/6/2006	y	There was a lead for the call - consumer is retailer who claimed misrepresentation but there was no evidence of that on DP end.	This was a sting through legal. A "formal letter" was not sent until 10/6; however the VP Sales had an exchange with DP regarding the allegation immediately following sting.	Unk
12/18/2006	Vickie Hannon	N/A	N/A	Dish Pronto Inc	12/18/2006	Y	Yes, inconclusive	Still investigating - cannot find a record of ever contacting #	F, U
11/6/2006	Tony Sultan	760-771-4505 206-780-9044 206-660-4119	N/A	I Dish Com LLC/Blu Kiwi		y	Y	Y	F, P, U, R,
11/8/06	Tony Sultan	760-771-4505 206-780-9044 206-660-4119	N/A	I Dish Com LLC/Blu Kiwi		y	Y	Y	F, P, U, R,
8/6/2006	K Rawal	N/A	N/A	Jeff Hughes dba Sterling Satellite	8/11/2006	y	Legal handled this	Retailer was brought into corporate. \$10,000 Penalty was assessed. 8255909065750587	F, P
10/12/2006	Kourtney Heald	319-695-3820 641-919-3820	not listed	Jeff Hughes dba Sterling Satellite	12/27/2006	y	Y	Penalty assessed	RFL
9/29/2006	Hannah Klein	301-649-2221	N/A	Jerry Dean Grider dba JSR Enterprises	10/6/2006	y	Y	3rd Party - no longer under contract. Placed call following a corrupted DNC download.	Unk
12/20/2006	Linda Chesley	603-826-4158	not listed	Jerry Dean Grider dba JSR Enterprises	12/27/2006	y	Y	Third party made call. No longer affiliate.	F, P
12/11/2006	Adnan Hasan	510-530-5979	800-649-3231	Marketing Guru	Pending Signature	y		Sting	F, P
7/17/2006	Aaron Hakeem	415-640-0519	not listed	Marketing Guru	10/16/2006	y	Legal handled this	Sting done with referral to Scott Anderson - consumer was being contacted by multiple companies.	Unk
9/14/2006	Manoj Puri	425-369-0313	888-815-5614	Marketing Guru	10/16/2006	y	N		U
11/14/2006	Tahira Sial	719-488-5649	not listed	Marketing Guru	Pending Signature	y	N	Retailer was notified via e-mail	U
11/17/2006	Ruth Khan	719-265-5859	719-265-5899	Marketing Guru		y	N		F, P, H

TCPA Retailer Activity - Internal Stings
As of January 12, 2007

Complaint Date	Consumer/customer	Phone Number Called	Phone Number of Retailer	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type
8/3/2006	Aaron Hakeem	415-640-0519	N/A	National Satellite Systems	10/10/2006	y	Timely response. Call was attributed to a bad scrub of DNC list. No complaints since.	Mr. Hakeem complained to David Moskowitz on or about July 17, 2006	F, P, H
10/27/2006	Ruth Khan	719-265-5859	not listed	NW Dish LLC	11/3/2006	Y	None - Response was due by cob on 12/18/2006.		F, P, H
10/27/2006	Ruth Khan	719-265-5859	not listed	NW Dish LLC	11/3/2006	Y	None - Response was due by cob on 12/18/2006.		F, P, H
11/2/2006	Beth Courtwright	508-303-3345	not listed	NW Dish LLC	12/15/2006	y	None - Response was due by cob on 12/18/2006.	Sting - Termination in process due to lack of response from November 3 to present.	F
11/13/2006	Ruth Sullivan	847-398-2019	not listed	NW Dish LLC	12/11/2006	Y	None - Response was due by cob on 12/18/2006.		F, P, H
12/11/06	Murad Pandit	301-933-1965	not listed	NW Dish LLC	12/15/2006	N	None - Response was due by cob on 12/18/2006.		F, P
	Ken Teleis		N/A	United			Legal handled this	Terminated	Unk
	Michael Todd	502-426-7633	N/A	United			Legal handled this	Terminated	Unk
11/13/2006	Ruth Sullivan	847-398-2019	not listed	Vekstar	12/11/2006	Y	Y	Did not renew 2007 contract	U

Complaint Types	
DNC	Do Not Call
F	Frequent
H	Harrassment
M	Misrepresentation
O	Obscene
P	Persistent
PR	Pre-recorded
R	Rude
RFL	Remove from list
U	Unsolicited
UNK	Unknown

TCPA Retailer Activity - Consumer Stings
January 12, 2007

Complaint Date	Consumer customer	Customer Phone Number	Phone Number of Vendor	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type of Complaint
	Melissa Wallace	801-619-4826 801-619-0208	Not listed	Aloha Communications		Y	Y	Responded to Legal	
12/20/2005	Jeffrey Mitchell	N/A	Not listed	American Satellite	Pending signature	Y	Letter to be sent	8255909453291012	
1/27/2006	Jeffrey Mitchell	N/A	Not listed	American Satellite	Pending signature	Y	Letter to be sent	8255909453338508	
2/13/2006	Jeffrey Mitchell	N/A	Not listed	American Satellite	Pending signature	Y	Letter to be sent	8255909453359181	
6/2/2006	Jeffrey Mitchell	N/A	Not listed	American Satellite	Pending signature	Y	Letter to be sent	8255909453494160	
6/12/2006	Jeffrey Mitchell	N/A	Not listed	American Satellite	Pending signature	Y	Letter to be sent	8255909453508829	
7/25/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	American Satellite	12/28/2006	Y	Y	Complaint generated by letter to Echo with 11 complaints-12.13.06	
9/21/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	American Satellite	12/28/2006	Y	Y	Complaint generated by letter to Echo with 11 complaints-12.13.06	
12/1/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	American Satellite	12/28/2006	Y	Y	Complaint generated by letter to Echo with 11 complaints-12.13.06	
12/1/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	American Satellite	12/28/2006	Y	Y	Complaint generated by letter to Echo with 11 complaints-12.13.06	
9/23/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	Atlas Assets	N/A	Y	N/A	RETAILER TERMED. Complaint generated by letter to Echo with 11 complaints.	Unknown
9/28/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	Atlas Assets	N/A	Y	N/A	RETAILER TERMED. Complaint generated by letter to Echo with 11 complaints.	Unknown
10/12/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	Atlas Assets	N/A	Y	N/A	RETAILER TERMED. Complaint generated by letter to Echo with 11 complaints.	Unknown
5/12/2006	Jeffrey Mitchell	N/A	Not listed	Brandvein Companies, Inc.	Pending signature	Y	Letter to be sent	8255909453468768	
10/3/2006	Stewart Abramson	412-362-4233 412-362-2054 412-665-2716 412-665-0118	866-663-7017	Cyberworks Software	10/10/2006	Y	Response timely and sufficient.	N/A	Unknown
1/4/2006	Andrew Davis	561-254-7254	212-982-6401 800-591-8108 ext 3428	Dish Centric LLC	1/4/2007	N/A	Due 1/11/07	Identified through credit card qualification attempt.	M
3/7/2006	Jeffrey Mitchell	N/A		Dish Pronto	Pending signature	Y	Letter to be sent	8255909453384973	
12/2/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224		Dish Pronto	12/28/2006	Y		Complaint generate by letter to Echo with 11 complaints. 12/13/06	Unknown

TCPA Retailer Activity - Consumer Stings
January 12, 2007

Complaint Date	Consumer customer	Customer Phone Number	Phone Number of Vendor	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type of Complaint
7/25/2005	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224		EBN Financial	12/28/2006	Y	Given to retailer attorney	Complaint generate by letter to Echo with 11 complaints.	Unknown
8/4/2006	Melissa Wallace	801-619-4826 801-619-0208		Global Wizards, LLC	N/A	Y	N/A	Initially connected to Allsat, Inc. Global Wizards, LLC settled with consumer.	
2/6/2006	Jeffrey Mitchell	N/A		Jeff Hughes dba Sterling Satellite	Pending signature	Y	Letter to be sent	8255909453351428	
7/14/2006	Jeffrey Mitchell	N/A		Jeff Hughes dba Sterling Satellite	Pending signature	Y	Letter to be sent	8255909453550292	
10/11/2006	Stewart Abramson	412-362-4233 412-362-2054 412-665-2716 412-665-0118	Not listed	Jeff Hughes dba Sterling Satellite	Notified via e-mail	Y	CLOSED	POE Notice was sent out. Sterling ADDED consumer to call list instead of deleting it. Settled with customer.	
	Melissa Wallace	801-619-4826 801-619-0208	972-385-0433	Jerry Dean Grider d/b/a/ JSR Enterprises	10/31/2006	Y	Y	Advised consumer that complaint was erroneous.	
3/12/2006	Beth and Jonathan Wilmot	N/A	N/A	Marketing Guru	N/A	N/A	N/A	This was settled with compensation from MG to Wilmots	
3/31/2006	Jeffrey Mitchell	N/A	Not listed	Marketing Guru	Pending signature	Y	Letter to be sent	8255909453418219	
11/6/2006	Stewart Abramson	412-362-4233 412-362-2054 412-665-2716 412-665-0118	650-545-0378 602-624-4922 800-511-5064 307-764-8646	Marketing Guru	Notified via e-mail	Y	N	Jen - pre-recorded message, press 1 for more info and calls from "Jerry"	F, P, PR
N/A	Virginia Martin	N/A	N/A	Marketing Guru	N/A	Y	N/A	Unaware of scope of final settlement	
2/13/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	Marrik Dish Co.	12/28/2006	Y	Y	Complaint generate by letter to Echo with 11 complaints. 12/13/06	Unknown
2/13/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	Marrik Dish Co.	12/28/2006	Y	Y	Complaint generated by letter to Echo with 11 complaints-12.13.06	Unknown
7/13/2006	Jeffrey Mitchell	N/A	Not listed	On Site Satellite East LLC	Pending signature	Y	Letter to be sent	8255909453549807	
11/4/2005	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	Satellite Systems Network	12/28/2006	Y	N	Complaint generate by letter to Echo with 11 complaints. 12/13/06	Unknown
11/4/2005	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	Satellite Systems Network	12/28/2006	Y	N	Complaint generated by letter to Echo with 11 complaints-12.13.06	Unknown
11/7/2005	Jeffrey Mitchell	N/A	Not listed	Satellite Systems Network	Pending signature	Y	Letter to be sent	8255909453231570	
8/17/2006	Michael Todd	502-426-7633	702-835-0091 702-835-0195 720-514-7924	Satellite Systems Now	8/29/2006	N	N	8255909185626576 - Retailer settled with complainant - never provided written response	PR
10/18/2006	Michael Todd	502-426-7633 502-426-3008	Not listed	Satellite Systems Now	10/31/2006	N	N	8255909185769913	PR
	Michael Todd	502-426-7633	N/A	United Satellite		N	Legal handled this	Terminated	

TCPA Retailer Activity - Consumer Stings
January 12, 2007

Complaint Date	Consumer customer	Customer Phone Number	Phone Number of Vendor	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type of Complaint
1/26/2006	Jeffrey Mitchell	N/A	Not listed	United Satellite	Pending signature	Y	Letter to be sent	8255909453335876	
2/7/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	United Satellite	N/A	Y	N/A	RETAILER TERMED. Complaint generated by letter to Echo with 11 complaints. Legal will handle.	Unknown
2/7/2006	Gregory Fisher	937-681-3222 937-312-1448 937-681-3224	Not listed	United Satellite	N/A	Y	N/A	RETAILER TERMED. Complaint generated by letter to Echo with 11 complaints. Legal will handle.	Unknown
2/7/2006	Jeffrey Mitchell	N/A	Not listed	United Satellite	Pending signature	Y	N/A	8255909453351725	
	Jeffrey Mitchell	N/A	Not listed	United Satellite	Pending signature	Y	N/A	Legal will handle	

Complaint Types	
DNC	Do Not Call
F	Frequent
H	Harrassment
M	Misrepresentation
O	Obscene
P	Persistent
PR	Pre-recorded
R	Rude
RFL	Remove from list
U	Unsolicited
UNK	Unknown

TCPA Retailer Activity - Consumer ID'd Retailer
As of January 12, 2007

Complaint Date	Consumer Customer	Customer Phone Number	Phone Number of Vendor	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type of Complaint
1/5/07	Ameesh Shah	310-477-5160	800-333-3947 x1049	Airbel Communications	Pending signature	Y		Name of caller - Amit	
7/25/2006	Ronnie Martin	949-636-5463	866-700-6542	Allsat Inc	10/25/06 (e-mail)		N	Consumer id'd w/ caller id.	U
8/7/2006	Anonymous	509-276-1974	866-700-6542	Allsat Inc	8/14/2006		Y	Retailer requested additional info - unable to locate called # with info provided. Notified via e-mail 10/25/06	R, O
8/24/2006	Mr. Brian	818-788-7258	866-213-0384 201-373-8356	Allsat Inc	10/25/06 (e-mail)		N	Caller ID did not match name of company id'd by consumer. Notified via e-mail 10/25/06	
9/5/2006	Ruth Khan	719-265-5899	877-693-4745	Allsat Inc					R, O
9/18/2006	Yousuf Raza	703-221-3637	303-325-7971	Allsat Inc	10/25/06 (e-mail)		N		F, P
10/4/2006	Patricia Hussion	317-831-2406	480-626-0511	Allsat Inc	10/25/06 (e-mail)		N	Caller ID did not match name of company id'd by consumer	F, P, H
10/11/2006	Fred Wall	775-324-5504	866-700-6542	Allsat Inc	10/31/2006		Y	Notified via e-mail 10/25/06	
10/26/2006	Michael Huber	505-771-2383	866-700-6542	Allsat Inc	10/31/2006		Y	Caller ID researched by RS and directed to Allsat. Connected to 3rd party - DNC scrub was incomplete. Problem corrected.	F, P
11/16/2006	Roger Smith	806-368-8138	888-325-0265	Channel Choice Communications	12/11/2006		y	Response sufficient. Issue closed.	
10/3/2006	Don Keys	574-294-6258	812-662-5214	Defender	10/6/2006		Y	Response sufficient. Issue closed.	F, P
8/5/2006	Amber Nickerson	701-483-6862	720-246-0422	Dish Factory Direct Inc	9/5/2006		Y	Response sufficient. Issue closed.	
9/29/2006	Wayne Leboeuf	830-625-7614	800-315-0788	Dish Pronto	10/6/2006		Y	Response sufficient. Issue closed.	
9/30/2006	Ronald/Tammy Todd	256-352-2785	800-811-8467	Dish Pronto	10/6/2006		Y	Response sufficient. Issue closed.	F, U, RFL
10/9/2006	Becky Lee	800-520-2900	800-520-7113	Dish Pronto	10/16/2006		Y	Response sufficient. Issue closed.	
11/21/2006	Melinda Yarborough	541-937-2571	800-811-8467	Dish Pronto	12/11/2006		Y	Response sufficient. Issue closed.	F, P, U
	Claude Gainer	313-365-6050, 6051,6052,6053	416-777-6313	Dish Pronto	7/26/2006		Y	Response sufficient. Issue closed.	
8/5/2006	Melony Russell	804-934-0233	800-315-0788	Dish Pronto	10/6/2006		Y	Response sufficient. Issue closed.	
8/22/2006	Anonymous	503-606-2917	800-701-8414	Dish Pronto	10/6/2006		Y	Response sufficient. Issue closed.	
8/26/2006	Ryan Smith	269-692-2549	866-422-5670	Dish Pronto	10/6/2006		Y	Response sufficient. Issue closed.	Unsolicited
8/26/2006	Susan Burkholder	830-277-2222	800-252-3701	Dish Pronto	10/6/2006		Y	Response sufficient. Issue closed.	Unsolicited
9/1/2006	Cara	405-604-2922	416-777-6313	Dish Pronto	10/6/2006		Y	Response sufficient. Issue closed.	
8/24/2006	Tom Bruiniers	909-593-1607	800-789-9179	Dish TV, Inc	10/6/2006			Response sufficient. Issue closed.	

TCPA Retailer Activity - Consumer ID'd Retailer
As of January 12, 2007

Complaint Date	Consumer Customer	Customer Phone Number	Phone Number of Vendor	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type of Complaint
9/28/2006	Anita Kumar	425-837-1797 425-749-8059	425-837-1797 425-749-8059	Global Wizards LLC	N/A	Y	N	ID'd as "Global Dish" - Letter was not sent as investigation was underway on company. Consumer has tapes of calls.	
9/20/2006	Narashimha Acharya	not listed	877-693-4745	Global Wizards, LLC		Y		Originally assigned to Allsat Inc. Global provided response indicating cons w/drew complaint	F, P, U, R, O
9/22/2006	Nikhil Goyal	313-963-6667	877-693-4745 x709	Global Wizards, LLC				Not reported as recently discovered this was not Allsat, Inc, but Global Dish.	U, F, P, RFL
10/25/2006	Rejat Jain			Global Wizards, LLC		Y		Reported to Allsat, Inc. should be reported to Global Wizards, Inc.	F, P, U, R, O
	Ameesh Shah		425-837-1797 425-749-8059	Global Wizards, LLC		Y	Y	Initially connected to Allsat, Inc. Global Wizards, LLC settled with consumer.	F, P, U, R, O
	Murad Pandit	301-933-1965		Global Wizards, LLC					
6/2/2006	Naveen/Zibi Jamal	408-264-4011	not listed	I-Dish/Blu Kiwi	8/1/2006	Y	Information Insufficient	8/1/2006	F, P, R, O
8/18/2006	Varun Gupta	281-499-7140		I-Dish/Blu Kiwi	10/6/2006				F, U
9/26/2006	Anita Kumar	425-837-1797 425-749-8059	425-837-1797 425-749-8059	I-Dish/Blu Kiwi	10/12/2006	Y	Y	3rd Party - unable to gather any concrete information	F, P, H
10/5/2006	Douglas McKellar	614-860-8163	800-776-3474	I-Dish/Blu Kiwi	10/6/2006				F, U
9/28/2006	Thomas Jones	Not provided	972-385-0433	JSR Enterprises	Pending management decision relative to status		N/A	972-385-0433	DNC
10/19/2006	Mike Brawner		972-385-0433	JSR Enterprises	Pending management decision relative to status		N/A	972-385-0433	
11/7/2006	Richard Wildman	717-770-0832	972-385-0433	JSR Enterprises	Pending management decision relative to status		N/A	972-385-0433	RFL
11/10/2006	Jennifer Marcellus	530-577-5859	972-385-0433	JSR Enterprises	Pending management decision relative to status		N/A	972-385-0433	F, P
11/15/2006	Jose Hernandez	541-672-4954	972-385-0433	JSR Enterprises	Pending management decision relative to status		N/A	Due to an inquiry from the LA AG, five additional complaints were associated with 972-385-0433. Melissa Wallace initially identified the owner of the phone number.	
11/17/2006	John Foard	831-621-3818		JSR Enterprises	12/11/2006		Y	Consumer ID'd based on "name". Not contacted by JSR.	
6/17/2006	Josh Rice	541-915-3325	954-657-9600 954-657-9922	Marketing Guru	8/15/2006				RFL
7/14/2006	Keith Pomroy	207-582-5698	866-755-9008	Marketing Guru	8/1/2006				
7/17/2006	Kenneth Sheilds	360-600-4439	866-701-2295 800-592-1773	Marketing Guru	10/16/2006				
7/27/2006	Ryan Amhurst	570-223-9620	954-657-9600	Marketing Guru	8/15/2006				
8/9/2006	Charlotte Gilbert	not listed	800-622-4199	Marketing Guru	8/14/2006		N		
8/30/2006	Tracy Rose	937-746-3315	866-755-9008	Marketing Guru	10/16/2006				
9/8/2006	Barbara Drake	509-882-2778	800-511-5064	Marketing Guru			N		

TCPA Retailer Activity - Consumer ID'd Retailer
As of January 12, 2007

Complaint Date	Consumer Customer	Customer Phone Number	Phone Number of Vendor	Retailer Name	Date Letter Sent	POE Notice	Retailer Response Provided	Additional Comments	Type of Complaint
9/15/2006	Manish Malhotra	732-583-9312	888-815-5614	Marketing Guru	10/16/2006				
9/26/2006	Anita Kumar	425-837-1797 425-749-8059	425-837-1797 425-749-8059	Marketing Guru		Y	N	Id was "Satellite Sales"	
10/2/2006	Jody Lyn Creamer	858-270-3065	866-755-9008 x5037	Marketing Guru				Cons called 888-825-2557	
10/9/2006	Dawayne Lawrence	512-524-8007	866-755-9008	Marketing Guru	10/16/2006		N		F, P
11/13/2006	Regina Thomson	Not provided	602-624-4922	Marketing Guru				Satellite Center/Elephant Group	F, P
11/29/2006	Carol W. Dean (NC AG)	252-438-6080	800-455-1390	Marketing Guru	Pending signature		N	id'd as Satellite Sales-notified MG via e-mail 12/12/06	M, DNC
	Anonymous	941-312-4154	800-745-0684 888-403-9552	Marketing Guru	8/2/2006		N		RFL
	Anonymous	410-833-8653	877-822-2418 800-942-9951	Marketing Guru	8/2/2006		N		RFL
	Michael Brewer	414-282-8268	561-750-5150	Marketing Guru	8/4/2006			DNC	
10/8/2006	Sameer Alam	817-571-7666	888-397-3474	RPM Technologies	10/16/2006		Y	Response sufficient	

Complaint Types	
DNC	Do Not Call
F	Frequent
H	Harrassment
M	Misrepresentation
O	Obscene
P	Persistent
PR	Pre-recorded
R	Rude
RFL	Remove from list
U	Unsolicited
UNK	Unknown

TCPA Retailer Activity - Tally
As of January 12, 2007

Retailer Name	Internal Stings	Consumer Stings	Consumer ID'd Retailer	Total Allegations	Current Status	Comments
Airbel Communications	0	0	1	1	Active	Pending Signature
All Sat	2	0	8	10	Active	Retailer terminated relationship with Global Wizards LLC (see below) - addressed call center relationships and we have had no complaints since October 11, 2006
Allegro Discount Advertising	0	1	0	1	Active	Response sufficient.
Aloha Communications	0	1	0	1	Active	Response was sufficient. Retailer has communicated with consumer.
American Satellite	3	9	0	12	Response to latest "stings" is being evaluated.	9 Consumer Stings are 2 complainants - Gregory Fisher and Jeffrey Mitchell.
Atlas Assets	2	3	0	5	Termed	Two stings helped identify previously recorded and unidentified calls for 70 complainants
Brandvein Communications	1	1	0	2	Active	No complaints prior to sting, none after. Did identify 9 previously unidentified calls. Response to allegation was swift and effective.
Channel Choice Communications	0	0	1	1	Active	Response sufficient.
Cyberworks Software	0	1	0	1	Active	Response was sufficient and no complaints since.
Defender Security	0	0	1	1	Active	Response sufficient.
Dish Centric, LLC	0	1	0	1	Active	Response overdue
Dish Factory Direct	0	0	1	1	Active	Response sufficient.
Dish Pronto	2	2	10	14	Active	Responses sufficient.
Dish TV, Inc.	0	0	1	1	Active	Response sufficient.
EBN Financial	0	0	1	1	Active	Not due
Global Wizards LLC	0	1	5	6	Termed	Termination was result of the "nature" of the allegations and the possible connections to unauthorized affiliates. Also, since their relationship was dissolved with Allsat, Inc., we have had no further complaints for Allsat and suspect that there is a correlation.
I-Dish/Blu Kiwi	2	0	4	6	Active	Penalty was assessed due to nature of 2 internal stings to same consumer who is still receiving calls.
Jeff Hughes dba Sterling Satellite	2	3	0	5	Active	Determination of penalty pending with management
JSR Enterprises	2	1	5	8	Active	Determination of course of action to follow caller id identification pending with management
Marketing Guru	5	4	17	26	Active	Management is handling
Marrik Dish	0	2	0	2		Not due
National Satellite Systems	1	0	0	1	Active	Response was sufficient.
NW Dish LLC	5	0	0	5	Termed	No response on Final Demand letter.
On Site Satellite East LLC	0	0	1	1		Not due
RPM Satellite and Technology	0	0	1	1	Active	Response sufficient.
Satellite Systems Network	0	3	0	3	Active	
Satellite Systems Now	0	3	0	3	Active	
United Satellite	2	6		2	Termed	
Vekstar	1	0	0	1		Did not renew contract
	30	42	56	122		

EXHIBIT 742

EXHIBIT 742

JA014861
013587

TX 102-014123

First Set of Documents Requested¹

In order to perform its investigation in accordance with the resolutions of the board of directors of DISH Network Corporation, the Special Litigation Committee requests the documents described herein from DISH Network Corporation:²

Definitions

The following definitions clarify potentially ambiguous terms throughout the requests contained herein:

1. The “Audit Committee” means the Audit Committee of DISH.
2. The “AVC” is the Assurance of Voluntary Compliance entered into between DISH Network, L.L.C. and the Attorneys General of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, 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.
3. The “Board” means the board of directors of DISH.
4. A “CID” is a civil investigative demand issued by the FTC or any attorney general of any state.
5. “DISH” means DISH Network Corporation.
6. “DNC” means national and state do not call lists and registries.
7. The “FTC” means the Federal Trade Commission.
8. The “Investigation Time Period” means January 1, 2003 through December 31, 2013, inclusive.
9. “Kelley Drye” means Kelley Drye & Warren LLP.
10. “Prior Actions” means the actions captioned: *Krakauer v. DISH Network L.L.C.*, No. 1:14-CV 333 (M.D.N.C.) and *United States of America v. DISH Network LLC*, No. 09-3073 (D. Ill.).
11. “SSN” means Satellite Systems Network.
12. The “TCPA” means the Telephone Consumer Protection Act.
13. The “TSR” means the Telemarketing Sales Rule.

¹ The SLC may request additional documents from DISH.

² Certain of these materials have already been provided to counsel for the SLC. Documents previously provided to counsel for the SLC do not need to be provided again.

Documents Requested

Board Materials

1. All agendas, materials, books, presentations, handouts and minutes for all Board or Audit Committee meetings held during the Investigation Time Period.
2. Each Audit Committee charter in effect at any time during the Investigation Time Period.
3. Each written policy of DISH concerning matters requiring presentation to and/or approval by the Board in effect at any time during the Investigation Time Period.
4. Each written policy of DISH concerning trades in DISH stock by members of the Board in effect at any time during the Investigation Time Period.
5. Emails of the below-listed custodians for the Investigation Time Period:³
 - a) Charles W. Ergen
 - b) David K. Moskowitz
 - c) James DeFranco

Legal Materials

1. All post-trial decisions and orders issued in the Prior Actions.
2. The AVC.
3. All trial transcripts from the Prior Actions.
4. Transcripts of all depositions in the Prior Actions.
5. Exhibit lists for each of the Prior Actions.
6. Access to review the documents produced in each of the Prior Actions.
7. DISH's Request to the FTC for guidance on vicarious liability and/or agency.
8. Kelly Drye's 2008 White Paper on vicarious liability.
9. An organizational chart for DISH's legal department, noting (i) the individuals involved in TCPA/TSR/DNC compliance, (ii) each individual's role, (iii) any changes to the department or to the roles of the people involved in telemarketing compliance from 2003 to 2013 and (iv) the reporting structure from the legal department to the Board or Audit Committee between 2003 and 2013.⁴
10. Access to review any handwritten notes of Stanton Dodge or Brandon Ehrhart concerning DISH board presentations during the Investigation Time Period.

³ At this time, the SLC is not directing the company to collect materials from personal, non-business related, email accounts for any individual. For each custodian identified in these requests, promptly inform counsel for the SLC of the volume of data in DISH's possession from the noted time period. We will be touch to discuss the best method for providing all potentially relevant documents from each custodian to counsel for the SLC.

⁴ If such a chart is not available, the SLC requests that DISH prepare such a chart.

11. Emails of the below-listed custodians for the noted time periods:

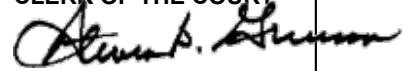
- a) Jeffrey Blum (Investigation Time Period)
- b) Brett Kitei (January 1, 2008 to December 31, 2013)
- c) Stanton Dodge (Investigation Time Period)
- d) Brandon Ehrhart (Investigation Time Period)
- e) Lori Kalani (Investigation Time Period)
- f) Denise Hargen (Investigation Time Period)

Business Materials

- 1. Any and all written policies of DISH concerning compliance with the TCPA, TSR, DNC, and/or AVC in effect at any time during the Investigation Time Period.
- 2. The CID issued by the FTC to DISH regarding the TCPA in 2005 and any other CID issued (whether issued by the FTC or an attorney general) to DISH concerning the TCPA, TSR and/or DNC during the Investigation Time Period.
- 3. All materials regarding compliance requirements, methods, and expectations provided by the FTC to DISH concerning the TCPA, TSR and/or DNC during the Investigation Time Period.
- 4. The Compliance Point 2010 Certification Letter.
- 5. Each SSN Retailer Agreement in effect at any time during the Investigation Time Period.
- 6. An organizational chart showing (i) the individuals at DISH responsible for DISH's compliance with telemarketing laws and regulations outside of the legal department and (ii) the reporting structure for those individuals up through the Audit Committee and the Board.⁵
- 7. Emails of the below-listed custodians for Investigation Time Period:
 - a) Amir Ahmed
 - b) Reji Musso
 - c) Mike Mills
 - d) James DeFranco
 - e) Brian Neylon
 - f) Blake Van Emst
 - g) Bruce Werner
 - h) Russell Bangert
 - i) Joey Montano

⁵

If such a chart is not available, the SLC requests that DISH prepare such a chart.



1 **APEN**

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

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14
15 PLUMBERS LOCAL UNION NO. 519 PENSION
16 TRUST FUND and CITY OF STERLING
17 HEIGHTS POLICE AND FIRE RETIREMENT
18 SYSTEM, derivatively on behalf of nominal
19 defendant DISH NETWORK CORP.,

20 Plaintiffs,

21 v.

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

28 Defendants,

29 DISH NETWORK CORP., a Nevada Corp.,

30 Nominal Defendant

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

**VOLUME 50 OF APPENDIX TO
THE REPORT OF THE SPECIAL
LITIGATION COMMITTEE OF
DISH NETWORK CORPORATION**

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01:23909688.1

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<u>Ex.</u>	<u>Date</u>	<u>Description</u>	<u>Page</u> <u>No.</u>
743	11/23/1999	Retailer Charlie Chat Transcript	13591
744	05/01/2003	Assurance of Voluntary Compliance or Discontinuance	13604
745	12/28/2006	Letter from R. Origer to A. Tehranchi	13644
746	04/08/2009	Email from Sophie to Vendor Inquiries	13647
747	07/16/2009	<i>DISH Network Reaches Agreement With 46 States</i>	13651
748	05/04/2011	Comments of DISH Network, LLC, at 2, <i>In the Matter of Joint Petition Filed by Dish Network, LLC, et al.</i> , CG Docket No. 11-50 (FCC May 4, 2011).	13656
749	05/17/2013	Petition for Review, <i>DISH Network, L.L.C. v. Federal Communications Commission, et al.</i> No. 13-13-1182	13659
750	09/03/2013	Brief for Petitioner DISH Network L.L.C.	13668
751	01/12/2017	Trial Transcript	13765
752	11/02/2016	Trial Transcript	13977
753	07/27/2017	Memorandum Opinion and Order, <i>Krakauer v. DISH Network, LLC</i> Case: 1:14-CV-333	14121
754	04/5/2018	Order on Claims Procedures <i>Krakauer v. DISH Network, LLC</i> Case: 1:14-CV-333	14150
755	Undated	Retailer Dish TV Now: Timeline	14162
756	Undated	Website – DISH Board of Directors	14164
757	Undated	Website – Lewis Rose, Kelley Drye & Warren	14167
758	03/17/2015	2015-03-17 Bruce Werner (condensed)	14171
759	09/30/2005	Memorandum to L. Parnes from H. Sribnick	14220
760	04/26/2012	Analysis of the Potential Input File Issue for the October 2008 National DNC Registry Reassign Process	14225
761	11/06/2006	Email to R. Musso from Voice re Response to Melissa Wallace	14228
762	02/09/2007	Email to R. Musso from B. Neylon re American	14230
763	07/02/2010	Meeting Invite re Understanding PN EBR Process Flow	14232
764	05/18/2003	Echostar Satellite Corporation Incentivized Retailer Agreement	14238
765	01/25/2005	Letter to K. Meyers from D. Caplan re Prerecorded Telephone Solicitation	14274
766	01/07/2009	Email to M. Castillo to B. Eichhorn	14277
767	01/30/2007	Email to B. Werner from M. Oberbillig re Satellite Systems Network OE Tool # 821970	14280
768	01/30/2007	Email to B. Werner from M. Oberbillig re Telemarketing	14284
769	01/11/2011	Email to J. Dang from J. Montano re Call Research	14289
770		Retailer Complaint Chart	14293

771	09/17/2003	Email to S. Richardson from T. Binns re CRM DNC addition	14298
772	03/20/2008	Echostar Do-Not-Call Policy	14300
773	02/04/2016	Trial Transcript	14304
774	06/05/2012	Email to P. Runkle from M. Castillo re Progress	14558
775	09/21/2006	Email to L. Vallejos from R. Dufault	14561
776	03/25/2009	U.S. v. Dish Complaint	14564
777	02/27/2015	U.S. v. Dish Third Amended Complaint	14596
778	03/17/2015	Deposition Transcript of Bruce Werner	14628
779		Intentionally Omitted	14677
780	11/07/2007	Letter to A. Tehranchi from R. Origer	14679
781	06/30/2004	Email from M. Oberbillig to. A. Ahmed et al.	14682
782	08/08/2014	Memorandum of Law re Agency Deference re 422 Order	14686
783	01/16/2014	Memorandum in Support of Motion for Summary Judgment	14704
784	05/30/2014	Plaintiffs' Motion for Summary Judgment	14910
785	01/06/2014	Dish's Motion for Summary Judgment	15106
786	01/27/2016	Trial Transcript, <i>U.S. v. DISH</i> , C.A. No. 09-03073 (C.D. Ill. Jan. 27, 2016)	15110
787	1/28/2016	Trial Transcript	15158
788	05/17/2007	Email from M. Mills to B. Werner	15408
789	Undated	Stipulated Judgment in <i>United States v. Planet Earth Satellite, Inc. et al.</i>	15410
790	02/22/2018	Brief of Appellant, <i>U.S. v. Dish Network LLC</i> , No. 17-3111 (7th Cir.) (D.I. 33).	15437
791	08/08/2014	Defendant DISH Network LLC's Supplemental Memorandum of Law Regarding Agency Deference, <i>U.S. v. DISH</i> , No. 09-3073 (C.D. Ill.)	15544
792	05/14/2003	EchoStar Insider Trading Policy and Related Conduct	15590

DATED this 28th day of November 2018.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November 2018, a true and correct copy of the foregoing **VOLUME 50 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 743

EXHIBIT 743

JA014869
013591

Retailer Charlie Chat Transcript

Courtesy of
Dishretailer.com Satellite Retailer Discussion Boards

Tuesday November 23rd, 1999

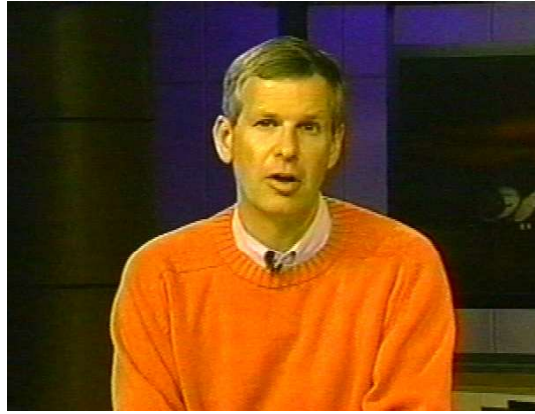
Welcome to another fun filled, action packed Charlie Chat. Stay tuned for the latest news and information from Wahsington with your hosts Jim Defranco and Charlie Ergen 😊



Wake Up Charlie, its time for the Chat. Remember, you snooze you loose!

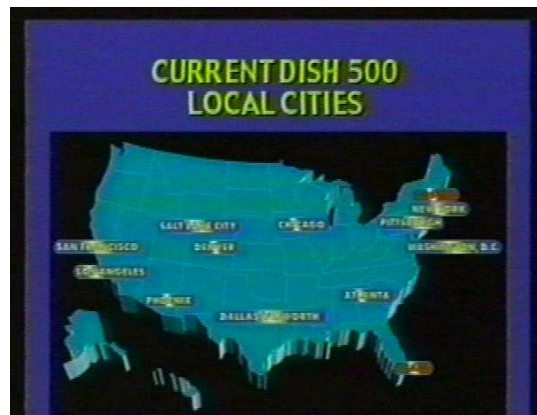


Well here we go, it looks like we are ready to get staterd with this weeks chat. Charlie looks nice and relaxed but it seems that Jim cant wait to get started.

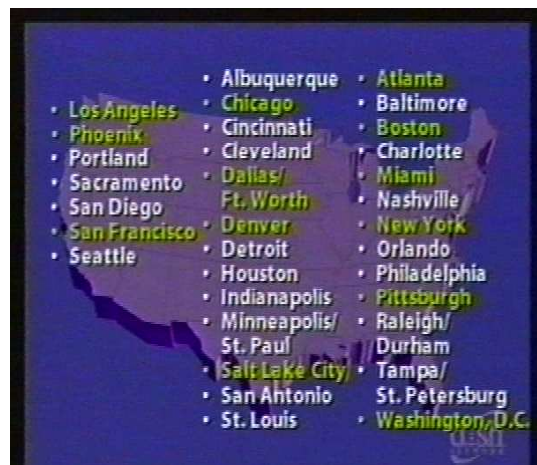


Gee, this chat is different. Usually charlie takes half the show telling everyone to contact their congressmen and senators. He doesnt seem like he is too happy, but atleast he started out by telling all of us how great locals are and how they are going to change the satellite industry. Heres some of the highlights of the new legislation.....

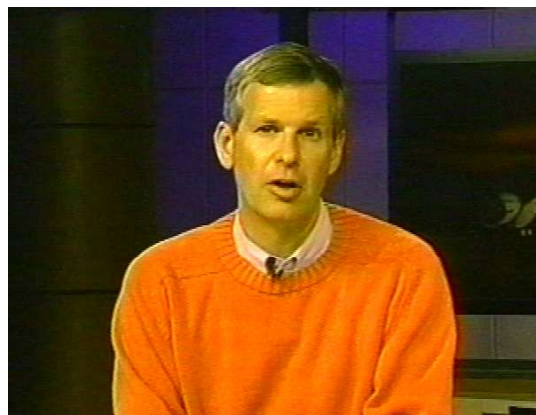
1. 90 Day cable rule now eliminated, so you we will no longer have to lie to the customer service repersentive when we activate network signals.
2. Local Channels will now be available on Showroom Subscriptions, and on commercial accounts/
3. Copyright fees went down on the superstations
4. Must carry will take effect January 1st, 2002
5. 6 month retransmission rule. Dish can offer locals now, without consent, but have 6 months to reach an agreement.
6. No change in the current Grade B standard
7. Grandfather all existing Grade B subs for a period of 5 years
8. Rv owners and truck drivers can now recieve distant network signals as long as the dish is not permintly attatched to a structure. Must show proof to qualify



All 13 cities that Dish currently offers local local in will be a Dish500 solution, except Boston. Please note that New York and La will stay at 119. Yes, Bob Haller you will be seeing Pittsburgh on 110. Im not kidding this time.

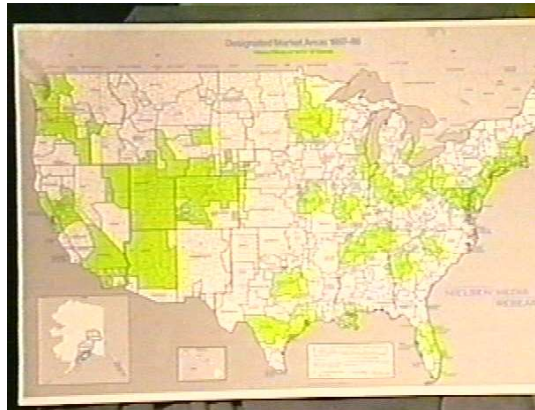


This is a list of the future cities that Dish will be providing local service to. Cities in Gold are already up and cities in white are the ones that are proposed. Hey, I see Detroit is Finally Listed. YEA!



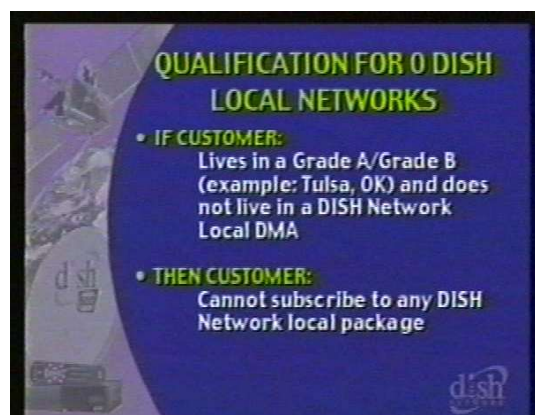
"Nobody does more locals than Dish"

Thats right, if the nice folks from DirecTv are reading, Charlie just said that nobody does more locals than Dish. Ya better watch out.

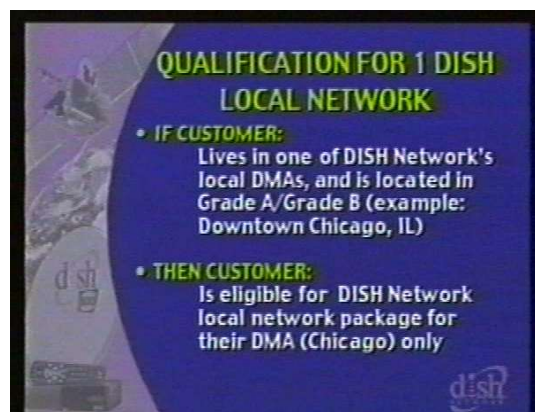


Anyways, Charlie announced that we will have 20 local to local cities by the end of the year and 50 cities by the end of the first quarter which will be approxamatly 70 percent of the country. If you look at this map, I believe charlie said they would be serving all the regions in yellow.

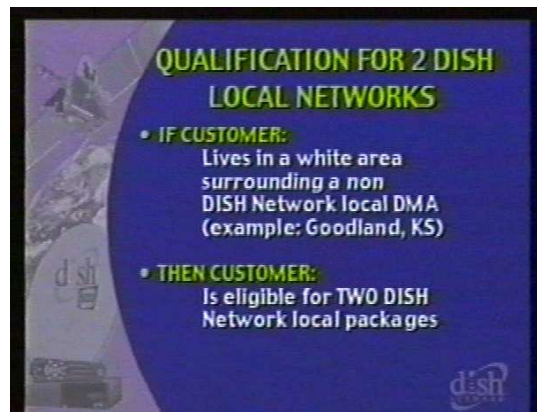
The following slides are an explanation of what the new law means on Distant Network signals



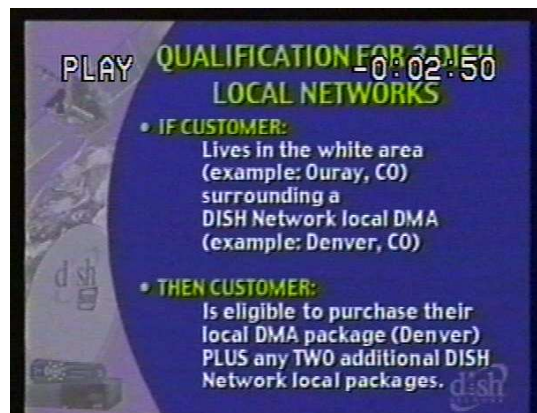
This slide means your out of luck,
Charlie says you better goto Rat Shack and get a good antenna!



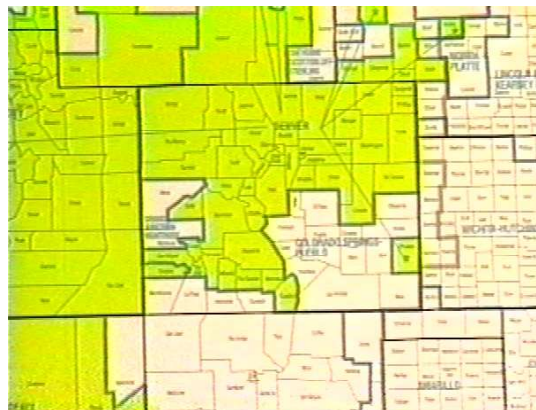
This slide means that your one of those lucky people like Bob Haller who can get locals, Charlie says get a Dish500!



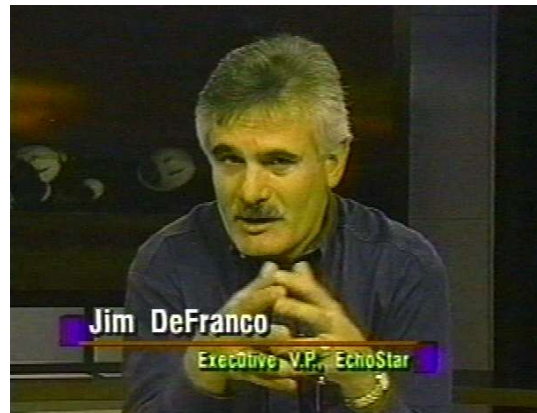
This slide means that Charlie isn't doing your locals either, Charlie says get a Dish500!



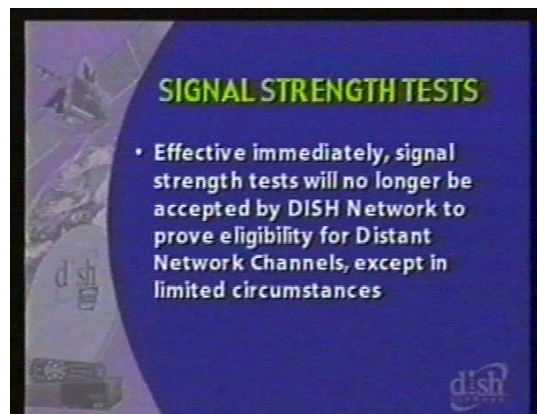
This means that you can get alot of distant signals, Charlie Says get a Dish500, a Dish300 and an Sw64!



This is a closeup view of the Local DMA for Denver, I think charlie said if you lived in the white area you can get 2 distant signals plus Denver for a total of 3.



Now Jim DeFranco is going to talk about signal Tests. Jim is Smiling because Charlie told us to buy this expensive testing equipment and now it isn't any good.



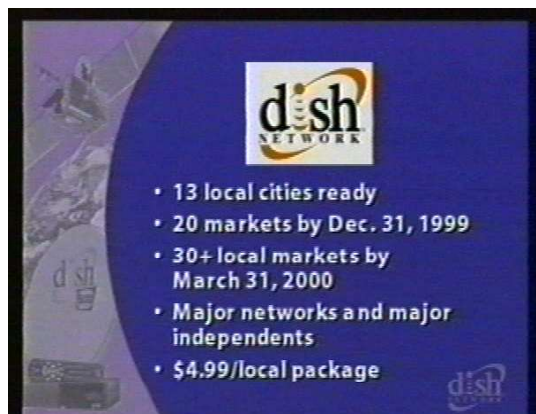
This is just the slide enforcing the fact our fancy signal meters are no longer good. Good thing I didn't waste my money 🙄



Now Jim and Charlie are going to talk about the Advertising that starts next week.



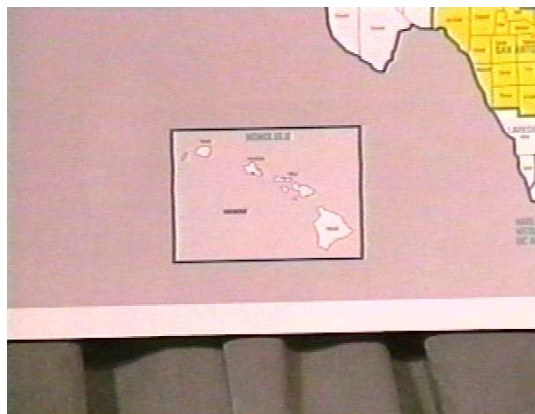
Preety snappy aint it? If you goto the retailer website, you can download serveral different versions of this ad if your Charlie decided that they are doing local in your city.



This is Dishes plan for local to local, Where is Detroit?



Technical Difficulties, I bet its those Dirty Rats at DirecTv messing with the signal because they are jellous that charlie is going to offer more locals than they can ever imagine.



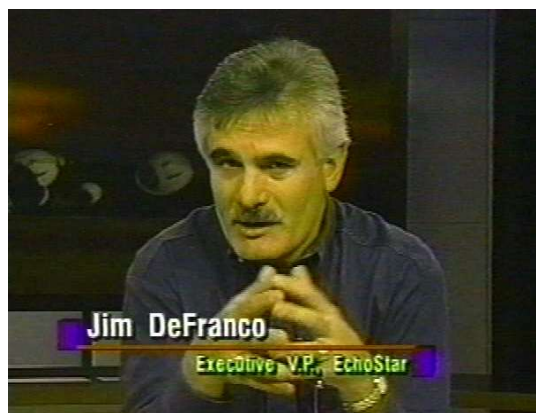
Bill from Dish Hawahi (Hope I spelled it right) Called and asked about distant network signals. I guess the Director thought it would be cool to show a tiny little picture of Hawahi.



Good old Mike Dugan comes to save the day. I forget what he said, because I can't read my notes, but I thought this picture looked good. If you look to the right you can see half of Mary Davidson who is head of Retail Services.

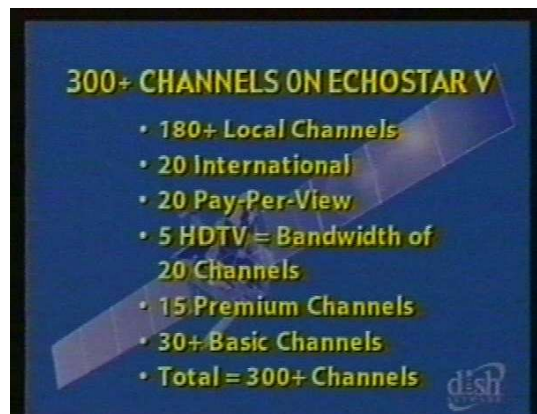


Charlie looks a little Blue here, because he had to break the bad news to our friend Bill that there will be no core services offered at 110 any time soon. In case you were wondering, Bill uses a 36inch dish to pick up 110 and I believe a 6 or an 8 foot dish to pick up 119.



Jim DeFranco also mentions that the price on the 3822 will drop in price from \$249 to \$199 effective Monday November, 29th

Programming Announcements!



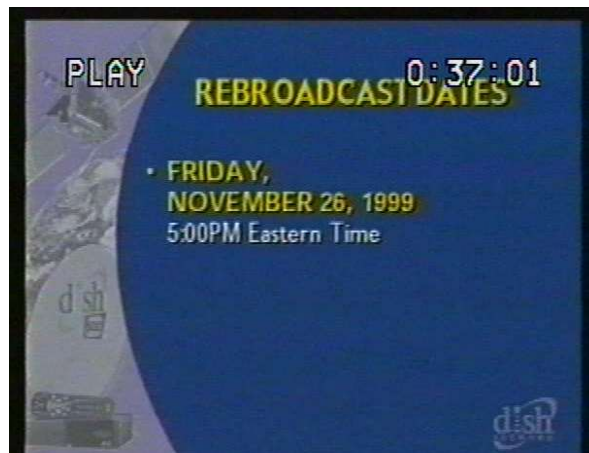
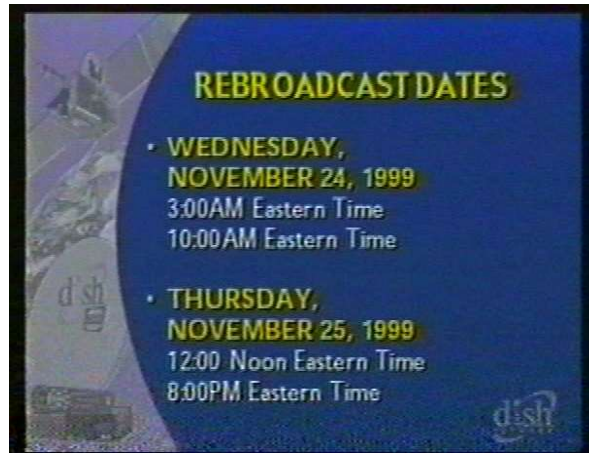
I just wanted to get everyone excited, even though Charlie didn't mention what channels would be added, here's a good idea of what will be at 110.



As you all know, Team Summit will be at the end of February. A little early this year, but Charlie said it's going to be very exciting with lots of good news and products.



The Next Charli Chat is December 6th. Remember this is the Retailer Chat, the consumer chat will be in the evening at 8pm. BTW, this chat will be an interactive chat if we have a Dishplayer.



These are just the re-broadcast Dates, if you missed this chat and want to see it for yourself. I dont know what good it does to show the chat Thursday since its ThanksGiving and we'll all be at our homes. Remember we can only get the chat on our showroom recievers which are at our shops.



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©1998-1999 Professional Satellite Dealers Association. All Rights Reserved

This transcript was written by Claude Greiner. If you have any questions or comments

JA014880
013602

concerning this Un-official transcript, please send us an E-mail at
CharlieChat@Dishretailer.com



You are visitor number:



EXHIBIT 744

EXHIBIT 744

JA014882
013604

TX 102-014144

COPY

RECEIVED
ATTORNEY GENERAL OF OHIO
AUG 01 2003

In the Matter of:
ECHOSTAR SATELLITE CORPORATION.

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

ASSURANCE OF VOLUNTARY COMPLIANCE OR DISCONTINUANCE

This Assurance of Voluntary Compliance or Discontinuance ("Assurance") is entered into by the Attorneys General of the States of California, Colorado, Connecticut, Florida, Georgia,¹ Illinois, Louisiana, Minnesota, New Jersey, New York, Ohio, Oregon and Wisconsin ("Attorneys General" or "States"), acting pursuant to their respective Consumer Protection Statutes², and EchoStar Satellite Corporation³ ("EchoStar").

I. BACKGROUND

1. EchoStar is a corporation incorporated under the laws of the State of Colorado. Its principal place of business is located at 5701 S. Santa Fe Drive, Littleton, Colorado 80120.

2. EchoStar is in the business of providing certain audio and video programming services to its subscribers via direct broadcast satellites. As part of its services, EchoStar sells receiving equipment and a "smart card" to allow access to audio and video signals transmitted

¹With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions, including acceptance of Assurances of Voluntary Compliance for the State of Georgia. Hereafter, when the signatory states are referred to as the "States" or "Attorneys General," such designation, as it pertains to Georgia, refers to the Administrator of the Fair Business and Practices Act.

² **CALIFORNIA** - Bus. & Prof. Code §§ 17200 *et seq.*, and 17500 *et seq.*; **COLORADO** - Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 *et seq.*; **CONNECTICUT**-Conn. Gen. Stat. §42-110a *et seq.*; **FLORIDA** - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; **GEORGIA** - Fair Business Practices Act of 1975, O.G.C.A. § 10-1-390 *et seq.*; **ILLINOIS**- Consumer Fraud and Deceptive Business Practices Act, 805 ILCS 505/1 *et seq.*; **LOUISIANA** - LSA R. S. 51:1410 and LSA R. S. 51:1401, *et seq.*; **MINNESOTA** Minn. Stat. §§ 325D.43 *et seq.* (Uniform Deceptive Trade Practices) and § 325F.68 *et seq.* (Prevention of Consumer Fraud); **NEW JERSEY** - Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; **NEW YORK** - N.Y. Gen. Bus. Law §§ 349 & 350 and Executive Law § 63(12); **OHIO** - Consumer Sales Practice Act, R.C. § 1345.01 *et seq.*; **OREGON** - Unlawful Trade Practices Act, ORS 646.605 to 646.656; and **WISCONSIN** - Wis. Stat. §§100.18(1) (Fraudulent Representations) (collectively, "Consumer Protection Statutes").

³ "EchoStar" shall be understood to include "EchoStar Satellite Corporation", its agents and employees, and its parents, subsidiaries, and affiliates.

from such satellites. EchoStar sells its hardware and receiving equipment both directly and through authorized retailers.

3. EchoStar 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 purchased by EchoStar from private and public television and audio content producers.

Attorneys General's Position

4. The Attorneys General assert that they began their inquiry pursuant to their Consumer Protections Statutes set forth in footnote 2, because they believed that at various times EchoStar and/or authorized retailers, in selling EchoStar satellite systems and programming to the public failed to clearly and conspicuously provide timely and effective disclosures of certain material contract terms. The Attorneys General further assert that if proven, such deficiencies would be a violation of their Consumer Protection Statutes.

EchoStar's Position

5. EchoStar asserts that it has not been deficient in any manner, legally or otherwise, in the way it and retailers make disclosures to prospective customers, or in the advertising it uses. EchoStar asserts that it places a priority on its efforts to provide quality products and customer service and to that end has policies and procedures to provide a high level of service and fair dealing to customers. EchoStar values the States' suggestions as to ways in which EchoStar can improve its policies and procedures and is willing to agree to the obligations herein in an effort to promote customer relations. EchoStar, however, asserts that by entering into this Assurance it does so denying wrongdoing of any kind and affirmatively states that it believes the requirements it has agreed to by signing this Assurance are policies, procedures and actions which exceed applicable legal and common law standards, and that it met all legal standards prior to the Attorneys General beginning their investigation. By entering into this Assurance, EchoStar does not intend to create any legal or voluntary standard of care and expressly denies that any

practices or policies inconsistent with those set forth in this Assurance violate any legal standard. It is EchoStar's intention and expectation that neither this Assurance nor any provision hereof, shall be offered or cited as evidence of a legal or voluntary standard of care. Furthermore, nothing in the Assurance is intended to change the existing independent contractor relationships between EchoStar and authorized retailers who sell EchoStar products and no agency relationship is created by the agreements set forth herein.

Resolution

6. The parties have agreed to resolve the issues raised during the Attorneys General's inquiry by entering into this Assurance. EchoStar is entering into this Assurance solely for the purpose of settlement. Nothing contained herein may be taken as, or construed to be, an admission or concession of any violation of any law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which EchoStar expressly denies. No part of this Assurance constitutes or shall constitute evidence against EchoStar or any of its retailers in any action brought by any person(s) or entity or other party for any violation of any federal or state statute or regulation or the common law.

Definitions

7. As used herein, and for the purpose of enforcing this Assurance, the following words or phrases have the following meaning:

(a) A statement is "clear and conspicuous" if it 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 shall appear on the

screen for a duration sufficient for a consumer to read and comprehend it. In a print advertisement or promotional material, including 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.

(b) The term "In-Person Transaction", as used herein, shall mean any transaction where the goods or services are sold or leased to the customer at a physical business location (whether permanent or temporary), through a door-to-door sale or any other transaction where the customer has face-to-face contact with another person to obtain the goods or services.

(c) The terms "Early Cancellation", and "Early Termination", as used herein, may be used interchangeably and shall mean the ending, cancellation or termination of a customer's contract with EchoStar prior to the end of the required multi-month term set forth in that contract.

(d) The terms "Cancellation Fee", and "Termination Fee", as used herein, may be used interchangeably and shall mean any fee charged by EchoStar to a customer for the Early Cancellation or Early Termination of such customer's contract, other than a default by EchoStar.

(e) The term "Commitment Customer", as used herein, shall mean an EchoStar customer who enters into a contract with EchoStar with contractual obligations for a fixed period of time, which if not satisfied would result in a Cancellation Fee or other such additional charge (but does not include customers who prepay on an annual or multi-month basis).

(f) The term "Programming", as used herein, shall mean any and all video and or audio transmissions provided by EchoStar.

(g) The term "contract" and the term "agreement" have the same meaning and refer to any contractual agreement between EchoStar and a customer.

(h) The "Effective Date" of this Assurance is the date on which EchoStar receives a copy of this Assurance, duly executed by each of the Attorneys General set forth below.

II. ASSURANCES

General

EchoStar agrees to adopt and implement the following policies and procedures if and to the extent not already the existing practice of EchoStar:

8. Prior and reasonably proximate in time to the sale or lease directly by EchoStar of EchoStar satellite system hardware or Programming (whichever occurs first), the following terms and conditions listed in subparagraphs (a), (b), and (c), if and as such terms may be applicable, shall be clearly and conspicuously disclosed on at least one occasion (the "Pre-Sale Disclosures"). Such disclosures may be made orally by telephone or in person, electronically, in writing or as may otherwise be appropriate under the circumstances:

- (a) Specific terms to be disclosed as applicable to Commitment Customers:
 - (1) the contract period during which Programming cannot be terminated or downgraded without the payment of a Termination Fee including whether such fee may be assessed in addition to other penalties, fees or charges, and the amount of such Termination Fee;
 - (2) required minimum Programming fees;
 - (3) required minimum fees for failing to return leased equipment;
 - (4) any requirement to return leased equipment and the time period within which such equipment must be returned;
 - (5) fees charged by EchoStar for equipment removal or equipment return; and

(6) whether a contract period automatically renews for an additional term, other than month to month, at the end of the first term.

(b) General terms to be disclosed as applicable:

- (1) fees associated with changing or downgrading Programming at the end of any introductory promotion period for such Programming;
- (2) EchoStar's refund policy if such policy includes the retention of any payments made by the customer.

(c) Other general terms to be disclosed as applicable:

- (1) activation fees;
- (2) standard installation fees;
- (3) local Programming fees and/or charges;
- (4) whether purchased equipment may be reconditioned or used and if reconditioned or used, the length and type of warranty; and,
- (5) In a Direct Telephone Sale, whether a particular consumer is eligible for local network Programming (which shall be defined to include public broadcasting) based upon the service location for such consumer. In all other sales or leases, a listing of metropolitan areas where local network Programming is available and a website and telephone number to access to determine if a particular customer is eligible for such local Programming or whether the customer is eligible for local network Programming based on the service location for such customer.

9. In those cases where EchoStar sells and/or leases directly to the customer all hardware, installation and Programming services (whichever occurs first) by means of a telephone call (a "Direct Telephone Sale"), prior to or at the time of such Direct Telephone Sale, EchoStar shall specifically advise the customer of each applicable Pre-Sale Disclosure. EchoStar agrees to record the confirmation portion of Direct Telephone Sale phone calls on a random

basis, which portion shall include confirmation that the customer received and understood each applicable Pre-Sale Disclosure, and preserve such recordings in hard copy or electronic form for a minimum of eighteen (18) months after the date of such Direct Telephone Sale call. EchoStar or a retailer may obtain confirmation of a customer's pre-sale or pre-lease receipt of the applicable Pre-Sale Disclosures at a time after the sale or lease, such as at the time of installation.

10. Notwithstanding the provision of Pre-Sale Disclosures as described above, EchoStar agrees that if, at any time during the five (5) years after the Effective Date, a customer who purchases Programming or EchoStar satellite hardware after the Effective Date disputes having received an applicable Pre-Sale Disclosure(s), and EchoStar and the customer are unable to resolve the dispute, EchoStar shall inform the customer that he or she must submit the dispute in writing with reasonable detail within 30 days and the following procedures and remedies shall apply⁴:

(a) Paragraph 8(a) Disclosures. In the event that, within eighteen (18) months of sale or lease, a customer disputes receiving a Paragraph 8(a) Pre-Sale Disclosure(s) from EchoStar or a Retailer, and objects to the enforcement of the term contained within that Pre-Sale Disclosure(s) by EchoStar, then EchoStar may not enforce such Pre-Sale Disclosure(s) against such customer unless EchoStar presents documentary evidence or documented confirmation that the customer actually received the Pre-Sale Disclosure(s) in question. In the event that EchoStar is not able to present documentary evidence or documented confirmation that the customer actually received the Pre-Sale Disclosure(s) in question, then EchoStar may not enforce the remedies imposed by the term(s) against that customer and shall refund any fees or charges collected from such customer pursuant to that Pre-Sale Disclosure(s) and forever release the customer from any purported obligation under such Pre-Sale Disclosure(s).

⁴ For purposes of this paragraph 10, the date of the dispute will be agreed to be the date the customer first calls or contacts EchoStar and raises the dispute.

(b) Paragraph 8(b) Disclosures.

(1) Paragraph 8(b)(1). In the event that, within ninety (90) days of being charged such fee, a customer disputes receiving a Paragraph 8(b)(1) Pre-Sale Disclosure from EchoStar or one of its Retailers, and objects to the enforcement of the term contained within that Pre-Sale Disclosure by EchoStar, then EchoStar may not enforce such Pre-Sale Disclosure against such customer unless EchoStar presents documentary evidence or documented confirmation that the customer actually received the Pre-Sale Disclosure in question. In the event that EchoStar is not able to present documentary evidence or documented confirmation that the customer actually received the Pre-Sale Disclosure in question, then EchoStar may not enforce the remedies imposed by the term against that customer and shall refund any fees or charges collected from such customer pursuant to that Pre-Sale Disclosure and forever release the customer from any purported obligation under such Pre-Sale Disclosure.

(2) Paragraph 8(b)(2). If within ninety (90) days of terminating Programming, a customer disputes receiving the Pre-Sale Disclosure described in Paragraph 8(b)(2), and EchoStar is not able to present documentary evidence or documented confirmation that the customer actually received such Pre-Sale Disclosure, then EchoStar will refund any payments received from that customer for unused Programming. The refund shall not include any discount or other economic benefit that the customer received for making a prepayment. In addition, because the parties acknowledge that if a customer cancels at any time during a service term, EchoStar will lose an amount equal to or more than the cost to the customer of one month's Programming, EchoStar may additionally recover the charge to such customer for one-month's Programming.

(c) Paragraph 8(c) Disclosures.

(1) Paragraph 8(c)(1) and (2). If activation fees and standard installation fees are not paid at the time of sale, lease or installation, and the customer disputes receiving Pre-Sale Disclosure of these fees within ninety (90) days of being billed for such fees, and EchoStar is not able to present documentary evidence or documented confirmation that the customer actually received such Pre-Sale Disclosure, then EchoStar will refund any payments of such fees or not charge such fees to such customer.

(2) Paragraph 8(c)(4). In the event that a customer, within 21 days of sale or 7 days of activation, whichever is earlier, disputes receiving the Pre-Sale Disclosure set forth at Paragraph 8(c)(4), and EchoStar is unable to present documentary evidence or documented confirmation that the customer actually received such Pre-Sale Disclosure, then EchoStar will replace such equipment with new equipment.

(3) Paragraph 8(c)(5). In the event that a customer, within 21 days of sale or 7 days of activation, whichever is earlier, disputes receiving the Pre-Sale Disclosure set forth at Paragraph 8(c)(5), and EchoStar is unable to present documentary evidence or documented confirmation that the customer actually received such Pre-Sale Disclosure (and such customer is in fact ineligible to receive local Programming), then such customer may return all purchased equipment to the retailer who sold the equipment, or to EchoStar if EchoStar sold the equipment, and receive a refund of the purchase price paid for the equipment, (provided that all such purchased equipment is returned in the same condition as purchased, reasonable wear and tear excepted), less any reasonable restocking fee that may be agreed

upon by such customer, if any, and which has been clearly and conspicuously disclosed to the customer prior to sale.

Accurate and bona fide "documentary evidence" or "documented confirmation" (for example, and without limitation, a recording of the customer's conversation or a written or electronic acknowledgement) shall be conclusive proof as to the States for purposes of this Assurance that a Pre-Sale Disclosure was received by the customer.

11. Unless restricted pursuant to an applicable agreement with an independent retailer, (and EchoStar represents that it will use best efforts to not include such language in any future agreement), EchoStar shall, within forty-five (45) days of the Effective Date, inform and require that each independent retailer adopt procedures similar to those outlined in Paragraph 8, Paragraph 10 and Paragraph 19 as applicable.

If at any time during the five (5) years following the Effective Date of this Assurance, EchoStar is advised by a customer, an Attorney General or through its own channels, that a retailer has failed to adopt and implement such procedures within one hundred twenty (120) days after the Effective Date, EchoStar shall notify said retailer of its deficiency and further warn that punitive action will be taken unless such compliance is forthcoming. Within one hundred eighty (180) days after the Effective Date, EchoStar shall take documented punitive action, the type of such action being in EchoStar's sole discretion, up to and including termination of any retailer reasonably determined by EchoStar to have failed to comply with Paragraph 8, Paragraph 10 and/or Paragraph 19 as applicable, and shall further notify the appropriate State Attorney General in the subject State of the name and address of any such retailer who fails to comply with Paragraph 8, Paragraph 10 and/or Paragraph 19 as applicable on more than two additional occasions. EchoStar shall retain all records of punitive actions taken against non-complying retailers for a minimum of five (5) years.

III. ASSURANCES

Specific

EchoStar agrees to adopt and implement the following policies and procedures if and to the extent not already the existing practice of EchoStar:

12. Refund Policy. EchoStar shall maintain a refund policy that includes but is not limited to the following:
- (a) EchoStar shall forward all required refunds to the customer within thirty (30) days of a customer becoming eligible for a refund.
 - (b) EchoStar shall adopt the following policies and procedures in regards to refunds relating to "Failure of Service" situations:
 - (1) EchoStar shall designate and clearly and conspicuously disclose to the customer, at minimum, a telephone number and mailing address at which Failure of Service notifications may be received.
 - (2) For purposes of this Paragraph, "Failure of Service" shall be defined to mean an installation of a satellite system where service has never been properly established due to the failure or inability of the equipment to receive Programming and the customer has, within five (5) days of the date of installation or the date the Programming account was first activated so as to allow reception of signal by the customer's equipment, whichever is later, advised EchoStar at the telephone number or address specified in accordance with the preceding Paragraph of the inability to receive such Programming. In the event of a Failure of Service, EchoStar shall:
 - (i) After reasonable attempts to cure the problem but in no case longer than fourteen (14) days without cure unless agreed to by the customer,

rescind the contract with the customer and refund 100% of any payment made to EchoStar in connection with the purchase of service and/or equipment, provided that the customer returns all equipment in the same condition as purchased, reasonable wear and tear excepted.

(ii) As part of the reasonable attempt to cure the reception problem, EchoStar may, with the customer's prior agreement, assess additional non-standard installation costs to cover the costs to cure the failure and/or inability to receive Programming. Without such agreement EchoStar will rescind the contract with the customer and refund 100% of any payment made to EchoStar in connection with the purchase of service and/or equipment.

(iii) EchoStar may not charge nor authorize any retailer or contractor to charge any additional flat service rate to cover the initial inspection unless the result of the inspection reveals that the cause of the inability to receive Programming is attributable to customer mis-installation, misuse or abuse of the equipment, or other factors not within EchoStar's or a retailer's control.

13. Cancellation Notice.

(a) EchoStar shall accept cancellation notice from customers via telephone, regular U.S. mail, and email, so long as such cancellation notice is directed to a telephone number, email address, and/or mailing address designated by EchoStar for such purpose. Said telephone numbers, mailing address and e-mail address shall be disclosed to each EchoStar customer by reasonable means, which may include, without limitation, disclosure in the contract or agreement at the time any contract or agreements are signed, or in a customer's bill, and updated each time such number or

address is modified. Updates may be provided by any means normally used to communicate with each customer, including without limitation, notations on monthly bills to customers.

(b) EchoStar shall institute measures reasonably necessary to ensure that telephone calls from customers calling to give cancellation notice are received and addressed in a timely manner.

(c) EchoStar shall institute measures reasonably necessary to ensure that call center representatives create a written or electronic record of a service cancellation request immediately upon receipt.

(d) EchoStar shall permit customers to provide cancellation notice up to twenty nine (29) days prior to the date the customer wants to terminate service and EchoStar shall terminate service on the date requested by the customer. EchoStar shall reserve the right to terminate any customer's service earlier than the date requested as permitted by the applicable terms of the customer agreement or applicable law.

14. Rescission Period. EchoStar shall provide and disclose rescission periods as may be required by applicable federal, state or local law. Additionally, where required by applicable federal, state or local law, EchoStar's customer contracts shall provide notice of the time of the rescission period and method pursuant to which customers may rescind their contract. EchoStar shall accept rescission notice from customers via telephone, email, and regular U.S. mail, so long as such customer provides such notice directly to EchoStar only at the address and/or phone number designated by EchoStar. In addition to the above, EchoStar must accept any rescission notice provided to either an independent dealer or retailer who promoted the original contract with the customer in question, unless prior to delivery of the customer's rescission notice it has been clearly and conspicuously disclosed to the customer that rescission notice may only be

given to EchoStar. The provisions found at Paragraphs 13 (a), (b), and (c), governing cancellation notices, shall equally apply to rescission notice.

15. Early Cancellation. EchoStar shall accept early cancellation, waive any and all Cancellation Fees, and refund any prepayments upon the customer presenting sufficient evidence to verify any of the following (the term "sufficient evidence" includes, but is not limited to, a signed letter from the customer, with supporting evidence such as proof of loss of a residence or documentation reflecting admission to a health care facility):

- (a) The customer's permanent loss of signal and/or inability to receive or maintain a signal during the commitment period, unless caused or attributable to improper installation by the customer, a change in alignment of the satellite receiving equipment that is not caused by EchoStar, misuse or abuse of the equipment or other factors not within EchoStar's control, or if the receiving equipment is outside the applicable warranty period. In such event, EchoStar shall be allowed the opportunity to verify and correct the loss of signal and shall be entitled to assess a service charge if it is determined by EchoStar in good faith that the loss of signal is caused by one of the factors in the preceding sentence;
- (b) Catastrophic loss of a customer's residence where Programming service is received;
- (c) Death of all named customer(s) on the EchoStar account;
- (d) Health problems or other change in physical or mental circumstances which require the named customer(s) on the EchoStar account to permanently move from the residence to a health care facility.

16. Early Cancellation Fee. In the event a "Commitment Customer" has agreed or offers to pre-pay and, in fact, makes prepayment of his or her financial obligation for the full term of his or her contract with EchoStar prior to the expiration of the term of that contract, and has otherwise complied with all other terms of the contract, with the exception of any term requiring constant ability to receive signals, EchoStar shall not assess a Cancellation Fee.

17. Electronic Funds Transfers and Credit Card AutoPay. EchoStar shall:

(a) prior to enrolling a customer in either an Electronic Funds Transfer (“EFT”) or Credit Card AutoPay (“CCA”) program, on at least one occasion, clearly and conspicuously disclose to the customer the various specific transfers or charges for which the customer will be subject under the programs;

(b) prior to charging a customer’s credit card or effectuating an EFT, (1) obtain either a signed written, electronic or verbal confirmation from the customer that the company is authorized to charge the payments for monthly Programming, pay-per-view and other similar and related charges to a credit card or to obtain payment for such services via an EFT; and (2) obtain a signed written, electronic or recorded verbal confirmation from the customer that the company is authorized to obtain payment for any cancellation or equipment fees by charging a credit card or by effectuating an EFT;

(c) not effectuate any one-time EFT from a bank account or one time charge to a credit card belonging to someone other than the customer named on the specific account (hereinafter “the Third Party Payer”) without first obtaining the Third Party Payer’s express written, electronic or verbal consent. No further charges may be made to the account of the Third Party Payer without first obtaining the Third Party Payer’s express written, electronic or verbal consent to the charges pursuant to the provisions in Paragraph 17(d) below. The Third Party Payer must also have apparent authority to authorize the charges to any such account or credit card;

(d) prior to effectuating any charge to an account of any Third Party Payer whose credit card or bank account is or could be subject to charge in multiple billing periods hereunder, such Third Party Payer must give his or her written, electronic or verbal consent in the same manner as required of customers pursuant to 17(b)(1) and (2) above. Furthermore and prior to EchoStar effectuating any charge to an account of a Third Party Payer, such Third Party

Payer shall be informed of the specific charges which may be assessed to such Third Party's credit card or bank account, including, but not limited to any applicable charge set forth in Paragraph 8, above. Specifically, the Third Party Payer shall be informed, if applicable, that such account may be used for any and all charges accruing against the EchoStar customer's account, including those set forth in Paragraph 8, until such time as the Third Party Payer contacts EchoStar to revoke the authorization to use such account. In the event that EchoStar has not obtained the confirmations from a Third Party Payer as are required from an EchoStar customer as set forth in Paragraph 17(b), then EchoStar may not enforce the term at issue against such Third Party Payer. The Third Party Payer must also have apparent authority to authorize the charges to any such account or credit card;

(e) only renew customers who are enrolled in either EFT or CCA and who prepaid for more than two months of Programming services but are not month-to-month customers ("Multi-month Billing Period Customers"), if it is clearly and conspicuously disclosed to such customer on at least two (2) separate occasions prior to renewal that EchoStar will be charging such customer for the specific extended time period and the amount to be charged, or upon written, electronic or recorded verbal consent by the customer. Otherwise, such customers shall default to month-to-month billing periods.

18. Rebates. EchoStar shall clearly and conspicuously disclose the terms and conditions of any rebate offer. EchoStar shall maintain all measures reasonably necessary to ensure that rebates to which customers are entitled are provided as advertised or disclosed and within the advertised or disclosed time period of the customer meeting the required terms and conditions.

19. Equipment Advertisements. Any advertisement by EchoStar, or any advertisement which is generated by EchoStar, for a promotion which permits the sale or gift of a reduced price satellite dish or related hardware, shall clearly and conspicuously disclose, if applicable:

(a) If the satellite dish or related hardware is reconditioned or used and, if reconditioned or used, the length and type of warranty, and

- (b) If the customer will not take ownership of the satellite dish or related hardware.

20. Collections. Within thirty (30) days following the resolution of a billing dispute in a customer's favor, EchoStar shall notify the applicable credit rating agency or agencies to correct or remove any negative credit reports made by EchoStar relating to such dispute. EchoStar shall maintain policies and procedures reasonably necessary to assure compliance with all applicable laws regarding debt collection.

21. Customer Complaints. EchoStar shall maintain policies and procedures reasonably necessary to ensure customer complaints are quickly responded to and a good faith effort made to resolve such complaints in a timely manner. Such policies shall include, but are not limited to:

(a) Policies and procedures reasonably necessary to ensure that customer complaints are logged, with such log containing the following minimum information: the name and account number of such customer, a summary of the customer's complaint and action taken by EchoStar to resolve that complaint;

(b) Policies and procedures necessary to generally ensure that customer complaint calls to EchoStar Customer Service Centers are answered in a timely manner;

22. State Law Regulations Concerning Installers. EchoStar shall maintain measures reasonably necessary to ensure that satellite dish installations performed by EchoStar employees are done by persons who are properly licensed, bonded, insured, and otherwise in compliance with state and local laws, to the extent required by the applicable laws of the states in which they provide such services. With respect to installers who are not EchoStar employees, EchoStar shall require all such installers with whom it contracts to comply with state and local laws, including, but not limited to, licensing requirements and bonding and insurance requirements. EchoStar shall further adhere to a policy of disciplining, in EchoStar's sole discretion, up to and including the termination of, installers and/or retailers who use installers that are found by the company to have not complied with these requirements. EchoStar shall keep for a period of five

(5) years written records for each report of, and its response to, any notification that installers with whom it contracts are in violation of state law.

23. Monetary Terms. EchoStar shall pay the sum of five million and 00/100ths Dollars (\$5,000,000.00) into an account specified by the signatory Attorneys General⁵ within ten (10) days after the States notify EchoStar of such account and the place for payment.

(a) Of such sum, three million and 00/100ths dollars (\$3,000,000.00) thereof shall be divided and distributed among the Attorneys General in a manner which is in their sole discretion. Such sum may be used by the Attorneys General for any purpose allowed pursuant to

⁵ With respect to the State of California, its apportionment of the paragraph 23(a) funds shall be dealt with pursuant to Business and Professions Code section 17536.

With respect to the State of Colorado, its apportionment of the funds shall be used first for reimbursement of Colorado's actual costs and attorney fees and second, to be held, along with any interest thereon, in trust by the Attorney General for payments to former EchoStar customers, future consumer education, consumer fraud or antitrust enforcement efforts.

With respect to the State of Connecticut, its apportionment of the paragraph 23(a) funds shall be accomplished in accordance with Connecticut laws. The paragraph 23(b) funds shall be used for investigative costs, attorney's fees and settlement administration.

With respect to the State of Florida, its apportionment of the paragraph 23(a) funds shall be deposited into the Legal Affairs Revolving Trust Escrow Fund, to be held for payment to Florida EchoStar customers who had filed a complaint by the date of this agreement, and future consumer education, consumer law education or consumer enforcement efforts. Florida's apportionment of the paragraph 23(b) funds shall be to the Legal Affairs Revolving Trust Fund for costs of investigation and attorney's fees.

With respect to the State of Illinois, its apportionment of the paragraph 23(a) funds shall be deposited in the "Attorney General's Consumer Trust Fund" and shall be first used for payments to former EchoStar consumers who apply and qualify within 60 days of public notice that such funds are available, however, after 60 days of such notice, those undistributed funds for which no valid claims have been received shall be transferred to the "Court Ordered and Voluntary Compliance Payment Projects Fund" for use and distribution in accordance with the terms established for that fund. Specifically and notwithstanding language otherwise appearing in paragraph 23, the apportionment of Illinois' paragraph 23(b) funds shall be deposited in the "Court Ordered and Voluntary Compliance Payments Projects Fund" for use and distribution in accordance with the terms established for that fund.

With respect to the State of Louisiana, its apportionment of funds shall be deposited in the Consumer Education and Enforcement Fund established pursuant to LSA-R.S. 51:1404 and shall be distributed first to Louisiana consumers filing claims for refunds, and thereafter, the balance, if any, to be used for consumer education and enforcement efforts.

With respect to the State of Minnesota, its apportionment of the paragraph 23(a) funds shall be distributed pursuant to an Order of the Court to be submitted ex parte to the Ramsey County District Court for review and approval.

With respect to the State of Oregon, its apportionment of the paragraph 23(b) funds shall be deposited to the Consumer Protection and Education Revolving Account established pursuant to ORS 180.095 while its apportionment of the 23(a) funds shall be made as follows: first for Oregon consumers filing claims for refunds with DOJ within 90 days of receipt of

applicable law, including but not limited to, consumer education, consumer protection efforts, payments to former EchoStar customers, donations to charitable organizations, improvements to school systems or other educational purposes;

(b) Of such sum, two million and 00/100ths Dollars (\$2,000,000.00) thereof shall be divided and distributed among the Attorneys General in a manner which is in their sole discretion, to be used by the Attorneys General for investigative costs, costs to administer the Assurance and attorneys' fees.

IV. GENERAL PROVISIONS

24. Unless otherwise noted herein, EchoStar shall create written policies and adopt written procedures reasonably expected to create continuing compliance and otherwise comply with the terms of this Assurance within ninety (90) days after the Effective Date of this Assurance, except that EchoStar and retailers shall have up to one hundred eighty (180) days to change and implement new marketing materials to comply with Paragraphs 8 and 19 and EchoStar shall have up to one hundred eighty (180) days to implement a recording system as described in Paragraph 9. Notwithstanding the foregoing, EchoStar shall use reasonable commercial efforts to comply with the provisions of this Assurance as expeditiously as possible.

25. In the event of a dispute relating to EchoStar's compliance with this Assurance, the parties shall negotiate in good faith to resolve such dispute before initiating any action or proceeding relating to this Assurance, except in those cases where an Attorney General concludes that because of an alleged violation, a threat of immediate and irreparable harm requires immediate action. The States agree not to initiate any action or proceeding against EchoStar based upon a dispute relating to EchoStar's compliance without first:

the funds, and thereafter the balance, if any, to the Consumer Protection and Education Revolving Account established pursuant to ORS 180.095.

(a) furnishing written notice of the dispute to EchoStar's designated representative(s) (as identified pursuant to paragraph 36) describing the nature of the dispute and, if applicable, identifying the specific provision of the agreement and/or the State consumer protection law that the conduct at issue allegedly violates;

(b) allowing EchoStar a period of thirty (30) days, or such additional time as may be agreed, to provide a written response to the notice; and

(c) meeting with EchoStar, if requested, to discuss the dispute and alternatives to the initiation of any action or proceeding based on all of the circumstances. If the party sending the notice is one or more of the States, the meeting to discuss the dispute shall be with the State(s) raising the dispute. The meeting referred to in this Paragraph may be conducted by teleconference.

26. It is expressly agreed that EchoStar shall not be in violation of this Assurance as the result of, or be held liable for, the acts, omissions, policies or practices of any retailers, including, but not limited to an authorized retailer, failing to adopt policies and procedures similar to those outlined in Paragraph 8, Paragraph 10 and Paragraph 19 as applicable. Furthermore, while it is the parties' intent that EchoStar and retailers will adopt and implement the policies described herein, it is acknowledged that isolated instances of non-compliance (for example, failing to provide a Pre-Sale Disclosure to a particular customer), shall not be a violation of this Assurance provided that EchoStar has in fact adopted the policies and procedures required herein.

27. EchoStar shall make available to the Colorado Attorney General's Office two (2) written compliance reports, each signed by an officer with knowledge of EchoStar's obligations under this Assurance, setting forth the steps EchoStar has taken to comply with the terms and provisions of this Assurance. The first report shall be made available 120 days after the Effective Date of this Assurance. The second report shall be made available eighteen (18)

months after the Effective Date. The second report, in addition to other information necessary to explain in detail the policies and procedures EchoStar has implemented to comply with this Assurance, shall also contain: (1) a section that sets forth the number and types of written consumer complaints that EchoStar has received and addressed pursuant to Paragraph 10 since the first report and the manner in which such complaints have been resolved; and (2) the identity, address and phone number of any retailer that was the subject of any disciplinary action or who received a notice of deficiency pursuant to the requirements of paragraph 11 above during the reporting period, and for each such retailer, the nature of the action, if any, which EchoStar took. After the Colorado Attorney General's Office reviews each of these reports it may share the information in the report(s) with any State that requests the information. If any State informs the Colorado Attorney General's Office that it needs to see the report(s), the Colorado Attorney General's Office shall make this request known to Echostar, which shall make such report(s) available for review by such State at the location designated by the State, within thirty (30) days after such request is communicated by the Colorado Attorney General's Office to Echostar.

28. EchoStar shall provide a copy of this Assurance to the members of its board of directors and an accurate summary of the applicable specific terms to all those officers, managers and other persons responsible for the implementation of and compliance with those terms, including without limitation, EchoStar's agents and authorized retailers who are required to take certain actions under the terms of this Assurance.

29. This Assurance shall be governed by the laws of the States. Nothing in this Assurance shall be deemed to permit or authorize any violation of the laws of any state or otherwise be construed to relieve EchoStar of any duty to comply with the applicable laws, rules and regulations of any state, nor shall anything herein be deemed to constitute permission for EchoStar to engage in any acts or practices prohibited by such laws, rules or regulations.

30. Each State acknowledges by its execution hereof that this Assurance terminates its inquiry into EchoStar's business practices that occurred prior to the Effective Date of this

Assurance and further that this Assurance constitutes a complete settlement and release of all claims on behalf of each such State against Echostar, and all of its subsidiaries, parents and affiliates, predecessors, successors or assigns, officers, directors, employees, shareholders, agents, servants, and assigns (all such released parties shall be collectively referred to as the "Releasees"), with respect to all claims, causes of action, damages, restitution, fines, costs, attorneys' fees and penalties arising from any acts, issues, policies or practices about which the States had knowledge prior to the Effective Date of this Assurance and which related to or were based upon the subject matter of this Assurance. Each State agrees that such State shall not proceed with or institute any civil action against Releasees for any acts, issues, policies or practices, prior to the Effective Date of this Assurance, which is or could have been asserted that is related to or is based upon the subject matter of this Assurance. Based on their inquiry into EchoStar's business practices which relate to or are based upon the acts, issues, policies or practices which are or could have been asserted that are the subject matter of this Assurance, the signatory Attorneys General have concluded that this Assurance is the appropriate resolution of the alleged violations. Nothing in this paragraph of this Assurance shall preclude a State from instituting an enforcement action or proceeding alleging a violation of this Assurance. As used in this Paragraph 30, and throughout this Assurance, the term "the subject matter of this Assurance," means those acts, issues, policies or practices set forth in Paragraph 4 hereof, any advertisement, act, issue, policy or practice covered by, or related to, any of the provisions of Sections II and III hereof, or any other matter that was a subject of the States' inquiry.

31. This Assurance does not constitute an approval by the Attorneys General of any of EchoStar's programs, practices, or past conduct and EchoStar shall not make any representation to the contrary.

32. This Assurance does not constitute an admission by EchoStar 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 of the signatory States identified below.

33. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the issues dealt with in this Assurance.

34. The parties agree to consider in good faith any request to modify the terms of this Assurance based upon a change in applicable law, change in business practices, changes or advancements in technology, or any other reason that may be appropriate under the circumstances. Any modification to this Assurance must be in writing and signed by duly authorized representatives of the parties agreeing to such modification. Any amendment or modification of this Assurance shall be initiated by a written request from the party(s) seeking the modification to the other party(s), and a timely response by the other party(s) shall be given. A modification can only be made through a written agreement signed by the Attorney(s) General agreeing to the modification and EchoStar. To seek any modification from a single Attorney General, EchoStar shall send a written request for such modification to that Attorney General who shall respond to such request within 30 days of its receipt. To seek a modification from more than one Attorney General, EchoStar shall send written request for such modification to the Attorney General of the State of Colorado who will coordinate the Attorneys General response to such request within 30 days of its receipt. Consent to a request for modification shall not be unreasonably withheld or delayed.

35. In the event that a federal or state law, rule, regulation or a judicial or administrative interpretation respecting the subject matter of any section herein ("New Law") is passed, adopted, officially communicated or rendered after the Effective Date, and such New Law makes

it such that EchoStar cannot comply with both the New Law and this Assurance, then compliance with the New Law in the jurisdiction in which the New Law is applicable shall constitute compliance with the counterpart provision of this Assurance with respect to those jurisdictions.

36. Notices, Compliance Reports and other correspondence to EchoStar or the Attorneys General as required by this Assurance shall, unless otherwise notified, be provided to the parties at their addresses, facsimile numbers, email addresses or phone numbers listed in the signature blocks below. EchoStar shall, within twenty (20) days of the Effective Date of this Assurance appoint an individual to whom the Attorneys General may direct consumer inquiries or complaints received by the Attorneys General, and within such period of time give notice to the Attorneys General of the individual's name and address.

37. Where allowed by applicable state law, the respective Attorneys General, without further notice, may make *ex parte* application to any appropriate state court for an order approving this Assurance, which shall be considered an Assurance of Voluntary Compliance or an Assurance of Discontinuance as provided by the States' respective laws, or otherwise file this Assurance in any appropriate state court.

38. This Assurance shall terminate automatically without any further action by any party on the effective date that another entity acquires all or substantially all of the assets of EchoStar unless:

- (a) the purchasing entity agrees to be bound by these obligations;
- (b) the transaction amounts to a merger or consolidation and EchoStar is no longer maintained as a separate entity or division;
- (c) the purchasing entity is a mere continuation of EchoStar; or
- (d) the transaction is entered into to escape liability for the obligations set forth in this Assurance.


39. This Assurance may be executed in counterparts. The parties must submit the requisite number of original signatures such that each party has an executed original.

40. EchoStar represents and warrants that it is represented by legal counsel and that it is fully advised of its legal rights in this matter. The undersigned representative for each party certifies that he/she is fully authorized by the party he/she represents to enter into the terms and conditions of this Assurance and to legally bind the party he/she represents to this Assurance.

V. SIGNATURES

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

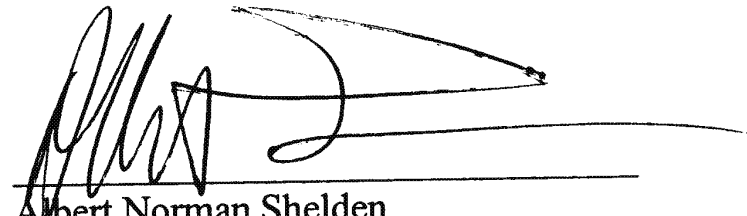
Signed this 20th day of May, 2003

EchoStar Satellite Corporation 5701 S. Santa Fe Drive Littleton, Colorado 80120 By:  Title: CEO	

**In the Matter of:
ECHOSTAR SATELLITE CORPORATION
Assurance of Voluntary Compliance or Discontinuance**

Dated: May 8, 2003

BILL LOCKYER
Attorney General of the State of California

A handwritten signature in black ink, appearing to read 'Albert Norman Shelden', is written over a horizontal line.

Albert Norman Shelden
Supervising Deputy Attorney General
California Attorney General's Office
Consumer Law Section
110 West A Street, Suite 1100
San Diego, CA 92101

V. SIGNATURES

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

Signed this ____ day of May, 2003

EchoStar Satellite Corporation
5701 S. Santa Fe Drive
Littleton, Colorado 80120

By: _____

Title: _____

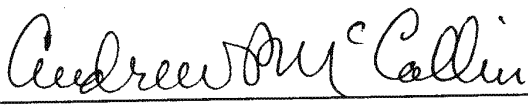
BILL LOCKYER
Attorney General
State of California

ALBERT NORMAN SHELDEN
Supervising Deputy Attorney General

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

BRENDAN T. FLYNN
Assistant Attorney General

KEN SALAZAR
Attorney General
State of Colorado



ANDREW McCALLIN
Assistant Attorney General

CHARLIE CRIST
Attorney General
State of Florida

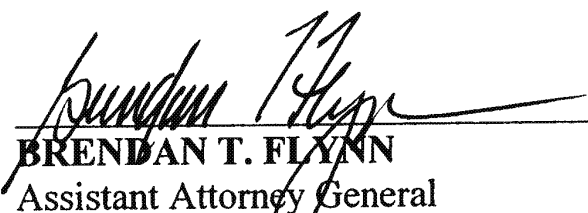
LISA RALEIGH
Senior Assistant Attorney General

25
27

V. SIGNATURES

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

Signed this 12th day of April, 2003

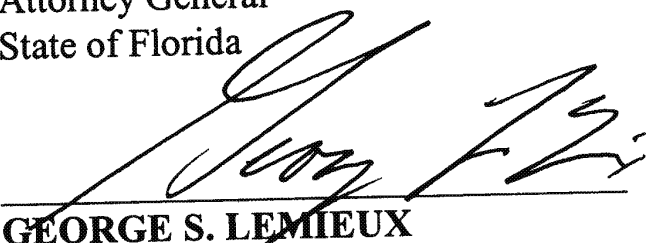
<p>EchoStar Satellite Corporation 5701 S. Santa Fe Drive Littleton, Colorado 80120</p> <p>By: _____ Title: _____</p>	
<p>BILL LOCKYER Attorney General State of California</p> <p>_____ ALBERT NORMAN SHELDEN Supervising Deputy Attorney General</p>	<p>KEN SALAZAR Attorney General State of Colorado</p> <p>_____ ANDREW McCALLIN Assistant Attorney General</p>
<p>RICHARD BLUMENTHAL Attorney General State of Connecticut</p> <p> BRENDAN T. FLYNN Assistant Attorney General</p>	<p>CHARLIE CRIST Attorney General State of Florida</p> <p>_____ LISA RALEIGH Senior Assistant Attorney General</p>

25
28

V. SIGNATURES

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

Signed this ____ day of April, 2003

EchoStar Satellite Corporation 5701 S. Santa Fe Drive Littleton, Colorado 80120 By: _____ Title: _____	
BILL LOCKYER Attorney General State of California	KEN SALAZAR Attorney General State of Colorado
ALBERT NORMAN SHELDEN Supervising Deputy Attorney General	ANDREW McCALLIN Assistant Attorney General
RICHARD BLUMENTHAL Attorney General State of Connecticut	CHARLIE CRIST Attorney General State of Florida
BRENDAN T. FLYNN Assistant Attorney General	 GEORGE S. LEMIEUX Deputy Attorney General
JOHN S. SMITH, III Administrator of the Office of Consumer Affairs State of Georgia	LISA MADIGAN Attorney General State of Illinois

28
29

<p>JOHN S. SMITH, III Administrator of the Office of Consumer Affairs State of Georgia</p> <p><i>Alexia K. Niketas</i></p> <p>ANNE INFINGER Assistant General Counsel ALEXIA NIKETAS Assistant General Counsel</p>	<p>LISA MADIGAN Attorney General State of Illinois</p> <hr/> <p>DEBBY HAGAN Chief of the Consumer Fraud Bureau JEFFREY FELTMAN Assistant Attorney General</p>
<p>RICHARD P. IEYOUB Attorney General State of Louisiana</p> <hr/> <p>KORDYCE DOUGLAS Assistant Attorney General</p>	<p>MIKE HATCH Attorney General State of Minnesota</p> <hr/> <p>JULIE RALSTON-AOKI Assistant Attorney General DONALD HEEMAN Assistant Attorney General</p>
<p>PETER C. HARVEY Acting Attorney General State of New Jersey</p> <hr/> <p>DAVID PUTESKA Assistant Attorney General</p>	<p>ELLIOT SPITZER Attorney General State of New York</p> <hr/> <p>SHIRLEY STARK Assistant Attorney General ENVER R. ACEVEDO Assistant Attorney General</p>
<p>JIM PETRO Attorney General State of Ohio</p> <hr/> <p>MICHAEL ZIEGLER Assistant Attorney General</p>	<p>HARDY MEYERS Attorney General State of Oregon</p> <hr/> <p>DAVID HART Assistant Attorney General</p>

X
30

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

CHARLIE CRIST
Attorney General
State of Florida

BRENDAN T. FLYNN
Assistant Attorney General

LISA RALEIGH
Senior Assistant Attorney General

JOHN S. SMITH, III
Administrator of the Office of Consumer
Affairs
State of Georgia

LISA MADIGAN
Attorney General
State of Illinois

ANNE INFINGER
Assistant General Counsel
ALEXIS NIKETAS
Assistant General Counsel

DEBBY HAGAN
Chief of the Consumer Fraud Bureau

RICHARD P. IEYOUB
Attorney General
State of Louisiana

JEFFREY FELTMAN
Assistant Attorney General

MIKE HATCH
Attorney General
State of Minnesota

KORDYCE DOUGLAS
Assistant Attorney General

JULIE RALSTON-AOKI
Assistant Attorney General
DONALD HEEMAN
Assistant Attorney General

DAVID SAMSON
Attorney General
State of New Jersey

ELLIOT SPITZER
Attorney General
State of New York

DAVID PUTESKA
Assistant Attorney General

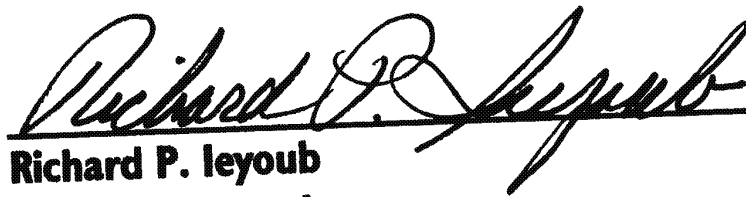
SHIRLEY STARK
Assistant Attorney General
ENVER R. ACEVEDO
Assistant Attorney General

27
31

**In the matter of:
Echostar Satellite Corporation**

April 28, 2003

**RICHARD P. IEYOUNG
ATTORNEY GENERAL STATE OF LOUISIANA**

A handwritten signature in black ink, appearing to read "Richard P. Ieyoub", is written over a horizontal line.

**Richard P. Ieyoub
Attorney General
Louisiana Department of Justice
Office of the Attorney General
300 Capitol Drive, 22nd Floor
Baton Rouge, Louisiana 70804-9005**

Dated: April 25, 2003

MIKE HATCH
Attorney General
State of Minnesota



DONALD G. HEEMAN
Assistant Attorney General
Atty. Reg. No. 286023

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 296-1794 (Voice)
(651) 296-1410 (TTY)

RICHARD BLUMENTHAL
Attorney General
State of Connecticut

CHARLIE CRIST
Attorney General
State of Florida

BRENDAN T. FLYNN
Assistant Attorney General

LISA RALEIGH
Senior Assistant Attorney General

JOHN S. SMITH, III
Administrator of the Office of Consumer
Affairs
State of Georgia

LISA MADIGAN
Attorney General
State of Illinois

ANNE INFINGER
Assistant General Counsel
ALEXIS NIKETAS
Assistant General Counsel
RICHARD P. IEYOUNG
Attorney General
State of Louisiana

DEBBY HAGAN
Chief of the Consumer Fraud Bureau
JEFFREY FELTMAN
Assistant Attorney General
MIKE HATCH
Attorney General
State of Minnesota

KORDYCE DOUGLAS
Assistant Attorney General

JULIE RALSTON-AOKI
Assistant Attorney General
DONALD HEEMAN
Assistant Attorney General

PETER C. HARVEY
Acting Attorney General
State of New Jersey

ELLIOT SPITZER
Attorney General
State of New York


DAVID PUTESKA
Deputy Attorney General

SHIRLEY STARK
Assistant Attorney General
ENVER R. ACEVEDO
Assistant Attorney General

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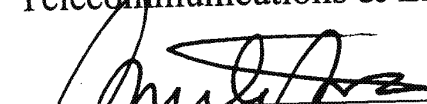
In the Matter Of:
ECHOSTAR SATELLITE CORPORATION
Assurance of Voluntary Compliance or Discontinuance

Dated: April 25, 2003

ELIOT SPITZER
Attorney General of the State of New York



Enver Acevedo
Assistant Attorney General
Telecommunications & Energy Bureau

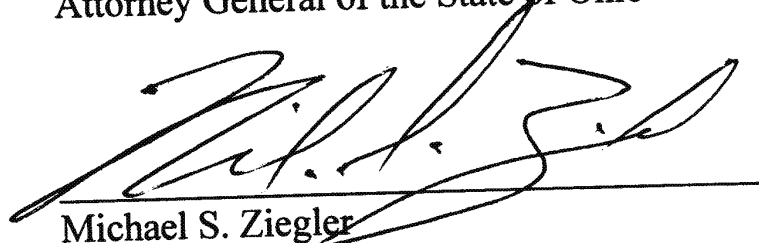


Shirley Stark
Assistant Attorney General
Bureau of Consumer Frauds & Protection
120 Broadway
New York, NY 10271

**In the Matter of:
EchoStar/Dish Network
Assurance of Voluntary Compliance or Discontinuance**

Dated: April 22, 2003

JIM PETRO
Attorney General of the State of Ohio

A handwritten signature in black ink, appearing to read "Michael S. Ziegler", is written over a horizontal line.

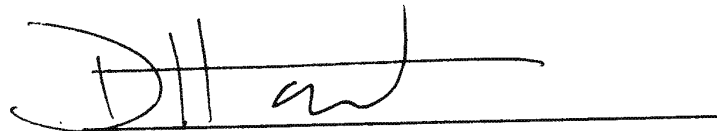
Michael S. Ziegler
Assistant Attorney General
Office of the Ohio Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

Oregon

**In the Matter of:
ECHOSTAR SATELLITE CORPORATION
ASSURANCE OF VOLUNTARY COMPLIANCE OR DISCONTINUANCE**

May 12, 2003

**HARDY MYERS
ATTORNEY GENERAL STATE OF OREGON**

A handwritten signature in black ink, appearing to read 'D Hart', is written over a horizontal line.

**David A. Hart
Assistant Attorney General**

Wisconsin

**In the Matter of:
Echostar Satellite Corporation
Assurance of Voluntary Compliance or Discontinuance**

Dated: April 22, 2003

PEGGY A. LAUTENSCHLAGER
Attorney General

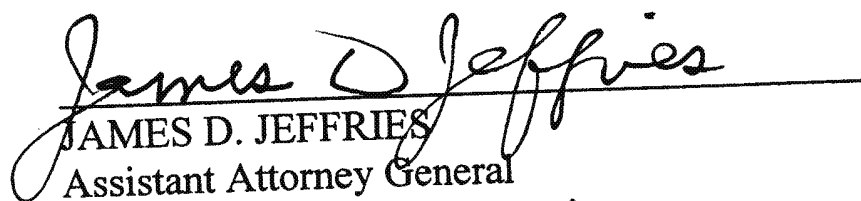

JAMES D. JEFFRIES
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857

EXHIBIT 745

EXHIBIT 745

JA014922
013644

TX 102-014184



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

December 28, 2006

Via Facsimile: 949-643-7173

Mr. Alex Tehranchi
Satellite Systems Network
9831 Irvine Center Drive
Irvine, CA 92618

Re: Notice of Complaint "Do Not Call" Violation

Dear Mr. Tehranchi:

The purpose of this letter is to inform you that Mr. Gregory Fisher, a consumer, has filed a complaint against EchoStar Satellite Corporation ("DISH Network") which has been connected to your company through the consumer's investigation. Mr. Fisher has alleged that he has received communication to his telephone numbers, 937-681-3222, 937-312-1448 and 937-681-3224, with a subsequent sale generated on 11/4/05. The calls have been traced to you and are solicitations for DISH Network programs and services. Mr. Fisher believes these events 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 Call" registry.

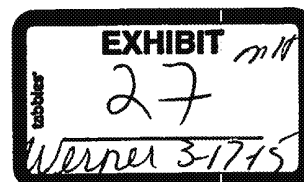
Within five (5) days of receipt of this letter, you must completely and thoroughly address the circumstances surrounding the allegation(s) and furnish information relative to the specific circumstance that has created this issue and the corrective actions that will eliminate recurrences for Satellite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

EchoStar Satellite L.L.C.
Retail Services - Reji Musso
9601 S. Meridian Blvd.
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 Network defend and indemnify Dish Network from and against any and all costs that Dish Network incurs therein.

Page 1 of 2

Krakauer-DOJ-00042184



Confidential - U.S. v. DISH

DISH 11-621285
JA014923
013645

SLC_DNC_Investigation_0003223

TX 102-014185

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

Page 2 of 2

Krakauer-DOJ-00042185

Confidential - U.S. v. DISH

DISH11-021286
JA014924
013646

SLC_DNC_Investigation_0003224
TX 102-014186

EXHIBIT 746

EXHIBIT 746

JA014925
013647

TX 102-014187

Snyder, Serena

From: Sophie [sophie@Yourdish.tv]
Sent: Wednesday, April 08, 2009 2:13 PM
To: Vendor Inquiries
Subject: FW: URGENT - Satellite Systems Network - Follow Up TCPA / DNC Issues 2 - 11/20/08 and 03/27/09

Serena,

The contact name for the leads was Jeff Rogers. His phone number is 908-358-7090. On 10-13-2008 we were with dnc.com, we were not with PossibleNow. We got PossibleNow on 10-23-2008 and did the training on 10-27-2008. Every year we have to purchase the San number in order to scrub the list with PossibleNow which we do purchase every year. The outbound dialer was with Five9 but they were too expensive so we changed about three weeks ago and are with chase data. We have no records of the consumer phone numbers since we are no longer with Five9.

Thanks,
Sophie

From: Vendor Inquiries [mailto:VendorInquiries@echostar.com]
Sent: Wednesday, April 08, 2009 12:46 PM
To: Sophie; Vendor Inquiries
Subject: RE: URGENT - Satellite Systems Network - Follow Up TCPA / DNC Issues 2 - 11/20/08 and 03/27/09

Sophie,

Thank you for your quick response and attention to these consumer issues. We originally sent these to Alex on 11/20/08 and 03/27/09. Do we have the right email address for him 'alex@yourdish.tv'? And we will make sure to include you on any complaints we receive in the future.

In addition to making sure these phone numbers have been removed from your calling list can you please provide the following?

- Origination of the lead
- Contact information for the Lead Generation company
- Date leads were scrubbed through PossibleNOW
- Dialer Records for the consumers' phone numbers

Thank you for your assistance. We look forward to your response and to concluding our research into these consumer issues.

Thank you,
Serena Snyder
Retail Services Compliance
Dish Network
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5742 (tel)
720-514-8288 (fax)

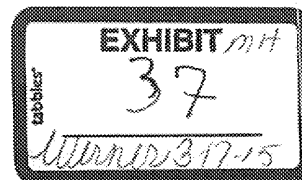
From: Sophie [mailto:sophie@Yourdish.tv]
Sent: Wednesday, April 08, 2009 1:09 PM
To: Vendor Inquiries
Subject: FW: URGENT - Satellite Systems Network - Follow Up TCPA / DNC Issues 2 - 11/20/08 and 03/27/09
Importance: High

To Whom It May Concern:

4/8/2009

Krakauer-DOJ-00051882

Confidential - U.S. v. DISH



A014926-030983
013648

SLC_DNC_Investigation_0003236

TX 102-014188

First of all this is the first time we have got any email in regards to this matter. We have checked our data base and both of these numbers were taken out last year. As soon as anyone asks to be put on the DNC, we take them out of our data base right away. I hope this answers the consumers' complaints.

Yours truly,
Sophie Tehranchi

From: Vendor Inquiries [mailto:VendorInquiries@echostar.com]
Sent: Wednesday, April 08, 2009 9:27 AM
To: sophie@yourdish.tv
Cc: Vendor Inquiries
Subject: FW: URGENT - Satellite Systems Network - Follow Up TCPA / DNC Issues 2 - 11/20/08 and 03/27/09
Importance: High

Dear Sophie Tehranchi,

We have audited our records and found that we have not received a response for the following TCPA / DNC Issues. These escalated issues need your immediate attention and response. I have attached the original letters that have been sent to you.

Submitted Date	Consumer First Name	Consumer Last Name	Consumer Phone Number	Consumer DNC	Date Added to List (N, S, W, I)	Caller ID	Complaint Type	Retailer Name
10/14/08	Angela	Schooler	512-301-6838	None		800-375-8211	F P	Satellite System
03/20/09	Kitty	Fowler	530-675-2230	I	04/29/08	800-375-8211	F P H RFL	Satellite System

If you have any questions please contact me, so we can conclude our research for these consumers' complaints.

Thank you,
Serena Snyder
Retail Services Compliance
Dish Network
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5742 (tel)
720-514-8288 (fax)

From: Snyder, Serena
Sent: Friday, April 03, 2009 2:16 PM
To: 'alex@yourdish.tv'
Cc: Vendor Inquiries; Rukas, Terrence
Subject: URGENT - Satellite Systems Network - Follow Up TCPA / DNC Issues 2 - 11/20/08 and 03/27/09
Importance: High

Dear Mr. Tehranchi,

We have audited our records and found that we have not received a response for the following TCPA / DNC Issues. These escalated issues need your immediate attention and response. I have attached the original letters that have been sent to you.

Submitted Date	Consumer First Name	Consumer Last Name	Consumer Phone Number	Consumer DNC	Date Added to List (N, S, W, I)	Caller ID	Complaint Type	Retailer Name
10/14/08	Angela	Schooler	512-301-6838	None		800-375-8211	F P	Satellite System

4/8/2009

Krakauer-DOJ-00051883

Confidential - U.S. v. DISH

DISH 11-030984
JA014927
013649

SLC_DNC_Investigation_0003237

TX 102-014189

If you have any questions please contact me, so we can conclude our research for these consumers' complaints.

Thank you,
Serena Snyder
Retail Services Compliance
Dish Network
9601 S. Meridian Blvd
Englewood, CO 80112
720-514-5742 (tel)
720-514-8288 (fax)

4/8/2009

Krakauer-DOJ-00051884

Confidential - U.S. v. DISH

DISH11-030985
JA014928
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TX 102-014190

EXHIBIT 747

EXHIBIT 747

JA014929
013651

TX 102-014191



DISH Network Reaches Agreement With 46 States

ENGLEWOOD, Colo., July 16, 2009 /PRNewswire-FirstCall via COMTEX News Network/ -- DISH Network L.L.C., a subsidiary of DISH Network Corporation (Nasdaq: DISH), announced today it has entered into an agreement with 46 state attorneys general resolving a dispute about advertising, telemarketing, and customer issues relating to DISH Network and its independent retailers. There was no finding of any violation or wrongdoing by the company and the states released DISH Network from the matters investigated.

"Customer satisfaction has always been a top priority for DISH Network, and we continuously implement new approaches to strengthen our customer relationships," said Tom Cullen, Executive Vice President of DISH Network. "We are pleased to work with the state attorneys general in a cooperative manner to enhance our products and services."

To promote continued customer satisfaction, under the Assurance of Voluntary Compliance agreement reached today, DISH Network agreed to implement certain enhancements to its processes. The 46 states are: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, 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.

About DISH Network Corporation

DISH Network Corporation (Nasdaq: DISH), the nation's HD leader, provides approximately 13.584 million satellite TV customers as of March 31, 2009 with the highest quality programming and technology at the best value, including the lowest all-digital price nationwide. Customers have access to hundreds of video and audio channels, the most HD channels, the most international channels, state-of-the-art interactive TV applications, and award-winning HD and DVR technology including 1080p Video on Demand and the ViP® 722 DVR, a CNET and PC Magazine "Editors' Choice." DISH Network is included in the Nasdaq-100 Index (NDX) and is a Fortune 250 company. Visit www.dishnetwork.com.

SOURCE DISH Network

<http://www.dishnetwork.com>

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EXHIBIT 748

EXHIBIT 748

JA014931
013653

TX 102-014193

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)

Joint Petition Filed by Dish Network, LLC,)
The United States of America, and the States of) CG Docket No. 11-50
California, Illinois, North Carolina, and Ohio)
For Declaratory Ruling Concerning the)
Telephone Consumer Protection Act (TCPA))
Rules)

Petition Filed by Philip J. Charvat for)
Declaratory Ruling Concerning the)
Telephone Consumer Protection Act (TCPA))
Rules)

Petition Filed by Dish Network, LLC for)
Declaratory Ruling Concerning the)
Telephone Consumer Protection Act (TCPA))
Rules)
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May 4, 2011

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013654

TX 102-014194

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SUMMARY

The *Public Notice* asks for comment on the following questions:

(1) Under the TCPA, does a call placed by an entity that markets the seller's goods or services qualify as a call made on behalf of, and initiated by, the seller, even if the seller does not make the telephone call (i.e., physically place the call)?; and

(2) What should determine whether a telemarketing call is made "on behalf of" a seller, thus triggering liability for the seller under the TCPA? Should federal common law agency principles apply? What, if any, other principles could be used to define "on behalf of" liability for a seller under the TCPA?

The first question should be answered with a resounding "no." The TCPA was designed, and is jurisdictionally limited to, reaching the actual users of the telephone equipment. The liability provisions of the statute are directed toward a business or person that places its own unlawful calls, or a call center that places unlawful calls. These provisions do not create liability for a business or person that does not use telephone equipment. These provisions also do not extend liability to a business that authorizes an independent third party to generally market its products or services where that third party initiated an unlawful call.

The Commission's implementing regulations also do not provide for broad, unfettered indirect liability to any party that has a nexus (however close or distant) with another who violates the TCPA and/or its implementing regulations. Consistent with the jurisdictional reach of and the authority conferred on the FCC by the TCPA, the regulations promulgated by the Commission provide for liability for the initiator of the call. There is no basis – whether legal authority or common sense – to adopt the attenuated, unsupported, and impractical

arguments suggested by the Government Movants¹ or the plaintiff, Phillip Charvat, in *Charvat v. EchoStar Satellite, LLC*, No. 09-4525. (“Charvat”).

With respect to the second question that the FCC requested comment on, if the Commission concludes that the TCPA permits some type of indirect liability (which it should not), the federal common law of agency is the only practical standard to define the scope of such liability. This standard requires an analysis of whether the alleged principal directed and controlled the alleged agent’s unlawful telemarketing. Using this standard would be consistent with how courts routinely interpret federal statutes that provide for indirect liability, but do not articulate a standard for applying such liability. Applying the federal common law of agency also would promote uniformity in the interpretation and application of the TCPA, both by the Commission and judiciary in matters involving the TCPA.

¹ “Government Movants” collectively refers to the States of California, Illinois, North Carolina, and Ohio (the “States”) and the United States Department of Justice.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Joint Petition Filed by Dish Network, LLC,)	
The United States of America, and the States of)	CG Docket No. 11-50
California, Illinois, North Carolina, and Ohio)	
For Declaratory Ruling Concerning the)	
Telephone Consumer Protection Act (TCPA))	
Rules)	
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Petition Filed by Philip J. Charvat for)	
Declaratory Ruling Concerning the)	
Telephone Consumer Protection Act (TCPA))	
Rules)	
)	
Petition Filed by Dish Network, LLC for)	
Declaratory Ruling Concerning the)	
Telephone Consumer Protection Act (TCPA))	
Rules)	
_____)	

COMMENTS OF DISH NETWORK, LLC

Dish Network, L.L.C. ("DISH"), through its undersigned counsel, respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or the "Commission") *Public Notice*, dated April 4, 2011, requesting guidance on the circumstances under which a person or entity is liable for telemarketing violations committed by dealers or other third parties.¹

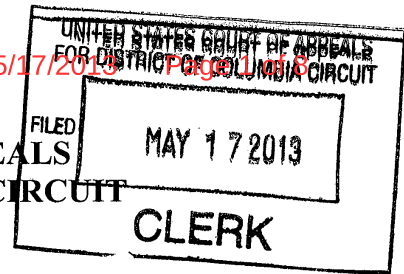
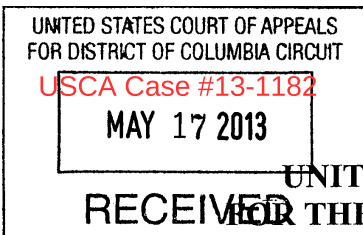
¹ *Public Notice*, Consumer and Governmental Affairs Bureau Seeks Comment on the *Joint Petition Of Dish Network, LLC And The United States, The States Of California, Illinois, North Carolina, And Ohio For An Expedited Clarification Of And Declaratory Ruling On The Telephone Consumer Protection Act of 1991*; the *Petition Filed by Philip J. Charvat for Declaratory Ruling Concerning the Telephone Consumer Protect Act (TCPA) Rules*;

EXHIBIT 749

EXHIBIT 749

JA014937
013659

TX 102-014199



DISH NETWORK, L.L.C.

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION and UNITED STATES
OF AMERICA,

Respondents.

No. 13- 13-1182

PETITION FOR REVIEW

Pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, Rule 15(a) of the Federal Rules of Appellate Procedure and Rule 15 of the D.C. Circuit Rules, DISH Network, L.L.C. (“DISH”), hereby respectfully petitions this Court for review of the Federal Communications Commission’s Declaratory Ruling in *In re the Joint Petition Filed by DISH Network, LLC, the United States of America, and the States of California, Illinois, North Carolina, and Ohio for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules, the Petition Filed by Philip J. Charvat for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules, and the Petition Filed by DISH Network, LLC for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules*, CG Docket No. 11-50 (released May 9, 2013) (the “Declaratory

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JA014938
013660

TX 102-014200

Ruling”). A copy of the Declaratory Ruling is attached to this petition as Attachment A. Venue is proper pursuant to 28 U.S.C. § 2343.

In the Declaratory Ruling, the Federal Communications Commission (“FCC”) granted in part and denied in part the Joint Petition Filed by DISH Network, LLC, the United States of America, and the States of California, Illinois, North Carolina, and Ohio for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules and the Petition Filed by DISH Network, LLC for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules (collectively “the DISH Petitions”), CG Docket No. 11-50, along with another related petition. *See* Attachment A. The Declaratory Ruling was arbitrary and capricious, an abuse of discretion, in excess of the FCC’s statutory authority, and otherwise contrary to the law.

Accordingly, DISH respectfully requests that this Court (1) hold that the FCC’s Declaratory Ruling was unlawful, (2) vacate the Declaratory Ruling in part, (3) remand to the FCC for an order consistent with this Court’s findings, and (4) provide such other relief as this Court deems appropriate.

Respectfully submitted,
DISH NETWORK, L.L.C.

By: 

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Dated: May 17, 2013

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Review was served this 17th day of May, 2013, on the following parties and also on all persons and entities that participated in the FCC proceedings below:

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¹ Those noted with an asterisk by their name received copies of the Petition for Review by courier on May 17, 2013. The remaining persons and/or entities were served by First Class, postage pre-paid mail.

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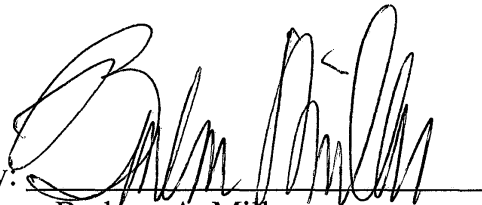
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EXHIBIT 750

EXHIBIT 750

JA014946
013668

TX 102-014208

ORAL ARGUMENT NOT YET SCHEDULED**No. 13-1182**

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

DISH NETWORK L.L.C.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION AND
UNITED STATES OF AMERICA,*Respondents.*

On Petition for Review of Declaratory Ruling
of the Federal Communications Commission

BRIEF FOR PETITIONER DISH NETWORK L.L.C.

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September 3, 2013

JA014947
013669

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Petitioner DISH Network L.L.C.

(“DISH”) certifies as follows:

A. Parties And Amici

The parties in this Court are:

Petitioner

DISH Network L.L.C.

Respondents

Federal Communications Commission
United States of America

This Court has not granted any party leave to intervene or to participate as amicus curiae at this time.

In addition to Petitioner and Respondents, the following parties participated in the FCC proceedings below:

Stewart Abramson
American Bankers Association (Virginia O'Neill)
American Teleservices Association
AT&T Inc.
Todd Bank
Robert Biggerstaff
Robert H. Braver
Nathan Burdge
Philip J. Charvat
Jay Connor
Charles Dean
DIRECTV, Inc.
Federal Trade Commission

Mark R. Lee
Diana L. Mey
Gerald Roylance
Joe Shields
States of California, Illinois, North Carolina, and Ohio
Jimmy A. Sutton
Richard Zelma

B. Rulings Under Review

The ruling under review is the Federal Communications Commission's declaratory ruling in *In re the Joint Petition Filed by DISH Network, L.L.C., the United States of America, and the States of California, Illinois, North Carolina, and Ohio for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules, the Petition Filed by Philip J. Charvat for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules, and the Petition Filed by DISH Network, LLC for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules* ("Declaratory Ruling"). The FCC released the Declaratory Ruling on May 9, 2013. The Declaratory Ruling is available at 28 FCC Rcd. 6574 and is reproduced in the Appendix at A459-A487.

C. Related Cases

There are two related cases: *Charvat v. Echostar Satellite, LLC*, No. 09-4525, currently pending in the U.S. Court of Appeals for the Sixth Circuit, and *United States v. DISH Network, L.L.C.*, No. 09-cv-3073, currently pending in the U.S. District Court for the Central District of Illinois. The Sixth Circuit in *Charvat*

and the District Court in *DISH Network* referred the parties to the FCC for the Commission's views on two provisions of the Telephone Consumer Protection Act of 1991. The Declaratory Ruling is the FCC's response to those referrals.

/s/ Samir C. Jain

SAMIR C. JAIN

September 3, 2013

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, DISH Network L.L.C. certifies that it is a corporation that provides satellite television services. DISH DBS Corporation, DISH Orbital Corporation, and DISH Network Corporation are parent companies of DISH Network L.L.C. The following publicly traded companies own 10 percent or more of DISH Network L.L.C.'s stock: DISH DBS Corporation and DISH Network Corporation.

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GLOSSARY

DISH	DISH Network L.L.C. and EchoStar Satellite, LLC
DOJ	United States Department of Justice (or the “United States”)
FCC	Federal Communications Commission (or “Commission”)
FTC	Federal Trade Commission
TCPA	Telephone Consumer Protection Act of 1991

JURISDICTIONAL STATEMENT

The Federal Communications Commission (“FCC” or “Commission”) released the Declaratory Ruling on May 9, 2013. A459. DISH Network L.L.C. timely filed a petition for review on May 17, 2013. This Court has jurisdiction over this appeal pursuant to 47 U.S.C. § 402(a) and 28 U.S.C. §§ 2342 and 2344.

BASIS OF PETITIONER’S STANDING

DISH is a defendant in two cases in which courts referred the parties to the FCC for the Commission’s views on two provisions of the Telephone Consumer Protection Act of 1991 (“TCPA” or “the Act”). Pursuant to those referrals, DISH filed a petition before the Commission seeking a declaratory ruling on whether a seller such as DISH may be directly or vicariously liable for violations of the TCPA committed by third parties and, if so, what standard governs the scope of that liability. DISH now challenges certain determinations made by the Commission in that declaratory ruling.

RELEVANT STATUTES AND REGULATIONS

Pertinent statutes and regulations are set forth in the Addendum to this Brief.

STATEMENT OF ISSUES ON APPEAL

Whether the FCC’s “guidance” to courts on federal common-law principles of agency and the application of those principles in TCPA cases should be vacated because the Commission lacks the authority and expertise to opine on the common

law of agency and because the Commission's "guidance" directly conflicts with the common-law principles it purports to explain.

INTRODUCTION

Recent years have witnessed an "explosion" in private suits across a broad range of industries under the TCPA, which regulates certain telemarketing practices relating to "robocalling" and the national do-not-call registry. Christakis et al., *The TCPA: Year in Review*, 66 Consumer Fin. L. Q. Rep. 4, 5 (2012); see also Huddleston, *Am Law Firms See Opportunity in Rising TCPA Tide*, Am Law Daily (July 25, 2013) (describing TCPA suits against Google, Papa John's, Coca-Cola, J.C. Penney, and Zydus Pharmaceuticals). Spurred by the availability of statutory and treble damages and the relative ease of alleging a plausible TCPA violation, most of these suits are brought as class actions and typically allege thousands of violations and seek damages in the hundreds of millions of dollars. See *id.*; Christakis, 66 Consumer Fin. L.Q. Rep. at 5; Snell & Mino, *Telephone Consumer Protection Act Cases Are on the Rise*, Bloomberg Law (2013).¹

This petition for review concerns the legal standard that governs the scope of TCPA liability in these suits. Often, plaintiffs do not bring suit solely against the telemarketer that placed the offending call. In search of deeper pockets, plaintiffs also frequently sue the seller whose product or service was being marketed by the

¹ Available at <http://about.bloomberglaw.com/practitioner-contributions/telephone-consumer-protection-act-cases-are-on-the-rise/>

telemarketer. Recently confronted with two such suits against DISH, the U.S. Court of Appeals for the Sixth Circuit and the District Court for the Central District of Illinois directed the parties to seek the FCC's views on whether the TCPA permits plaintiffs to hold sellers such as DISH vicariously liable for violations committed by third parties who market the seller's products. In a May 9, 2013 declaratory ruling, the FCC concluded that a seller is not directly liable for calls it did not originate, but could be held liable for the actions of third parties under "federal common law agency principles of vicarious liability." A469 ¶ 28. The Commission then went on to provide "guidance" to courts on how to apply those common-law principles. A477 ¶ 46. The Commission supplied this "guidance" through "illustrative examples of evidence" that it believed would support a finding of an agency relationship. *Id.*

This petition does not challenge the Commission's conclusion that the TCPA incorporates principles of vicarious liability or that the scope of that liability is governed by federal common-law agency principles. The Commission's "guidance" on the meaning and application of those principles, however, must be set aside. The purported "guidance" lies beyond the agency's expertise and authority and distorts the common law of agency. If employed to govern the scope of liability in private TCPA suits, the Commission's "guidance" could dramatically

expand the scope of seller liability far beyond what traditional agency principles would allow.

To provide just one example, the Commission thought evidence that a third party had “access to detailed information regarding the nature and pricing of [a] seller’s products and services” would support a finding of vicarious liability. A477 ¶ 46. But *every* party that sells a seller’s products and services necessarily has “access to detailed information regarding the nature and pricing of [a] seller’s products and services.” Evidence of such access therefore does nothing to differentiate telemarketers acting as agents from those who are not. And even though the FCC disclaimed any intent to adopt a strict liability standard, it “[saw] no reason that a seller should not be liable ... for calls made by a third-party telemarketer when it has authorized that telemarketer to market its goods or services.” A478 ¶ 47. That result does not accord with agency law.

Nor did the Commission have any authority to instruct courts on how common-law agency principles apply. The Commission is not entrusted to administer the common law, and it has no authority or expertise to opine on its contours. Courts, not administrative agencies, are experts on the common law.

The Commission’s exercise in common-law judging threatens very real consequences in the many ongoing TCPA lawsuits, including the actions that produced the FCC referral. In the wake of the Declaratory Ruling, plaintiffs are

certain to invoke the Commission's erroneous "guidance" in seeking to impose broad vicarious liability on sellers. Some plaintiffs have already begun to do so. *See, e.g.*, Appellant Supplemental Br. 12-14, *Charvat v. EchoStar Satellite, LLC*, No. 09-4525 (6th Cir. July 23, 2013); Pl.'s Mem. in Opp. to Def.'s Renewed Summ. J. Mot. 7-17, *Donaca v. DISH Network, LLC*, No. 11-cv-2910 (D. Colo. July 2, 2013); Compl. 10-11, *Cooke v. DirectTV, Inc.*, No. 13-cv-22696 (S.D. Fla. July 26, 2013). Courts, in turn, may erroneously conclude that, because the Commission is charged to administer and implement the TCPA, its views on the application of common-law agency principles in that area are entitled to deference. Indeed, at least one court has already accepted the argument. *See Mey v. Monitronics Int'l, Inc.*, 2013 WL 4105430, at *5 (N.D. W. Va. Aug. 14, 2013).² At a minimum, courts will face the confusing and likely impossible task of reconciling the Commission's conclusion that the TCPA incorporates common-law agency principles with the Commission's purported application of those principles. This Court should thus set aside the FCC's "guidance" and make clear that the

² "Armed with the FCC's guidance," the district court in *Mey* concluded that evidence that a seller allowed a third party "to hold itself out as an 'authorized dealer' ... *alone* could lead a reasonable finder of fact to conclude that [the seller] cloaked [the third party] with the apparent authority to act on their behalf, thus exposing [the seller] to liability under § 227(c)." *Mey*, 2013 WL 4105430, at *4-5 (emphasis added).

“guidance” does not accord with agency law and should not be given any legal effect or deference in TCPA actions.

STATEMENT OF FACTS

A. The Telephone Consumer Protection Act Of 1991

The Telephone Consumer Protection Act of 1991 regulates the practice of telemarketing—*i.e.*, the “use of the telephone to market goods and services to the home and other businesses.” TCPA § 2(1), Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227. In enacting the TCPA, Congress sought to strike a “balanc[e]” between “[i]ndividuals’ privacy rights, public safety interests, and commercial freedoms of speech ... in a way that protects the privacy of individuals and permits legitimate telemarketing practices.” *Id.* § 2(9).

Of the various restrictions the TCPA places on telemarketers, two are relevant here. First, subject to certain exceptions, § 227(b)(1)(B) of the Act makes it “unlawful for any person within the United States ... to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.” 47 U.S.C. § 227(b)(1)(B); *see also* 47 C.F.R. § 64.1200(a)(2) (FCC regulation implementing § 227(b)(1)(B)). Such calls are often referred to as “robocall[s].” A460 ¶ 3 n.7.

Second, § 227(c)(3) of the TCPA authorizes the Commission to establish a national “do-not-call” database, consisting of “a list of telephone numbers of

residential subscribers who object to receiving telephone solicitations.” The Commission’s regulations implementing the do-not-call database generally prohibit any “person or entity” from “initiat[ing] any telephone solicitation to [a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call [list].” 47 C.F.R. § 64.1200(c)(2). The regulations further provide that “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity.” *Id.* § 64.1200(d). Telemarketers must honor any specific do-not-call requests they receive for five years from the time the request is made. *Id.* § 64.1200(d)(5). Thus, the Commission’s regulations generally prohibit telemarketers from calling (1) consumers who have registered their phone numbers on the national do-not-call list and (2) those who have specifically informed the telemarketer that they do not wish to be called by that telemarketer.

The TCPA creates separate private rights of action for violations of the Act’s robocalling and do-not-call provisions. Under § 227(b)(3), any “person or entity” may bring a civil “action based on a violation” of the Act’s robocalling prohibition or the regulations implementing that prohibition. In that action, a plaintiff may recover the “actual monetary loss from such a violation” or “\$500 in damages for

each such violation, whichever is greater.” 47 U.S.C. § 227(b)(3). If a plaintiff proves the defendant willfully or knowingly violated the TCPA, the court may award treble damages. *Id.*

Section 227(c)(5) defines the private right of action for do-not-call violations. Under § 227(c)(5), “[a] person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of [the FCC’s do-not-call regulations]” may bring a civil action based on those violations. As under the robocalling provision, a prevailing plaintiff may recover the greater of her actual monetary loss or \$500 for each violation and may seek up to treble damages for a knowing or willful violation. 47 U.S.C. § 227(c)(5).

In addition to these private rights of action, the Act authorizes the attorney general of any State to bring a civil action on behalf of its residents against any person who “has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of [the TCPA or its implementing regulations].” 47 U.S.C. § 227(g). Like individual plaintiffs, States may “recover for actual monetary loss or receive \$500 in damages for each violation.” *Id.* They may also seek up to triple their damages for a willful or knowing violation. *Id.*

B. DISH Network L.L.C.

DISH is in the business of delivering DISH Network broadcast satellite television products and services throughout the United States. A59. DISH markets its products and services to consumers directly through telemarketing calls made by DISH employees and by employees of outside telemarketing firms specifically hired by DISH to make calls on its behalf. *Id.*

DISH also markets its products to consumers indirectly through thousands of independent third-party retailers. *See* A59. These retailers include small telecommunications businesses, local and regional consumer electronic stores, and nationwide “big box” stores, such as Best Buy and Sears. *Id.* DISH authorizes these retailers to market, promote, and solicit orders for DISH Network products and services. *Id.* But the retailers retain control over how and to what extent they market DISH’s products. *Id.* And most of these retailers do not sell DISH Network products exclusively. *See* A175. The litigation that gave rise to the FCC’s declaratory ruling pertains to unlawful calls made by these independent businesses.

C. Proceedings Below**1. *Charvat v. Echostar* and *United States v. DISH Network***

The Declaratory Ruling arose out of two lawsuits against DISH. *See Charvat v. EchoStar Satellite, L.L.C.*, 676 F. Supp. 2d 668 (S.D. Ohio 2009);

United States v. DISH Network, L.L.C., 667 F. Supp. 2d 952 (C.D. Ill. 2009).³ The plaintiff in *Charvat* alleges that he received 30 calls from telemarketers attempting to sell DISH Network satellite television programming. 676 F. Supp. 2d at 670. According to Charvat, these calls violated the robocalling and do-not-call prohibitions of the TCPA and its implementing regulations. *Id.* at 670-671. Although he seeks to hold DISH liable for the purported TCPA violations, Charvat does not assert that DISH placed the offending calls. *Id.* Rather, he acknowledges that the calls were made by third-party retailers whom DISH authorized, as independent contractors, to advertise, promote, and solicit orders for DISH Network products and services. *Id.* at 671.

The district court granted DISH's motion for summary judgment and dismissed Charvat's TCPA claims. 676 F. Supp. 2d at 678-679. The court found that an entity can be held vicariously liable for TCPA violations committed by a third party when the third party acts as the entity's "employee or agent." *Id.* at 674-675. Because DISH "retain[ed] no control over the method of advertising or the means by which the [r]etailers carr[ied] out their marketing activities," the court concluded that the retailers were not DISH's agents. *Id.* at 675; *see also id.* at 676 (Charvat's evidence failed "to establish the 'right to control' needed to

³ EchoStar Satellite, L.L.C. is the predecessor of DISH Network L.L.C. For simplicity, this brief refers to EchoStar Satellite, L.L.C. as "DISH."

subject [DISH] to liability under the TCPA for the actions of the [r]etailers”).

Accordingly, the Court concluded that DISH was not liable for the retailers’ acts.

Id. at 675.

On appeal, the Sixth Circuit identified the question “at the heart of th[e] case” as “whether the [TCPA] and its accompanying regulations permit Charvat to recover damages from [DISH], an entity that did not place any illegal calls to him but whose independent contractors did.” *Charvat v. Echostar Satellite, LLC*, 630 F.3d 459, 465 (6th Cir. 2010). The answer to this question, the court decided, “implicate[d] the FCC’s statutory authority to interpret the [TCPA and its accompanying regulations].” *Id.* at 466. Accordingly, the court (over DISH’s objection) invoked the doctrine of primary jurisdiction and referred the parties to the FCC to obtain the Commission’s views on whether and to what extent the TCPA’s private-right-of-action provisions incorporate principles of vicarious liability. *Id.* at 467-468.

In *United States v. DISH Network*, the United States (acting on behalf of the Federal Trade Commission) and four state Attorneys General sued DISH for alleged violations of state and federal telemarketing laws. 667 F. Supp. 2d at 956. Like the plaintiff in *Charvat*, the Attorneys General argue that DISH should be held liable for TCPA violations committed by third-party retailers who market DISH products and services. *Id.* at 962. Following the Sixth Circuit’s lead, the

district court referred the parties to the FCC, so that the Commission could provide its opinion on the availability of vicarious liability under the TCPA. *See United States v. DISH Network, L.L.C.*, 2011 WL 475067, at *3-4 (Feb. 4, 2011).

2. The FCC's Declaratory Ruling

Pursuant to the courts' orders in *Charvat* and *United States v. DISH Network*, the parties filed petitions for a declaratory ruling with the FCC. *See* A463 ¶ 11. In response, the Commission issued a Public Notice seeking comment on two questions:

- 1) Under the TCPA, does a call placed by an entity that markets the seller's goods or services qualify as a call made on behalf of, and initiated by, the seller, even if the seller does not make the telephone call (*i.e.*, physically place the call)?
- 2) What should determine whether a telemarketing call is made "on behalf of" a seller, thus triggering liability for the seller under the TCPA? Should federal common law agency principles apply? What, if any, other principles could be used to define "on behalf of" liability for a seller under the TCPA?

A87.

On May 9, 2013, after receiving comments from industry members, consumers, and government entities, the Commission issued its ruling. A459-487. With respect to the first question, the FCC concluded that a seller of goods or services, such as DISH, does not "initiate" a telephone call made by a third-party retailer and therefore typically cannot be held "directly liable for a violation of the TCPA" when a third-party retailer makes an unlawful call. A467-A468 ¶¶ 24-27;

see 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(c)(2). A “person or entity ‘initiates’ a telephone call,” the Commission found, only “when it takes steps necessary to physically place a telephone call.” A468 ¶ 26. Thus, unless a seller is “involved in the placing of a specific telephone call” by a third-party retailer—likely a rare event—the seller cannot be deemed to have initiated the call. *Id.* ¶ 27.

Turning to the second question, the Commission found that a “seller may be held vicariously liable under federal common law principles of agency for TCPA violations committed by third-party telemarketers.” A469 ¶ 28. The Commission observed that “[f]ederal statutory tort actions, such as those authorized under the TCPA, typically are construed to incorporate federal common law agency principles of vicarious liability where, as here, the language of the statute permits such a construction and doing so would advance statutory purposes.” *Id.* ¶ 29 (citing *Meyer v. Holley*, 537 U.S. 280, 285 (2003), and *American Soc’y of Mech. Eng’rs, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 565-574 (1982)); see also A476 ¶ 42 (“[T]he application of general common law principles to federal tort statutes is the norm in the absence of clear evidence that Congress intended to withdraw the application of such principles.”).

In the Commission’s view, the language of both private-right-of-action provisions permitted the incorporation of common-law agency principles of vicarious liability. The Commission observed that § 227(c)(5) allows a person to

bring suit if the person has received more than one telephone call within a 12-month period “by or on behalf of the same entity.” A469-A470 ¶¶ 29-30. The phrase “on behalf of,” the Commission stated, “easily [could] be read to encompass common law agency principles.” A470 ¶ 30. And although § 227(b)(3) does not include the phrase “on behalf of,” A475 ¶ 40, the Commission deemed the absence of that phrase to be inconsequential where the provision’s text did not otherwise “foreclose the application of baseline federal common law agency principles,” *id.*; *see also* A471, A472 ¶¶ 33, 35.

In explicating its conclusions, the FCC asserted that “[p]otential liability under general agency-related principles extends beyond” the “classical definition of ‘agency,’” which the Commission identified as “‘the fiduciary relationship that arises when one person (a “principal”) manifests assent to another person (an “agent”) that the agent shall act on the principal’s behalf and subject to the principal’s control.’” A471 ¶ 34. A principal may also be liable under the common law, the Commission indicated, “where a third party has apparent (if not actual) authority” to act on the principal’s behalf or where the principal “ratifies th[e] acts [of another] by knowingly accepting th[e] benefits [of those acts].” *Id.*; *see also* A475 ¶ 40 n.124 (stating that “[p]rinciples of apparent authority and ratification may also provide a basis for vicarious seller liability for violations of [the TCPA]”).

The Commission concluded, however, that the scope of vicarious liability should extend no further than common-law agency principles. Several parties had advocated a standard that would have made a seller strictly liable for TCPA violations committed by third-party retailers marketing the seller's product. The Federal Trade Commission ("FTC") had argued, for example, that the Commission should not "rely on federal common-law precedents based on agency and/or joint-venture principles." A147. Rather, the FTC maintained, the Commission should simply "hold sellers liable for marketers' violative telephone calls made to market the sellers' goods or services." *Id.* The States of California, Illinois, North Carolina, and Ohio similarly argued that the Commission should "decline[]" to apply "agency principles" and instead hold a seller "strictly liable when a violative call is made to a person and such a call is made for the purpose of encouraging the purchase or rental of, or investment in[,] the [s]eller's property, goods, or services, and the party physically dialing the call identifies itself either as the [s]eller, or states expressly or by implication that it is acting for the [s]eller." A118.

The United States Department of Justice ("DOJ") also advocated a rule that would "impose primary liability on a seller for any illegal telemarketing calls made *on its behalf*" and "strongly opposed importing agency law principles." A434. "To provide the clearest guidance to industry, consumers, and courts," DOJ argued, "[vicarious] liability should not be determined by applying agency law, but

instead should be decided by looking to the nature of the relationships that exist between sellers and outside entities that telemarket on their behalf.” A435. In particular, DOJ urged the Commission to adopt certain “factors” to evaluate the “nature of the relationship[]” between the seller and the third party that commits the TCPA violation. *See id.*; *see also* A345-A346 (listing factors).

The Commission rejected these broader approaches. *See* A469 ¶ 28, A470 ¶ 31, A478 ¶ 47. The Commission explained that it did “not think that an action taken for the benefit of a seller by a third-party retailer, without more, is sufficient to trigger the liability of a seller under ... either section 227(c) or section 227(b).” A478 ¶ 47; *see also* A470 ¶ 31. And it confirmed that, by incorporating federal common-law agency principles into the TCPA, it did not intend to impose “strict liability” on sellers for any call made by an entity marketing its product. A478 ¶ 47 n.140.

Having found that the TCPA incorporated federal common-law principles of agency, the Commission then purported to offer “guidance” on the application of those principles. That guidance consisted of “illustrative examples of evidence that may demonstrate that the telemarketer is the seller’s authorized representative with apparent authority to make the seller vicariously liable for the telemarketer’s section 227(b) violations.” A477 ¶ 46. The Commission wrote:

For example, apparent authority may be supported by evidence that the seller allows the outside sales entity access to information and

systems that normally would be within the seller's exclusive control, including: access to detailed information regarding the nature and pricing of the seller's products and services or to the seller's customer information. The ability by the outside sales entity to enter consumer information into the seller's sales or customer systems, as well as the authority to use the seller's trade name, trademark and service mark may also be relevant. It may also be persuasive that the seller approved, wrote or reviewed the outside entity's telemarketing scripts.

Id.

“At a minimum,” the FCC concluded, “evidence of these kinds of relationships—which consumers may acquire through discovery, if they are not independently privy to such information—should be sufficient to place upon the seller the burden of demonstrating that a reasonable consumer would not sensibly assume that the telemarketer was acting as the seller's authorized agent.” A477-478 ¶ 46. Attempting to summarize this guidance, the FCC emphasized that it was not adopting a strict liability standard, but, at the same time, it “[saw] no reason that a seller should not be liable under [sections 227(b) and 227(c)] for calls made by a third-party telemarketer when it has authorized that telemarketer to market its goods or services.” A478 ¶ 47.

Commissioner Pai dissented from this portion of the ruling. A481-A487 (Pai, Comm'r, approving in part and dissenting in part). As relevant here, Commissioner Pai disagreed with the “guidance” the Commission purported to provide on the federal common law of agency. A485-A487. As an initial matter, Commissioner Pai observed, the “federal common law of agency is a general body

of law that covers numerous agencies” and is not “entrusted to [the Commission to] administer.” A486. As a result, the FCC lacked the expertise and authority necessary to opine on the “scope and meaning” of that law. *Id.*

Commissioner Pai also questioned the “merits of the ‘guidance’ provided by the Commission.” A486. Among other things, Commissioner Pai criticized the Commission’s reliance on the doctrine of apparent authority. That doctrine, Commissioner Pai noted, applies when “a person ‘reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal’s manifestations.’” *Id.* (quoting *Restatement (Third) of Agency* § 2.03 (2006)). As Commissioner Pai explained, “victims of TCPA violations ... interact only with the telemarketer, not the seller, and thus there are no (apparent) manifestations *by the seller* on which to hang the hat of apparent authority.” A486. Commissioner Pai thus concluded that the Commission’s “guidance” did not “clarify[] the common law of agency,” but only “mudd[ied] it.” A487.

SUMMARY OF THE ARGUMENT

This petition does not challenge the Commission’s conclusions that the TCPA incorporates principles of vicarious liability and that federal common-law agency principles define the scope of that liability. This petition contests only the FCC’s purported “guidance” to courts regarding the meaning and application of the

common-law agency doctrine. The Court should set that guidance aside for several reasons.

First, the Commission has no expertise or authority concerning common-law agency principles. It therefore had no basis to offer guidance on those principles to federal and state courts, which do have the necessary authority and expertise.

Second, the Commission's explanation of agency law is simply wrong. The doctrine of apparent authority, on which the Commission heavily relied, requires that the principal make some manifestation to the injured party that leads the injured party reasonably to conclude that the purported agent is acting with the principal's authorization. But a consumer who receives an unlawful telemarketing call from a third party is unlikely to have had any interactions with the seller whose goods are being marketed. In the ordinary TCPA case, there is thus unlikely to be any manifestation from the seller to the consumer to support a finding of apparent authority. Perhaps for this reason, in the 20 years since the TCPA's enactment, no court, so far as DISH is aware, has held a party vicariously liable for a TCPA violation based on the doctrine of apparent authority.

Underscoring the Commission's misunderstanding, the Commission's illustrative examples focus on interactions between the seller and the third-party retailer, not manifestations made by anyone—let alone the principal—to the injured party. Whether a third-party retailer can access a seller's "information and

systems” or “enter consumer information into the seller’s sales or customer systems,” for example, are not facts a consumer would know at the time he or she receives an offending call. A477 ¶ 46. Such evidence therefore cannot create a reasonable belief in the consumer that the retailer acted as the seller’s authorized agent.

The Commission’s examples are also flawed because they fail to establish an apparent agency relationship with regard to the specific conduct alleged to be unlawful—*i.e.*, improper telemarketing. Many of the Commission’s examples will apply to every third-party retailer that markets a seller’s goods, from big-box retailers to mom-and-pop stores. All retailers, for example, have “the authority to use the seller’s trade name, trademark and service mark.” A477 ¶ 46. A retailer’s ability to do so, however, sheds no light on whether the retailer had apparent authority to unlawfully *telemarket* on the seller’s behalf. Nor is it indicative of whether the principal has the right to control the agent—a necessary element of an agency relationship. Rather, many of the Commission’s examples will apply in every case in which a retailer markets a seller’s goods, including cases in which the seller exerts little or no control over the retailer.

Third, the Commission’s guidance is internally inconsistent. The Commission expressly held that it did “not think that an action taken for the benefit of a seller by a third-party retailer, without more, is sufficient to trigger the liability

of the seller under [the TCPA].” A478 ¶ 47. The Commission also deliberately considered and rejected the position of some parties that sellers should be strictly liable for TCPA violations by telemarketers who market their products. *Id.* ¶ 47 n.140. Yet the Commission’s hypothetical examples could apply to virtually every seller-telemarketer relationship. Plaintiffs could thus invoke those examples as sufficient to demonstrate an agency relationship, and if courts accepted that argument, the Declaratory Ruling would have the effect of imposing precisely the strict liability standard that the Commission explicitly rejected. This incoherence is reason enough to vacate the Commission’s guidance.

Fourth and finally, the FCC erred in suggesting that a seller might bear the burden of disproving an agency relationship. It is well-settled that the party alleging the existence of an agency relationship bears the burden of proof. In positing otherwise, the FCC’s guidance yet again gets the law wrong.

STANDARD OF REVIEW

Under the Administrative Procedure Act, this Court will “hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A); *see also Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 8 (D.C. Cir. 2000) (section 706(2) applies to this Court’s review of an FCC declaratory ruling). Where a federal agency lacks expertise in a particular area of the law, courts

review an agency's application of that law de novo. *See Cellwave Tel. Servs. L.P. v. FCC*, 30 F.3d 1533, 1537 (D.C. Cir. 1994) (reviewing the FCC's interpretation of Delaware law de novo). In particular, for the reasons discussed below, the FCC's purported guidance on the meaning and application of the common law of agency is due no deference.

ARGUMENT

THE COMMISSION'S "GUIDANCE" ON THE COMMON LAW OF AGENCY SHOULD BE SET ASIDE

A. The Commission Has No Expertise or Authority To Offer Guidance On Principles Of Agency Law

As this Court and the Supreme Court have recognized, "a determination of pure agency law involve[s] no special administrative experience that a court does not possess." *NLRB v. United Ins. Co. of Am.*, 390 U.S. 254, 258 (1968); *Yellow Taxi Co. of Minneapolis v. NLRB*, 721 F.2d 366, 383 n.39 (D.C. Cir. 1983) (when NLRB "appl[ies] common law principles [of agency]," it does "not act[] within the area of its special expertise"). Indeed, with respect to "the application of common law principles of agency[,] ... th[e] expertise lies with the Court." *NLRB v. Sheet Metal Workers' Int'l Ass'n, Local Union No. 19*, 154 F.3d 137, 141 (3d Cir. 1998).

As an initial matter, because the Commission's "guidance" is not based on any unique expertise, that guidance does not merit any weight or deference. The "underlying logic for deference largely depends on whether the agency's

interpretation may be fairly characterized as being infused with the agency's expertise." *National Wildlife Fed'n v. Gorsuch*, 693 F.2d 156, 169 (D.C. Cir. 1982). Thus, where "an agency has promulgated a regulation outside the scope of its specialized knowledge, courts will not defer to it." *Murphy Exploration & Prod. Co. v. DOI*, 252 F.3d 473, 479 (D.C. Cir. 2001). For this reason, this Court in *Murphy Exploration and Production Co.* accorded no deference to the Department of Interior's interpretation of a statutory provision that defined a federal court's authority to consider challenges to the agency's "administrative proceedings." *Id.* at 479. This Court acknowledged that, as a general matter, the statute under consideration "contemplate[d] a regulatory role for the agency." *Id.* But no deference was due the agency's interpretation of the provision at issue, the Court held, because the agency had "no particular expertise in determining the scope of an Article III court's jurisdiction." *Id.*; see also *Johnson v. Railroad Ret. Bd.*, 969 F.2d 1082, 1088 (D.C. Cir. 1992) ("Because the Board was interpreting matters outside of its expertise—the Social Security amendments—it was not entitled to deference.").

Moreover, as Commissioner Pai explained, the common law of agency is not a body of law the Commission has been entrusted or authorized to administer, but a generally applicable body of law that applies in many contexts outside the telecommunications field. See A486. Deference applies only "[w]hen a court

reviews an agency's construction of the statute which it administers." *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837, 842 (1984). It does not apply to the Commission's application of generally applicable legal principles that no single agency is charged to administer. *See, e.g., Reporters Comm. for Freedom of the Press v. DOJ*, 816 F.2d 730, 734 (D.C. Cir. 1987), *rev'd on other grounds*, 489 U.S. 749 (1989).

Here, as in *Murphy Exploration and Production Co. and Johnson*, the FCC offered guidance on an area of law—the federal common law of agency—which is “outside of its expertise,” *Johnson*, 969 F.2d at 1088, and which it has no special authority to administer. As a result, the Commission's views on how that law ought to apply is entitled to no deference and should be accorded no special weight in TCPA litigation.

Because the FCC's guidance will cause—indeed, already has caused—confusion among litigants and courts in private TCPA litigation, this Court should set the FCC's guidance aside altogether. Lacking expertise on the common law of agency, the Commission had no insight to offer courts and litigants on that doctrine and no authority on which to base its opinion. The United States conceded as much in the proceedings below, where it acknowledged that “the Commission likely does not have the authority to state for the federal courts what the federal common law of agency is.” A455.

Anticipating these objections, the Commission asserted in a footnote in the Declaratory Ruling that it saw “no good reason” why it “should not provide guidance to regulated parties, consumers, and courts as to how [it] understand[s] th[e] general incorporated principles [of agency law] to apply in th[e] [telemarketing] context, where the Commission has decades of experience.” A477 ¶ 46 n.137. This argument is unavailing. The Commission’s knowledge of the “facts” of the telemarketing industry in no way renders it an expert on the question whether those facts give rise to an agency relationship under the common law. *See C.C. Eastern, Inc. v. NLRB*, 60 F.3d 855, 858 (D.C. Cir. 1995) (“The application of the law of agency to established and undisputed ... fact[s] involves no special administrative expertise[.]” (internal quotation marks omitted)).

Because courts, not the Commission, are experts on the application of the common law, the Commission’s guidance was superfluous. As explained below, it is also wrong. *See infra*, Parts B-D. For these reasons and to avoid unnecessarily confusing litigants and courts, the Court should vacate the Commission’s guidance.

B. The FCC’s Guidance On Agency Law Is Wrong

Paragraph 46 of the Declaratory Ruling purports to provide “illustrative examples of evidence that may demonstrate that [a] telemarketer is the seller’s authorized representative with apparent authority to make the seller vicariously liable for the telemarketer’s [TCPA] violations.” A477. These examples

incorrectly apply the common law of agency and should be vacated. In particular, while these examples may help demonstrate that the telemarketer was “authorized” to sell the seller’s good or service, they do not bear on whether a telemarketer had “apparent authority” or should be deemed the seller’s agent.

1. Apparent authority turns on the principal’s interactions with the injured party, not on the principal’s conduct toward the alleged agent

“Apparent authority” exists “where the principal engages in conduct that, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.” *Progressive Elec., Inc. v. NLRB*, 453 F.3d 538, 545 (D.C. Cir. 2006). Stated differently, “[a]pparent authority ... is created by a [principal’s] manifestation that another has authority to act with legal consequences for the [principal] who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is *traceable* to the manifestation.” *Restatement (Third) of Agency* § 3.03 (emphasis added). A manifestation by the principal to the third party is an “essential requirement” of apparent authority. *Id.*, cmt. b; *see also Restatement (Second) of Agency* § 265, cmt. a (1958) (“Apparent authority exists only as to those to whom the principal has manifested that an agent is authorized.”); *Moriarity v. Glueckert Funeral Home, Ltd.*, 155 F.3d 859, 865-866 (7th Cir. 1998). Thus, “[a]pparent authority cannot be established merely by showing that the agent

claimed authority or purported to exercise it, but must be established by proof of something said or done by the principal on which a third person reasonably relied.” *Moreau v. James River-Otis, Inc.*, 767 F.2d 6, 9-10 (1st Cir. 1985). And “[t]he fact that one party performs a service that facilitates the other’s business does not constitute [the required] manifestation.” *Restatement (Third) of Agency* §3.03, cmt. b.

Where such a manifestation is absent, this Court has rejected claims of apparent authority. In *Overnite Transportation Co. v. NLRB*, 140 F.3d 259 (D.C. Cir. 1998), this Court held that an employee lacked apparent authority to act on behalf of a union when he videotaped co-workers in a break room. *Id.* at 266. Although “several employees did in fact believe that [the employee] acted on behalf of the union,” the union could not “be held responsible for [his] conduct because it did nothing to confer apparent authority upon him.” *Id.* Specifically, there was “no evidence that the union encouraged any belief among employees that [the employee] had union allowance to engage in videotaping in the break room.” *Id.*

Similarly, in *NLRB v. Downtown Bid Services Corp.*, 682 F.3d 109 (D.C. Cir. 2012), this Court held that a union had not conferred apparent authority on a pro-union employee to campaign for the union in an aggressive and harassing manner. *Id.* at 111-115. Notably, the Court acknowledged that the employee was

the union's agent for a particular purpose: soliciting authorization cards. *Id.* at 114. But that "agency relationship was limited to statements made about Union policies and therefore did not cover the specific conduct that is alleged to be unlawful." *Id.* As to that alleged unlawful conduct, "the Union never engaged in any conduct that would reasonably create th[e] impression" that the employee was acting with apparent authority. *Id.* Accordingly, even though "many [employees] thought [the particular employee] represented the [u]nion—and th[e] [employee] may have fancied himself a [u]nion representative"—the union was not accountable for the employee's actions. *Id.*; *see also Moreau*, 767 F.2d at 10 (local union officers lacked apparent authority to negotiate a contract for the international union where there was "virtually no evidence in the record ... to indicate that the international organization made any representations to the Company or to any third party that local union officers had authority to negotiate" on its behalf).

Given this manifestation requirement, the doctrine of apparent authority fits poorly in the TCPA context. A consumer who receives an unlawful call typically interacts only with the third-party telemarketer who makes the call, not with the seller. Accordingly, there are likely to be few, if any, opportunities for the seller to make *any* manifestation to the consumer from which the consumer could reasonably conclude that the third-party marketer has "apparent authority" to make telemarketing calls on the seller's behalf. *See* A486 (Pai, Comm'r, approving in

part and dissenting in part) (the “key problem” with the Commission’s apparent authority theory is that “victims of TCPA violations ... interact only with the telemarketer, not the seller, and thus there are no (apparent) manifestations *by the seller* on which to hang the hat of apparent authority”); *see also Kansallis Fin. Ltd. v. Fern*, 659 N.E. 2d 731, 734 (Mass. 1996) (doctrine of apparent authority is not “particularly apt” in cases where the victim has no “ability to assess the agent’s [apparent] authority”). Perhaps for this reason, no court, so far as DISH is aware, has found a seller vicariously liable for a third party’s TCPA violations based on the doctrine of apparent authority.

Likely aware that sellers will rarely, if ever, interact directly with those who receive unlawful calls, the FCC pointed out that “‘a principal may create apparent authority by appointing a person to a particular position’” or by “‘permit[ting] an agent to acquire a reputation of authority in an area or endeavor.’” A472 ¶ 36 n.107 (quoting *Restatement (Third) of Agency* § 2.03, reporter’s note a & cmt. c). For these indirect manifestations to create apparent authority, however, the party seeking to hold the principal liable must be aware of the agent’s “position” or “reputation” and must “reasonably assume” that the agent’s actions are “consistent with the agent’s position or role.” *Restatement (Third) of Agency* § 3.03, cmt. c. The Commission failed to explain how the recipient of an unlawful call from a third-party telemarketer would know what “position” the telemarketer had been

appointed to by the seller—if any—or whether the telemarketer’s acts were consistent with the alleged “position.” As the United States explained below, “the relationship between the party physically dialing the call and the seller who stands to benefit from the call is completely opaque to the consumer.” A437.

Moreover, an indirect manifestation requires appointment to “a defined position [within] [the] organization” that third parties would reasonably understand as a position of authority, such as a the appointment of an individual to be dean of a university. *See Restatement (Third) of Agency* § 3.03, cmt. b. In the telemarketing context, however, sellers do not appoint retailers to any particular position, but merely authorize retailers to sell their products.

The FCC’s “examples of evidence” that would support a finding of apparent authority demonstrate the Commission’s fundamental misunderstanding of the manifestation requirement. The Commission’s illustrations focus primarily on interactions between the principal and the purported agent of which the injured party would be wholly unaware. Whether the outside sales entity has access to a seller’s “information and systems,” whether the outside sales entity can “enter consumer information into the seller’s sales or customer systems,” and whether “the seller approved, wrote or reviewed the outside entity’s telemarketing scripts,” *see* A477 ¶ 46, are all facts the consumer is unlikely to know at the time of the call. Such facts therefore cannot affect the consumer’s assessment of the telemarketer’s

purported authority to make the unlawful call and cannot support a finding of apparent authority. *See, e.g., Millard Processing Servs., Inc. v. NLRB*, 2 F.3d 258, 262 (8th Cir. 1993) (evidence that a union informed its purported agent about a rally, told him when he could film most employees, and drove him to the rally was “irrelevant to establishing apparent authority because there [was] no record evidence that any [third parties] were aware that the union had done these things”).

The Commission acknowledged that consumers often would not know the information it cited, but stated that “consumers may acquire [the information] through discovery.” A478 ¶ 46. Apparent authority, however, is measured by the injured person’s understanding *at the time* of the relevant event. *See Millard Processing Servs.*, 2 F.3d at 262 (“Only information actually communicated to and known by a third party can establish apparent authority.” (citing *Restatement (Second) of Agency* § 27, cmt. b)); *Gumpert v. Bon Ami Co.*, 251 F.2d 735, 739 (2d Cir. 1958) (later-discovered evidence “[was] irrelevant in considering [the purported agent’s] apparent authority” because that evidence “could not have misled [the plaintiff] at th[e] time” the predicate event occurred); *see also Wells Fargo Fin. Leasing, Inc. v. LMT-Fette, Inc.*, 250 F. Supp. 2d 1120, 1127-1128 (S.D. Iowa 2003) (purported agent’s statement did not support finding of apparent authority to enter into a transaction because the statement was made after the transaction occurred and defendants therefore “could not have been relying upon

that [statement] at the time of entering into the transaction”). Thus, even if consumers later discover the evidence the Commission highlighted during litigation, that evidence would be irrelevant to determining whether the consumer reasonably believed, at the time of the offending call, that the third-party retailer had apparent authority to act on the seller’s behalf.

2. The Commission’s examples do not show apparent authority to engage in the particular act of unlawful telemarketing

The Commission’s examples are also flawed because they fail to establish an “agency relationship ... with regard to the specific conduct that is alleged to be unlawful.” *Downtown Bid Servs.*, 682 F.3d at 113; *see also id.* (although employee was agent of union for one purpose, he was not an actual or apparent agent with respect to the unlawful conduct at issue); *Bridgeview Health Care Ctr. Ltd. v. Clark*, 2013 WL 1154206, at *5-7 (N.D. Ill. Mar. 19, 2013) (under “traditional rules of agency,” plaintiff must show not only that a marketer was an agent of the seller, but also that the seller had authorized the marketer to engage in particular unlawful conduct).

The Commission assumed, among other things, that “apparent authority may be supported by evidence that the seller allows the outside sales entity access to information and systems ... including: access to detailed information regarding the nature and pricing of the seller’s products and services.” A477 ¶ 46. The

Commission also noted that evidence of “authority to use the seller’s trade name, trademark and service mark” would support a finding of apparent authority. *Id.* But these examples are not probative on the key question whether a third-party retailer had apparent authority specifically to engage in unlawful telemarketing on the seller’s behalf. Every retailer that sells a seller’s products and services—including, for example, big-box retailers—necessarily has access to detailed information about the seller’s products or pricing. (For that matter, every person or entity with an internet connection can likely access detailed information about a seller’s products and pricing.) Every retailer is also likely to have authority to use the seller’s trade name and service mark when marketing the seller’s product. Most, if not all, retailers will also have the ability “to enter consumer information into the seller’s sales or customer systems,” A477 ¶ 46, a practice that simply reflects modern technology. Yet it cannot be the case that every retailer is a seller’s agent with apparent authority to conduct illegal telemarketing activities on the seller’s behalf. As this Court has explained, “the notion of ‘agency’ [is not] a limitless doctrine to be applied wherever it becomes necessary to attribute the actions of one entity to another in order to effectuate what the [administrative agency] perceives to be the purposes of the Act [it administers].” *International Longshoremen’s Ass’n, AFL-CIO v. NLRB*, 56 F.3d 205, 215 (D.C. Cir. 1995); *see also Leon v. Caterpillar Indus., Inc.*, 69 F.3d 1326, 1336 (7th Cir. 1995) (“mere

fact that Calumet [(an authorized Caterpillar dealer)]” is “allowed to use Caterpillar’s name and trademark in advertisements” does “not render it an agent of Caterpillar, just as every bar which advertises that they sell a particular brand of beer is not the agent of the brewery whose name they advertise”). The Commission’s examples thus fail to identify whether a retailer or other third party is an agent of the seller with regard to “the specific conduct that is alleged to be unlawful”—*i.e.*, improper telemarketing. They merely identify entities that are authorized to sell the seller’s good or service.

3. The FCC’s examples fail to establish that a seller had the actual or apparent right to control a particular retailer

The Commission’s examples also disregard the “fundamental principle of hornbook agency law that an agency relationship arises only where the principal ‘has the right to control the conduct of the agent with respect to matters entrusted to him.’” *International Longshoremen’s Ass’n*, 56 F.3d at 213 (quoting *Restatement (Second) of Agency* § 14)); *see also Restatement (Third) of Agency* § 1.01, cmt. f (“An essential element of agency is the principal’s right to control the agent’s actions.”). The “chief justification[.]” for holding a principal accountable for the acts of its agent is “the principal’s ability to select and control the agent and to terminate the agency relationship.” *Restatement (Third) of Agency* § 1.01, cmt. f. The principal’s ability to control its purported agent is therefore relevant in all cases, including those involving apparent authority. *See Overnight Transp. Co.*,

140 F.3d at 267-268 (plaintiff could not reasonably have believed that employees at a union rally had apparent authority to act on behalf of union absent “evidence that a union official directed activities of or assigned responsibilities to those who attended the gathering and engaged in the complained of activity”); *id.* at 266 (members of union organizing committee had no apparent authority to act on behalf of the union where there was no evidence a union official “gave any specific directives to [members of] the [c]ommittee”).

Consistent with this requirement, several courts applying common-law agency principles have held that a seller is vicariously liable for TCPA violations committed by third-party marketers only where the seller exercised control over the “manner and means” of the calls. In *Thomas v. Taco Bell Corp.*, 879 F. Supp. 2d 1079, 1084 (C.D. Cal. 2012), for example, the court held that Taco Bell could not be held vicariously liable for a text-message campaign conducted by a third party—even though Taco Bell knew about, approved, and partially funded the campaign—because the evidence failed to show that Taco Bell directed or controlled the “creation and distribution” of the text message. *Id.* at 1086. The court explained that “[t]o succeed on this vicarious liability theory, [the plaintiff] [had to] demonstrate ... that Taco Bell controlled or had the right to control [the third-party marketers] and, more specifically, the manner and means of the text message campaign they conducted.” *Id.* at 1084; *see also, e.g., Mey v. Pinnacle*

Sec., LLC, 2012 WL 4009718, at *5 (N.D. W. Va. Sept. 12, 2012) (seller could not be vicariously liable for calls made by third-party lead generators where plaintiff “presented no evidence to suggest that [the seller] ha[d] control over the means and manner by which its lead generators place calls on its behalf”); *Mais v. Gulf Coast Collection Bureau, Inc.*, 2013 WL 1899616, at *13 (S.D. Fla. May 8, 2013) (“To establish vicarious liability ... the plaintiff must show, among other things, ‘control by the principal over the actions of the agent,’” including “control as to the means used to achieve the results”); *Bridgeview Health Care Ctr.*, 2013 WL 1154206, at *5 (“[D]efendants may be liable under § 227(b) of the TCPA for the acts of a third party” if the defendant “ha[d] the right to control the manner and method of work carried out by the agent.”).

Contrary to this requirement, the Commission reasoned that any time a seller “authorize[s] [a] telemarketer to market its goods or services,” the seller “has the ability, through its authorization, to oversee the conduct of its telemarketers, even if that power to supervise is unexercised.” A478 ¶ 47. As the foregoing precedent demonstrates, that statement misapprehends the element of control necessary to establish an agency relationship. Many of the Commission’s examples in the Declaratory Ruling similarly demonstrate the FCC’s failure to comprehend agency law’s “right-to-control” requirement. Big-box stores that sell DISH products, like all retailers, have “access to detailed information regarding the nature and pricing

of [DISH's] products and services.” They also have the “authority to use [DISH's] trade name, trademark and service mark” when advertising DISH's products. Yet DISH has effectively no control over the manner in which a big-box retailer conducts its operations, including its marketing activities. According to the Commission's “guidance,” however, such a retailer might nonetheless be deemed DISH's agent, subjecting DISH to liability for TCPA violations committed by the big-box retailer's employees.⁴ The prospect that DISH might be held vicariously liable for acts committed by a third party as to whose conduct it has no right of control confirms the error in the Commission's purported illustrations of agency law.

C. The Commission's Guidance Is Internally Inconsistent

As noted, several parties involved in the proceedings below urged the Commission to reject common-law agency principles in favor of a broader standard. *See supra* pp. 15-16. DOJ, for example, “strongly opposed importing agency law principles.” A434. It championed an approach that “look[ed] to the nature of the relationships that exist between sellers and the outside entities that

⁴ The Commission stated that DISH could not be held vicariously liable for unlawful calls made by a big-box retailer “to the extent such a store is selling on its own account—*i.e.*, it has purchased the goods from a manufacturer and is reselling them.” A477 ¶ 45. But it is unclear how a consumer would know that a big-box retailer who placed an unlawful call was selling “on its own account” and not as the actual or apparent agent of the product manufacturer. In any event, big-box retailers do not purchase subscriptions to DISH's satellite television service and then resell those subscriptions “on [their] own account.”

telemarket on their behalf.” A435. It then supplied a list of “factors” it believed would justify holding a seller liable for TCPA violations committed by a third party, whether or not the third party qualified as the seller’s actual or apparent agent under the common law. *See id.*, A345-A346. The FTC and the States went further, arguing that the Commission should hold sellers “strictly liable” for any call that promoted the seller’s product or service. *See supra* p. 15.

The Commission expressly rejected these calls for a vicarious-liability standard broader than the common law of agency. *See* A469 ¶ 28, A470 ¶ 31, A478 ¶ 47. It emphasized that it did “not think that an action taken for the benefit of a seller by a third-party retailer, without more, is sufficient to trigger the liability of a seller under either ... section 227(c) or section 227(b).” A478 ¶ 47. And it made clear that it had no intention of adopting a “strict liability” standard. A478 ¶ 47 n.140.

Against this background, the Commission’s “guidance” is incoherent. The Commission “s[aw] no reason” why a seller should not be liable under the TCPA for calls made by a third-party telemarketer “when it has authorized that telemarketer to market its goods or services.” A478 ¶ 47. But that will be true in every case. Similarly, as noted, every entity that markets a seller’s goods—from big-box retailers to mom-and-pop stores—is likely to have access to information about the seller’s products and pricing. Every retailer will possess the authority to

use the seller's trade name and trademark. And many retailers will also be able "to enter consumer information into the seller's sales or customer systems." Plaintiffs in future TCPA cases will undoubtedly argue that these "illustrative examples"—which the Commission inexplicably borrowed from DOJ's proposed list of factors, despite having rejected DOJ's preferred legal standard—are individually sufficient to establish vicarious liability.⁵

Indeed, the plaintiff in *Charvat*—one of the cases that led to the referral to the Commission—has already told the court there that

the FCC Ruling recognizes that where a seller *authorizes* a third party to telemarket its goods and services, the seller will be liable for any violations of the TCPA. FCC Ruling ¶ 47. There can be no dispute that Dish authorized its retailers to engage in telemarketing, and authorized its retailers to telemarket using the Dish trade name. On this basis alone, the FCC Ruling necessitates the reversal of the decision of the trial court.

⁵ DOJ's proposed list of factors—which it specifically advocated as an *alternative* to common-law agency—included: "[e]vidence reflecting whether the seller allows the outside sales entity access to information and systems that the seller controls, such as ... [w]hether the outside sales entity is authorized to use the seller's trademark and service mark; [w]hether the outside sales entity possesses detailed information regarding the nature and pricing of the seller's products and services; ... [w]hether the outside sales entity has the ability to access and enter customer information into the seller's sales or customer systems; ... [and] [w]hether the seller approved, wrote, or reviewed the outside sales entity's telemarketing scripts." A345-A346. The Commission unaccountably cited these factors—almost verbatim—as "illustrative examples" of the very agency-law principles the factors were intended to obviate. A477 ¶ 46.

Appellant Supplemental Br. 11-12, *Charvat v. EchoStar Satellite, LLC*, No. 09-4525 (6th Cir. July 23, 2013).

Interpreted in that fashion, as Charvat has advocated and other plaintiffs undoubtedly will urge, the Commission's illustrative examples would amount to the precise "strict liability" standard the Commission went out of its way to repudiate. This internal inconsistency alone renders the FCC's guidance arbitrary and warrants its rejection. *See, e.g., Business Roundtable v. SEC*, 647 F.3d 1144, 1153 (D.C. Cir. 2011).

D. The Commission Erred In Suggesting That the Burden Rests On A Seller To Disprove An Agency Relationship

Finally, the Commission's "guidance" must be set aside because it erroneously concluded that, "[a]t a minimum," evidence in keeping with its illustrations "should be sufficient to place upon the seller the burden of demonstrating that a reasonable consumer would not sensibly assume that the telemarketer was acting as the seller's authorized agent." A477, 478 ¶ 46. This statement contravenes the law of agency, under which "the party asserting that a relationship of agency exists generally has the burden in litigation of establishing its existence." *Atrium of Princeton, LLC v. NLRB*, 684 F.3d 1310, 1315 (D.C. Cir. 2012) (citing *Restatement (Third) of Agency* § 1.02, cmt. d); *see also Moreau*, 767 F.2d at 10 ("The burden of proving apparent authority rests on the party asserting that the act was authorized.")

As discussed above, much of the evidence the Commission cites will be available in every TCPA case—*e.g.*, there will always be evidence that a given retailer had access to information regarding “the nature and pricing of the seller’s products and services.” A477 ¶ 46. If such minimal evidence sufficed to shift the burden of proof onto the seller, then the burden would almost always rest on the seller to disprove an agency relationship. That result is not in keeping with the law. Moreover, the Commission’s statement threatens to inject substantial confusion into TCPA litigation as to the proper allocation of burdens. Like the rest of the FCC’s guidance, it should be set aside.

* * *

This petition does not take issue with the Commission’s conclusion that the TCPA permits a seller to be held liable for the acts of a third-party telemarketer when the telemarketer qualifies as an agent of the seller under the federal common law of agency. But the Commission should have stopped there. It had no authority to opine on how those common-law principles would apply, and it employed no particular expertise in explicating those principles. By nonetheless proceeding to address the issue, the Commission has created a tangle of agency law that will cause substantial confusion in the courts. To avoid this result, this Court should set aside the Commission’s “guidance” and make clear that it misstates the law of agency.

CONCLUSION

For the foregoing reasons, the Court should grant DISH's petition for review and vacate those portions of the Declaratory Ruling that purport to provide guidance on the application of federal common-law agency principles. In so doing, the Court should hold that the Commission's guidance misstates the law of agency, is not entitled to any deference, and has no legal effect.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Federal Rule of Appellate Procedure 32(a)(7)(B), the brief contains 9,638 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font. As permitted by Federal Rule of Appellate Procedure 32(a)(7)(B), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Samir C. Jain

SAMIR C. JAIN

September 3, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Samir C. Jain

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ADDENDUM

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47 U.S.C. § 227—Restrictions on use of telephone equipment**(a) Definitions**

As used in this section—

(1) The term “automatic telephone dialing system” means equipment which has the capacity—

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

(B) to dial such numbers.

(2) The term “established business relationship”, for purposes only of subsection (b)(1)(C)(i) of this section, shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G))¹.

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

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

¹ So in original. The second closing parenthesis probably should not appear.

(5) The term “unsolicited advertisement” means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.

(b) Restrictions on use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

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

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

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

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

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

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

(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient;

(ii) the sender obtained the number of the telephone facsimile machine through—

(I) the voluntary communication of such number, within the context of such established business relationship, from the recipient of the unsolicited advertisement, or

(II) a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution,

except that this clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005, if the sender possessed the facsimile machine number of the recipient before such date of enactment; and

(iii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D),

except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or

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

(2) Regulations; exemptions and other provisions

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

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

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

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

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

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

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

(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect;

(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes—

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) the notice complies with the requirements of subsection (d) of this section;

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;

(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(iii), except that the Commission may take action under this subparagraph only—

(i) by regulation issued after public notice and opportunity for public comment; and

(ii) if the Commission determines that such notice required by paragraph (1)(C)(iii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements; and

(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

(I) determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of

establishing a limitation on such established business relationship; and

(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and

(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 3-month period that begins on July 9, 2005.

(3) Private right of action

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

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

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

(C) both such actions.

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

(c) Protection of subscriber privacy rights

(1) Rulemaking proceeding required

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

(A) compare and evaluate alternative methods and procedures (including the use of electronic databases, telephone network technologies, special directory markings, industry-based or company-

specific “do not call” systems, and any other alternatives, individually or in combination) for their effectiveness in protecting such privacy rights, and in terms of their cost and other advantages and disadvantages;

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

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

(D) consider whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under subsection (a)(3) of this section, and, if such a finding is made and supported by the record, propose specific restrictions to the Congress; and

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

(2) Regulations

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

(3) Use of database permitted

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

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

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

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

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

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

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

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

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

(I) specify the frequency with which such database will be updated and specify the method by which such updating will take effect for

purposes of compliance with the regulations prescribed under this subsection;

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

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

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

(4) Considerations required for use of database method

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

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

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

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

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

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

(C) consider (i) whether the needs of telemarketers operating on a local basis could be met through special markings of area white pages directories, and (ii) if such directories are needed as an adjunct to database lists prepared by area code and local exchange prefix.

(5) Private right of action

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

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

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

(C) both such actions.

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

(6) Relation to subsection (b)

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

(d) Technical and procedural standards

(1) Prohibition

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

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

facsimile machine or automatic telephone dialing system in a manner that does not comply with such standards; or

(B) to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual.

(2) Telephone facsimile machines

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

(3) Artificial or prerecorded voice systems

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

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

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

(e) Prohibition on provision of inaccurate caller identification information

(1) In general

It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B).

(2) Protection for blocking caller identification information

Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

(3) Regulations

(A) In general

Not later than 6 months after December 22, 2010, the Commission shall prescribe regulations to implement this subsection.

(B) Content of regulations

(i) In general

The regulations required under subparagraph (A) shall include such exemptions from the prohibition under paragraph (1) as the Commission determines is appropriate.

(ii) Specific exemption for law enforcement agencies or court orders

The regulations required under subparagraph (A) shall exempt from the prohibition under paragraph (1) transmissions in connection with—

(I) any authorized activity of a law enforcement agency;
or

(II) a court order that specifically authorizes the use of caller identification manipulation.

(4) Report

Not later than 6 months after December 22, 2010, the Commission shall report to Congress whether additional legislation is necessary to prohibit the provision of inaccurate caller identification information in technologies that are successor or replacement technologies to telecommunications service or IP-enabled voice service.

(5) Penalties

(A) Civil forfeiture

(i) In general

Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b) of this title, to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this Act. The amount of the forfeiture penalty determined under this paragraph shall not exceed \$10,000 for each violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.

(ii) Recovery

Any forfeiture penalty determined under clause (i) shall be recoverable pursuant to section 504(a) of this title.

(iii) Procedure

No forfeiture liability shall be determined under clause (i) against any person unless such person receives the notice required by section 503(b)(3) of this title or section 503(b)(4) of this title.

(iv) 2-year statute of limitations

No forfeiture penalty shall be determined or imposed against any person under clause (i) if the violation charged occurred

more than 2 years prior to the date of issuance of the required notice or notice of apparent liability.

(B) Criminal fine

Any person who willfully and knowingly violates this subsection shall upon conviction thereof be fined not more than \$10,000 for each violation, or 3 times that amount for each day of a continuing violation, in lieu of the fine provided by section 501 of this title for such a violation. This subparagraph does not supersede the provisions of section 501 of this title relating to imprisonment or the imposition of a penalty of both fine and imprisonment.

(6) Enforcement by States

(A) In general

The chief legal officer of a State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as *parens patriae*, on behalf of the residents of that State in an appropriate district court of the United States to enforce this subsection or to impose the civil penalties for violation of this subsection, whenever the chief legal officer or other State officer has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this subsection or a regulation under this subsection.

(B) Notice

The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under subparagraph (A) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(C) Authority to intervene

Upon receiving the notice required by subparagraph (B), the Commission shall have the right—

(i) to intervene in the action;

(ii) upon so intervening, to be heard on all matters arising therein; and

(iii) to file petitions for appeal.

(D) Construction

For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(E) Venue; service or process

(i) Venue

An action brought under subparagraph (A) shall be brought in a district court of the United States that meets applicable requirements relating to venue under section 1391 of Title 28.

(ii) Service of process

In an action brought under subparagraph (A)—

(I) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(II) a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(7) Effect on other laws

This subsection does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

(8) Definitions

For purposes of this subsection:

(A) Caller identification information

The term “caller identification information” means information provided by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service.

(B) Caller identification service

The term “caller identification service” means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or IP-enabled voice service. Such term includes automatic number identification services.

(C) IP-enabled voice service

The term “IP-enabled voice service” has the meaning given that term by section 9.3 of the Commission’s regulations (47 C.F.R. 9.3), as those regulations may be amended by the Commission from time to time.

(9) Limitation

Notwithstanding any other provision of this section, subsection (f) shall not apply to this subsection or to the regulations under this subsection.

(f) Effect on State law

(1) State law not preempted

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

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

(B) the use of automatic telephone dialing systems;

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

(D) the making of telephone solicitations.

(2) State use of databases

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

(g) Actions by States

(1) Authority of States

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

(2) Exclusive jurisdiction of Federal courts

The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all civil actions brought under this subsection. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the

defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Rights of Commission

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

(4) Venue; service of process

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

(5) Investigatory powers

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

(6) Effect on State court proceedings

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

(7) Limitation

Whenever the Commission has instituted a civil action for violation of regulations prescribed under this section, no State may, during the pendency

of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for any violation as alleged in the Commission's complaint.

(8) "Attorney general" defined

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

(h) Junk Fax Enforcement report

The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

(1) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;

(2) the number of citations issued by the Commission pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(3) the number of notices of apparent liability issued by the Commission pursuant to section 503 of this title during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(4) for each notice referred to in paragraph (3)—

(A) the amount of the proposed forfeiture penalty involved;

(B) the person to whom the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding;

(5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 of this title during the year to enforce any law, regulation, or

policy relating to sending of unsolicited advertisements to telephone facsimile machines;

(6) for each forfeiture order referred to in paragraph (5)—

- (A) the amount of the penalty imposed by the order;
- (B) the person to whom the order was issued;
- (C) whether the forfeiture penalty has been paid; and
- (D) the amount paid;

(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

(8) for each case in which the Commission referred such an order for recovery—

- (A) the number of days from the date the Commission issued such order to the date of such referral;
- (B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and
- (C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.

47 C.F.R. § 64.1200—Delivery restrictions

(a) No person or entity may:

(1) Except as provided in paragraph (a)(2) of this section, initiate any telephone call (other than a call made for emergency purposes or is made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice;

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

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

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

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.

<Text of subsection (a)(2) effective until Oct. 16, 2013.>

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

(i) Is made for emergency purposes;

(ii) Is not made for a commercial purpose;

- (iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation;
- (iv) Is made to any person with whom the caller has an established business relationship at the time the call is made; or
- (v) Is made by or on behalf of a tax-exempt nonprofit organization.

<Text of subsection (a)(2) effective Oct. 16, 2013.>

(2) Initiate, or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section, other than a call made with the prior express written consent of the called party or the prior express consent of the called party when the call is made by or on behalf of a tax-exempt nonprofit organization, or a call that delivers a “health care” message made by, or on behalf of, a “covered entity” or its “business associate,” as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

<Text of subsection (a)(3) effective until Oct. 16, 2013.>

- (3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine, unless—
- (i) The unsolicited advertisement is from a sender with an established business relationship, as defined in paragraph (f)(5) of this section, with the recipient; and
 - (ii) The sender obtained the number of the telephone facsimile machine through—
 - (A) The voluntary communication of such number by the recipient directly to the sender, within the context of such established business relationship; or
 - (B) A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. If a sender obtains the facsimile

number from the recipient's own directory, advertisement, or Internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed to make the number available for public distribution.

(C) This clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005 if the sender also possessed the facsimile machine number of the recipient before July 9, 2005. There shall be a rebuttable presumption that if a valid established business relationship was formed prior to July 9, 2005, the sender possessed the facsimile number prior to such date as well; and

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if—

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(3)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(3)(v) of this section;

(D) The notice includes—

(1) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(2) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or e-mail address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

(iv) A facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(3)(iii) of this section.

(v) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or e-mail address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

(vi) A sender that receives a request not to send future unsolicited advertisements that complies with paragraph (a)(3)(v) of this section must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient

subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.

(vii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

<Text of subsection (a)(3) effective Oct. 16, 2013.>

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

(i) Is made for emergency purposes;

(ii) Is not made for a commercial purpose;

(iii) Is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing;

(iv) Is made by or on behalf of a tax-exempt nonprofit organization; or

(v) Delivers a "health care" message made by, or on behalf of, a "covered entity" or its "business associate," as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103.

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

(i) The unsolicited advertisement is from a sender with an established business relationship, as defined in paragraph (f)(6) of this section, with the recipient; and

(ii) The sender obtained the number of the telephone facsimile machine through—

(A) The voluntary communication of such number by the recipient directly to the sender, within the context of such established business relationship; or

(B) A directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution. If a sender obtains the facsimile number from the recipient's own directory, advertisement, or Internet site, it will be presumed that the number was voluntarily made available for public distribution, unless such materials explicitly note that unsolicited advertisements are not accepted at the specified facsimile number. If a sender obtains the facsimile number from other sources, the sender must take reasonable steps to verify that the recipient agreed to make the number available for public distribution.

(C) This clause shall not apply in the case of an unsolicited advertisement that is sent based on an established business relationship with the recipient that was in existence before July 9, 2005 if the sender also possessed the facsimile machine number of the recipient before July 9, 2005. There shall be a rebuttable presumption that if a valid established business relationship was formed prior to July 9, 2005, the sender possessed the facsimile number prior to such date as well; and

(iii) The advertisement contains a notice that informs the recipient of the ability and means to avoid future unsolicited advertisements. A notice contained in an advertisement complies with the requirements under this paragraph only if—

(A) The notice is clear and conspicuous and on the first page of the advertisement;

(B) The notice states that the recipient may make a request to the sender of the advertisement not to send any future advertisements to a telephone facsimile machine or machines and that failure to comply, within 30 days, with such a request meeting the requirements under paragraph (a)(4)(v) of this section is unlawful;

(C) The notice sets forth the requirements for an opt-out request under paragraph (a)(4)(v) of this section;

(D) The notice includes—

(1) A domestic contact telephone number and facsimile machine number for the recipient to transmit such a request to the sender; and

(2) If neither the required telephone number nor facsimile machine number is a toll-free number, a separate cost-free mechanism including a Web site address or email address, for a recipient to transmit a request pursuant to such notice to the sender of the advertisement. A local telephone number also shall constitute a cost-free mechanism so long as recipients are local and will not incur any long distance or other separate charges for calls made to such number; and

(E) The telephone and facsimile numbers and cost-free mechanism identified in the notice must permit an individual or business to make an opt-out request 24 hours a day, 7 days a week.

(iv) A facsimile advertisement that is sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice that complies with the requirements in paragraph (a)(4)(iii) of this section.

(v) A request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

(A) The request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(B) The request is made to the telephone number, facsimile number, Web site address or email address identified in the sender's facsimile advertisement; and

(C) The person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine.

(vi) A sender that receives a request not to send future unsolicited advertisements that complies with paragraph (a)(4)(v) of this section must honor that request within the shortest reasonable time from the date of such request, not to exceed 30 days, and is prohibited from sending unsolicited advertisements to the recipient unless the recipient subsequently provides prior express invitation or permission to the sender. The recipient's opt-out request terminates the established business relationship exemption for purposes of sending future unsolicited advertisements. If such requests are recorded or maintained by a party other than the sender on whose behalf the unsolicited advertisement is sent, the sender will be liable for any failures to honor the opt-out request.

(vii) A facsimile broadcaster will be liable for violations of paragraph (a)(4) of this section, including the inclusion of opt-out notices on unsolicited advertisements, if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

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

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

(7) Abandon more than three percent of all telemarketing calls that are answered live by a person, as measured over a 30-day period for a single calling campaign. If a single calling campaign exceeds a 30-day period, the abandonment rate shall be calculated separately for each successive 30-day period or portion thereof that such calling campaign continues. A call is "abandoned" if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting.

(i) Whenever a live sales representative is not available to speak with the person answering the call, within two (2) seconds after the called

person's completed greeting, the telemarketer or the seller must provide:

(A) A prerecorded identification and opt-out message that is limited to disclosing that the call was for "telemarketing purposes" and states the name of the business, entity, or individual on whose behalf the call was placed, and a telephone number for such business, entity, or individual that permits the called person to make a do-not-call request during regular business hours for the duration of the telemarketing campaign; provided, that, such telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges, and

(B) An automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make a do-not-call request prior to terminating the call, including brief explanatory instructions on how to use such mechanism. When the called person elects to opt-out using such mechanism, the mechanism must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call.

(ii) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line or to any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii) of this section after the subscriber to such line has granted prior express written consent for the call to be made shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(iii) The seller or telemarketer must maintain records establishing compliance with paragraph (a)(7) of this section.

(iv) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by this paragraph (a)(7).

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

(b) All artificial or prerecorded voice telephone messages shall:

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

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

(3) In every case where the artificial or prerecorded voice telephone message includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through (iii), provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism, must automatically record the called person's number to the seller's do-not-call list and immediately terminate the call. When the artificial or prerecorded voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the seller's do-not-call list.

(c) No person or entity shall initiate any telephone solicitation to:

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

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal

Government. Such do-not-call registrations must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

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

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

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

(C) Recording. It has maintained and recorded a list of telephone numbers that the seller may not contact;

(D) Accessing the national do-not-call data-base. It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

Note to paragraph (c)(2)(i)(D): The requirement in paragraph 64.1200(c)(2)(i)(D) for persons or entities to employ a version of the national do-not-call registry obtained from the administrator no more than 31 days prior to the date any call is made is effective January 1, 2005. Until January 1, 2005, persons or entities must continue to employ a version of the registry obtained from the administrator of the registry no more than three months prior to the date any call is made.

(E) Purchasing the national do-not-call database. It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It

purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

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

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

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

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

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

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

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

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

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

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

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

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

(f) As used in this section:

(1) The term advertisement means any material advertising the commercial availability or quality of any property, goods, or services.

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

(3) The term clear and conspicuous means a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures. With respect to facsimiles and for purposes of paragraph (a)(4)(iii)(A) of this section, the notice must be placed at either the top or bottom of the facsimile.

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

(5) The term established business relationship for purposes of telephone solicitations means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

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

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

(6) The term established business relationship for purposes of paragraph (a)(4) of this section on the sending of facsimile advertisements means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application,

purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

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

(8) The term prior express written consent means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

(i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that:

(A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(ii) The term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

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

(10) The term sender for purposes of paragraph (a)(4) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.

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

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

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

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

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

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

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

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

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

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

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-

not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

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

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